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Authorised Version No. 117

Building Act 1993

No. 126 of 1993

Authorised Version incorporating amendments as at
26 September 2018

Part 1—Preliminary

1 Purposes

The main purposes of this Act are—

- (a) to regulate building work and building standards; and
- (b) to provide for the accreditation of building products, construction methods, building components and building systems; and
- (c) to provide an efficient and effective system for issuing building and occupancy permits and administering and enforcing related building and safety matters and resolving building disputes; and
- (d) to regulate building practitioners and plumbers; and
- (e) to regulate plumbing work and plumbing standards; and
- (f) to provide for the accreditation, certification and authorisation of plumbing work, products and materials; and
- (g) to regulate cooling tower systems; and
- (h) to limit the periods within which building actions and plumbing actions may be brought.

**S. 1
substituted by
No. 54/2007
s. 3.**

2 Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 March 1995, it comes into operation on that date.

3 Definitions

- (1) In this Act—

S. 3(1) def. of *appointed day* repealed by No. 21/2017 s. 72(2).

* * * * *

adjoining occupier means an occupier of an adjoining property;

adjoining owner means the owner of an adjoining property;

adjoining property means land (including any street, highway, lane, footway, square, alley and right of way) which is so situated in relation to the site on which building work is to be carried out as to be at risk of significant damage from the building work;

S. 3(1) def. of *approved auditor* inserted by No. 85/2000 s. 3, repealed by No. 46/2008 s. 248(1).

* * * * *

<p><i>approved infrastructure contributions plan</i> has the same meaning as in Part 3AB of the Planning and Environment Act 1987;</p>	<p>S. 3(1) def. of <i>approved infrastructure contributions plan</i> inserted by No. 7/2018 s. 21.</p>
<p><i>associate</i>, in relation to a person, means a person who exercises a significant influence over the person or the operation or management of the person's business;</p>	<p>S. 3(1) def. of <i>associate</i> inserted by No. 21/2017 s. 3(1).</p>
<p><i>Authority</i> means the Victorian Building Authority established under section 193;</p>	<p>S. 3(1) def. of <i>Authority</i> inserted by No. 34/2013 s. 3(a).</p>
<p><i>building</i> includes structure, temporary building, temporary structure and any part of a building or structure;</p>	
<p><i>Building account</i> means the Building account of the Victorian Building Authority Fund under Part 12;</p>	<p>S. 3(1) def. of <i>Building account</i> inserted by No. 15/2016 s. 16(3).</p>
<p><i>Building Advisory Council</i> means the Building Advisory Council under Part 12;</p>	
<p><i>Building Appeals Board</i> means the Building Appeals Board under Part 10;</p>	
<p><i>Building Code of Australia</i> means the Building Code of Australia comprising—</p> <p>(a) Volume One of the National Construction Code Series including any variations or additions in the Appendix Victoria set out in the Appendices to that Volume; and</p>	<p>S. 3(1) def. of <i>Building Code of Australia</i> inserted by No. 34/1997 s. 4, amended by No. 66/2004 s. 3(2), substituted by No. 5/2011 s. 3(2).</p>

- (b) Volume Two of the National Construction Code Series including any Victoria additions set out in Appendix A of that Volume;

S. 3(1) def. of *Building Practitioners Board* repealed by No. 15/2016 s. 16(1).

* * * * *

S. 3(1) def. of *building practitioner* amended by Nos 91/1995 s. 136(a) (i)–(iii), 35/2004 s. 34(1) (as amended by No. 66/2004 s. 21).

building practitioner means—

- (a) a building surveyor; or
- (b) a building inspector; or
- (c) a quantity surveyor; or
- (d) an engineer engaged in the building industry; or
- (e) a draftsperson who carries on a business of preparing plans for building work or preparing documentation relating to permits or permit applications; or
- (f) a builder including a domestic builder; or
- (g) a person who erects or supervises the erection of prescribed temporary structures; or
- (h) a person responsible for a building project or any stage of a building project and who belongs to a class or category of people prescribed to be building practitioners—

but does not include—

- (i) an architect; or

- (j) a person (other than a domestic builder) who does not carry on the business of building¹; or

* * * * *

Building Regulations Advisory Committee means the Building Regulations Advisory Committee under Part 12;

building regulations means regulations made under Part 2;

building work means work for or in connection with the construction, demolition or removal of a building;

business day means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

S. 3(1) def. of ***business day*** inserted by No. 39/1996 s. 3.

certificate of consent means a certificate of consent under Division 3A of Part 3;

S. 3(1) def. of ***certificate of consent*** inserted by No. 66/2004 s. 3(1).

certificate of registration means the certificate of registration issued to a building practitioner under section 171G;

S. 3(1) def. of ***certificate of registration*** inserted by No. 46/2018 s. 30.

Chief Commissioner means the person appointed to the VBA Board as Chief Commissioner;

S. 3(1) def. of ***Chief Commissioner*** inserted by No. 34/2013 s. 3(a).

S. 3(1) def. of
*chief
executive
officer*
inserted by
No. 34/2013
s. 3(a).

chief executive officer means the chief executive officer of the Authority;

S. 3(1) def. of
chief officer
inserted by
No. 66/2004
s. 3(1).

chief officer means—

- (a) in relation to the metropolitan fire district under the **Metropolitan Fire Brigades Act 1958**, the Chief Officer of the Metropolitan Fire and Emergency Services; and
- (b) in relation to any building or land outside the metropolitan fire district, the Chief Officer of the Country Fire Authority under the **Country Fire Authority Act 1958**;

S. 3(1) def. of
*code of
conduct*
inserted by
No. 15/2016
s. 16(4).

code of conduct means a code of conduct for building practitioners approved under Division 2 of Part 11;

S. 3(1) def. of
*collecting
agency*
inserted by
No. 7/2018
s. 21.

collecting agency has the same meaning as in Part 3AB of the **Planning and Environment Act 1987**;

S. 3(1) def. of
Commission
amended by
No. 68/2001
s. 3(1)(a),
repealed by
No. 34/2013
s. 17(a).

* * * * *

Commissioner means the Chief Commissioner, the Deputy Chief Commissioner or a Commissioner appointed to the VBA Board;

S. 3(1) def. of *Commissioner* amended by No. 68/2001 s. 3(1)(b), substituted by No. 34/2013 s. 3(b).

conduct, in relation to a public entertainment, means to have a direct pecuniary interest in the proceeds or profits of the entertainment;

construct, in relation to a building, includes—

- (a) build, re-build, erect or re-erect the building; and
- (b) repair the building; and
- (c) make alterations to the building; and
- (d) enlarge or extend the building; and
- (e) place or relocate the building on land;

cooling tower has the same meaning as it has in section 3(1) of the **Public Health and Wellbeing Act 2008**;

S. 3(1) def. of *cooling tower* inserted by No. 85/2000 s. 3, substituted by No. 46/2008 s. 248(2).

cooling tower system has the same meaning as it has in section 3(1) of the **Public Health and Wellbeing Act 2008**;

S. 3(1) def. of *cooling tower system* inserted by No. 85/2000 s. 3, substituted by No. 46/2008 s. 248(2).

council means a council within the meaning of the **Local Government Act 1989**;

S. 3(1) def. of *decision* substituted by No. 15/2016 s. 16(2)(a).

decision, in relation to a matter in relation to which an application for review or appeal can be made to the Building Appeals Board, the Authority or VCAT, includes failure to decide;

S. 3(1) def. of *decision-maker* substituted by No. 15/2016 s. 16(2)(b).

decision-maker, in relation to a matter in relation to which an application for review or appeal can be made to the Building Appeals Board, the Authority or VCAT, means the person or body whose decision may be the subject of that review or appeal;

S. 3(1) def. of *designated building surveyor* inserted by No. 21/2017 s. 3(1).

designated building surveyor has the meaning set out in section 80A(2);

S. 3(1) def. of *destructive testing* inserted by No. 46/2018 s. 30.

destructive testing, in relation to a building material or product used or to be used in the construction of a building, means testing of that material or product that will or is likely to cause the destruction of that material or product;

S. 3(1) def. of *development agency* inserted by No. 7/2018 s. 21.

development agency has the same meaning as in Part 3AB of the **Planning and Environment Act 1987**;

S. 3(1) def. of *direction to fix building work* inserted by No. 21/2017 s. 18(1).

direction to fix building work has the same meaning as it has in section 37;

S. 3(1) def. of *dispute resolution order* inserted by No. 15/2016 s. 59.

dispute resolution order has the same meaning as it has in the **Domestic Building Contracts Act 1995**;

domestic builder means a builder within the meaning of the **Domestic Building Contracts Act 1995**;

S. 3(1) def. of *domestic builder* inserted by No. 91/1995 s. 136(b), amended by No. 52/1998 s. 311(Sch. 1 item 10.1).

domestic building work has the same meaning as it has in the **Domestic Building Contracts Act 1995**;

S. 3(1) def. of *domestic building work* inserted by No. 91/1995 s. 136(b), amended by No. 52/1998 s. 311(Sch. 1 item 10.1).

domestic building work dispute has the same meaning as it has in the **Domestic Building Contracts Act 1995**;

S. 3(1) def. of *domestic building work dispute* inserted by No. 15/2016 s. 59.

domestic partner of a person means—

- (a) a person who is in a registered domestic relationship with the person; or
- (b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender);

S. 3(1) def. of *domestic partner* inserted by No. 21/2017 s. 3(1).

Energy Safe inspector means an inspector appointed under section 86 of the **Gas Safety Act 1997**;

S. 3(1) def. of *Energy Safe inspector* inserted by No. 21/2017 s. 3(1).

Energy Safe Victoria has the same meaning as it has in the **Energy Safe Victoria Act 2005**;

S. 3(1) def. of *Energy Safe Victoria* inserted by No. 21/2017 s. 3(1).

S. 3(1) def. of
excluded person
inserted by
No. 21/2017
s. 3(1).

excluded person has the meaning set out in section 171F;

S. 3(1) def. of
external wall cladding product
inserted by
No. 46/2018
s. 30.

external wall cladding product means any product or material that is, or could be, used on or in the external wall of a building (including an attachment or ancillary element), but excluding any product or material that the regulations state is not an external wall cladding product;

S. 3(1) def. of
high risk external wall cladding product
inserted by
No. 46/2018
s. 30.

function includes power, authority and duty;

high risk external wall cladding product means an external wall cladding product that is the subject of a declaration prohibiting its use under section 192B;

S. 3(1) def. of
infrastructure contribution
inserted by
No. 7/2018
s. 21.

infrastructure contribution has the same meaning as in Part 3AB of the **Planning and Environment Act 1987**;

S. 3(1) def. of
insured architect
inserted by
No. 35/2004
s. 34(2),

insured architect means an architect who is registered under the **Architects Act 1991** and who is covered by the required insurance under that Act;

S. 3(1) def. of
insurer
inserted by
No. 91/1995
s. 136(c),
substituted by
No. 52/2005
s. 29,
amended by
No. 21/2017
s. 72(1)(b).

insurer includes the Victorian Managed Insurance Authority;

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* * * * *

S. 3(1) def. of *Legionella* inserted by No. 85/2000 s. 3, repealed by No. 46/2008 s. 248(1).

* * * * *

S. 3(1) def. of *lot* inserted by No. 85/2000 s. 3, repealed by No. 46/2008 s. 248(1).

lot affected by an owners corporation has the same meaning as it has in the **Owners Corporations Act 2006**;

S. 3(1) def. of *lot affected by an owners corporation* inserted by No. 21/2017 s. 18(1).

major domestic building contract has the same meaning as it has in the **Domestic Building Contracts Act 1995**;

S. 3(1) def. of *major domestic building contract* inserted by No. 91/1995 s. 136(c), amended by No. 52/1998 s. 311(Sch. 1 item 10.1).

mandatory notification stage means a prescribed stage of building work;

municipal building surveyor means a person for the time being appointed, employed or nominated by a council as its municipal building surveyor for the purposes of this Act;

S. 3(1) def. of
*National
Construction
Code Series*
inserted by
No. 5/2011
s. 3(1).

National Construction Code Series means the National Construction Code Series published by the Australian Building Codes Board as amended or remade from time to time;

S. 3(1) def. of
*nominee
director*
inserted by
No. 21/2017
s. 3(1).

nominee director, in relation to a body corporate, means a director of the body corporate nominated by the body corporate as a nominee director under Division 1A of Part 11;

S. 3(1) def. of
officer
inserted by
No. 15/2016
s. 16(4).

officer, in relation to a body corporate, has the same meaning as officer of a corporation has in section 9 of the Corporations Act;

S. 3(1) def. of
owner
amended by
No. 85/1998
s. 24(Sch.
item 6.1(a)(b)).

owner—

- (a) in relation to land which has been alienated in fee by the Crown and is under the operation of the **Transfer of Land Act 1958**, (other than land in an identified folio under that Act) means the person who is registered or entitled to be registered as proprietor, or the persons who are registered or entitled to be registered as proprietors, of an estate in fee simple in the land; and
- (b) in relation to land which has been alienated in fee by the Crown and is land in an identified folio under the **Transfer of Land Act 1958** or land not under the operation of the **Transfer of Land Act 1958**, means the person who is the owner, or the persons who are the owners, of the fee or equity of redemption; and

- (c) in relation to Crown land reserved under the **Crown Land (Reserves) Act 1978** and managed or controlled by a committee of management, means the Minister administering that Act; and
- (d) in relation to any other Crown land, means the Minister or public authority that manages or controls the land;

owner in relation to a building, means the owner of the land on which a building is situated²;

owners corporation has the same meaning as it has in the **Owners Corporations Act 2006**;

S. 3(1) def. of
*owners
corporation*
inserted by
No. 21/2017
s. 18(1).

permit means building permit or occupancy permit;

place of public entertainment means—

- (a) a prescribed building or building in a prescribed class of buildings which is used or intended to be used for the purpose of providing public entertainment; or
- (b) a prescribed place or place in a prescribed class of places—
 - (i) which is enclosed or substantially enclosed; or
 - (ii) to which admission can be gained by payment of money or the giving of other consideration—

and which is used or intended to be used for the purpose of providing public entertainment;

S. 3(1) def. of
*Plumbing
Advisory
Council*
inserted by
No. 34/2013
s. 3(a).

Plumbing Advisory Council means the Plumbing
Advisory Council under Part 12;

S. 3(1) def. of
police officer
inserted by
No. 37/2014
s. 10(Sch.
item 9.1).

police officer has the same meaning as in the
Victoria Police Act 2013;

prescribed temporary structure includes a
temporary structure in a prescribed class of
temporary structures;

S. 3(1) def. of
*prescribed
testing
authority*
inserted by
No. 46/2018
s. 30.

prescribed testing authority means—

- (a) an organisation accredited by the
National Association of Testing
Authorities ACN 004 379 748 to
conduct the destructive testing of
building materials or products; and
- (b) any other person or body prescribed in
the regulations to conduct destructive
testing of building materials or
products;

S. 3(1) def. of
*private
building
surveyor*
amended by
No. 71/1995
s. 7(2).

private building surveyor means a building
surveyor registered under Part 11 other
than—

- (a) a municipal building surveyor; or
- (b) an officer or employee of the Crown or
a public authority; or

- (c) a building surveyor authorised under section 191, 192 or 221—

in his or her capacity as such a municipal building surveyor, officer, employee or authorised building surveyor;

proceeding, in relation to a proceeding of the Building Appeals Board, means—

- (a) an appeal to that Board under Divisions 1 and 2 of Part 10; or
- (b) a matter referred to that Board under Division 3 of that Part; or
- (c) an application to that Board under Division 4 of that Part; or
- (d) any other matter within that Board's jurisdiction that, by the Act or regulation conferring the jurisdiction, is declared to be a proceeding;

protection work means—

- (a) permanent or temporary work of—
 - (i) underpinning, including the provision of vertical support, lateral support, protection against variation in earth pressures, provision of ground anchors and other support for adjoining property; or
 - (ii) shoring up of adjoining property; or
 - (iii) overhead protection for adjoining property; or
 - (iv) other work designed to maintain the stability of adjoining property or to protect adjoining property

from damage from building work;
or

- (b) any work or use of equipment necessary for the provision, maintenance and removal of work referred to in paragraph (a)—

whether or not the work or equipment is carried out or used on, over, under or in the air space above the land on which the building work is or is to be carried out or the adjoining property;

public authority means a body established for a public purpose by or under an Act and includes a council;

public entertainment means an entertainment or meeting to which admission may ordinarily be gained by members of the public;

registered body corporate means a body corporate registered as a building practitioner under this Act;

S. 3(1) def. of *registered body corporate* inserted by No. 21/2017 s. 3(1).

registered building practitioner means a building practitioner registered under Part 11;

registration card means the registration card issued to a building practitioner under section 171GA;

S. 3(1) def. of *registration card* inserted by No. 46/2018 s. 30.

related body corporate, in relation to a body corporate, means a body corporate that would under section 4A(5) of the Competition and Consumer Act 2010 of the Commonwealth be taken to be related to that body corporate;

S. 3(1) def. of *related body corporate* inserted by No. 15/2016 s. 16(4), substituted by No. 21/2017 s. 3(2).

relevant building surveyor—

- (a) in relation to an application to, or permit, approval, inspection, direction, notice or order issued or given by, a municipal building surveyor, means the municipal building surveyor; and
- (b) in relation to an application to, or permit, approval, inspection, direction, notice or order issued or given by, a private building surveyor, means the private building surveyor; and
- (c) in relation to the carrying out by the Authority of the functions of a municipal building surveyor or a function specified in section 205P, means the Authority; and
- (d) in relation to the carrying out by a building surveyor authorised under section 191, 192 or 221 of the functions of a municipal building surveyor, means the authorised building surveyor;

S. 3(1) def. of *relevant building surveyor* amended by No. 34/2013 s. 17(b).

relevant council, in relation to a building or land, means the council of the municipal district in which the building or land is situated;

reporting authority means a body or person (other than a municipal building surveyor or private building surveyor to whom an application is made) that is required by this Act or the regulations or by any other Act or regulations to report on or consent to an application for a permit;

S. 3(1) def. of *reporting authority* amended by No. 28/2000 s. 12.

S. 3(1) def. of
required insurance
inserted by
No. 91/1995
s. 136(d),
substituted by
No. 102/2003
s. 41.

required insurance means the insurance required
by order under section 135 and, in the case
of insurance to which section 137AA
applies, complying with section 137AA;

S. 3(1) def. of
risk management plan
inserted by
No. 85/2000
s. 3,
repealed by
No. 46/2008
s. 248(1).

* * * * *

S. 3(1) def. of
risk management plan audit
inserted by
No. 85/2000
s. 3,
repealed by
No. 46/2008
s. 248(1).

* * * * *

S. 3(1) def. of
Secretary to the Department of Health
inserted by
No. 29/2010
s. 48(1).

Secretary to the Department of Health means the
Department Head (within the meaning of the
Public Administration Act 2004) of the
Department of Health;

S. 3(1) def. of
show cause notice
inserted by
No. 15/2016
s. 16(4).

show cause notice means a show cause notice
under section 182;

S. 3(1) def. of
spouse
inserted by
No. 21/2017
s. 3(1).

spouse of a person means a person to whom the
person is married;

subsidiary, in relation to a body corporate, has the meaning set out in section 4A of the Competition and Consumer Act 2010 of the Commonwealth;

S. 3(1) def. of *subsidiary* inserted by No. 21/2017 s. 3(1).

temporary structure includes—

- (a) a booth, tent, marquee or other temporary enclosure, whether or not a part of the booth, tent, marquee or enclosure is permanent; or
- (b) a seating structure whether enclosed or not, including a mobile seating structure;

VBA Board means the Victorian Building Authority Board established under section 200;

S. 3(1) def. of *VBA Board* inserted by No. 34/2013 s. 3(a), amended by No. 21/2017 s. 72(1)(c).

VBA inspector means a person appointed under section 204A;

S. 3(1) def. of *VBA inspector* inserted by No. 21/2017 s. 18(2).

Victorian Managed Insurance Authority has the same meaning as it has in the **Victorian Managed Insurance Authority Act 1996**.

S. 3(1) def. of *Victorian Managed Insurance Authority* inserted by No. 21/2017 s. 72(1)(a).

- (2) In Part 7 a reference to the owner is a reference to the owner of land on which building work is proposed to be or is carried out.

S. 3(3)
inserted by
No. 21/2017
s. 3(3).

- (3) For the purposes of the definition of *domestic partner* in subsection (1)—
- (a) *registered domestic relationship* has the same meaning as it has in the **Relationships Act 2008**; and
 - (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case.

S. 4
amended by
Nos 39/1996
s. 4, 85/2000
s. 4,
substituted by
No. 54/2007
s. 4.

4 Objectives of Act

- (1) The objectives of this Act are—
- (a) to protect the safety and health of people who use buildings and places of public entertainment;
 - (b) to enhance the amenity of buildings;
 - (c) to promote plumbing practices which protect the safety and health of people and the integrity of water supply and waste water systems;
 - (d) to facilitate the adoption and efficient application of—
 - (i) national building standards; and
 - (ii) national plumbing standards;
 - (e) to facilitate the cost effective construction and maintenance of buildings and plumbing systems;
 - (f) to facilitate the construction of environmentally and energy efficient buildings;

(g) to aid the achievement of an efficient and competitive building and plumbing industry.

(2) It is the intention of Parliament that in the administration of this Act regard should be had to the objectives set out in subsection (1).

5 Application to Crown and public authorities

Except to the extent set out in Division 6 of Part 12, this Act does not bind the Crown in right of the State of Victoria or a public authority.

* * * * *

S. 6
repealed by
No. 21/2017
s. 73.

Part 2—Building standards

7 Building regulations

- (1) The Governor in Council may make regulations for or with respect to prohibiting or regulating—
 - (a) the construction, use, maintenance, demolition and removal of buildings;
 - (b) any matter relating to the safety of buildings and places of public entertainment;
 - (c) the use and maintenance of places of public entertainment.
- (2) Without limiting the generality of subsection (1), regulations under this Part may—
 - (a) provide for any matters set out in Part 1 of Schedule 1; and
 - (b) establish standards and requirements relating to any matter referred to in subsection (1)(a), (b) or (c) or Part 1 of Schedule 1; and
 - (c) require the carrying out of building work and maintenance on existing buildings and building work.
- (3) The standards established by the regulations may be expressed in terms of performance, types of material, methods of construction or in other terms.
- (4) The regulations may provide for buildings constructed with particular materials, designs or methods of construction to be deemed to satisfy the prescribed standards.
- (5) The regulations may apply to existing buildings, whether or not building work is being or is proposed to be carried out on those buildings.

S. 7(1)(a)
amended by
No. 66/2004
s. 4.

8 Local laws

- (1) The building regulations may empower a council to make local laws for or with respect to any matter set out in Part 1 of Schedule 1.
- (2) The **Local Government Act 1989** applies in relation to the making, amendment or revocation of a local law under a power conferred by the building regulations as if the making, amendment or revocation of the local law was authorised under Part 5 of that Act.
- (3) A local law made in relation to a municipal district under a power conferred by the building regulations is taken to be a building regulation in force in relation to the municipal district.

S. 8(3)
amended by
No. 21/2017
s. 99.

9 Incorporation by reference

- (1) The building regulations may apply, adopt or incorporate, either wholly or in part and with or without any modification, any matter contained in the Building Code of Australia or any other document as in force or as issued or published at a particular time or as in force or as issued or published from time to time.
- (2) Section 32 of the **Interpretation of Legislation Act 1984** does not apply to the application, adoption or incorporation by the building regulations of any matter contained in a planning scheme approved under the **Planning and Environment Act 1987**.

S. 9(2)
substituted by
No. 68/2001
s. 4(1).

9A Regulatory impact statement not required for certain amendments

- (1) This section applies if a particular building regulation applies, adopts or incorporates any matter contained in a planning scheme approved under the **Planning and Environment Act 1987**.

S. 9A
inserted by
No. 68/2001
s. 5.

- (2) Despite anything to the contrary in Part 2 of the **Subordinate Legislation Act 1994**, it is not necessary for the Minister to ensure that a regulatory impact statement is prepared in respect of that regulation.

10 Application of new building regulations to building work

- (1) A building regulation or an amendment to a building regulation, does not apply to the carrying out of any building work in accordance with a building permit existing immediately before the building regulation or amendment commences.
- (2) A building regulation, or an amendment to a building regulation, does not apply to the carrying out of building work if the relevant building surveyor is satisfied, and certifies in writing, that substantial progress was made on the design of the building before the building regulation or amendment commenced.
- (3) Subject to any determination of the Building Appeals Board, building work referred to in subsection (1) or (2) must be carried out in accordance with the provisions of any regulations, by-laws, local laws or enactments in force at the material times as if the building regulation or amendment had not come into operation.
- (4) Despite subsections (1) to (3), the relevant building surveyor and the owner of the building or land concerned may agree that a building regulation, or an amendment to a building regulation, is to apply to the carrying out of building work referred to in those subsections.

11 Effect of planning schemes

- (1) If a provision of a planning scheme under the **Planning and Environment Act 1987** regulates the siting of buildings in respect of a municipal district or part of a municipal district, any building regulation which also regulates that matter—
 - (a) if not inconsistent with that provision, must be complied with in addition to that provision;
 - (b) if inconsistent with that provision—
 - (i) so far as is practicable, must be read so as to resolve the inconsistency; and
 - (ii) subject to subparagraph (i), to the extent of the inconsistency, ceases to have effect in that municipal district or that part of the municipal district on the coming into operation of the provision of the planning scheme for the period that the provision is in force.
- (2) A council must publish notice in a newspaper circulating generally in its municipal district of the fact that a regulation under this Part has ceased to have effect in the municipal district or part of it.

12 Revocation of other regulations relating to building³

- (1) Despite anything to the contrary in any other Act, the Governor in Council, on the recommendation of the Minister, may revoke any statutory rule made under any other Act to the extent that it provides for a matter set out in Part 1 of Schedule 1.
- (2) Before a statutory rule which provides for a matter set out in Part 1 of Schedule 1 is made under another Act, the Minister administering that Act must refer the statutory rule to the Minister administering this Act for consideration.

- (3) The referral of a statutory rule under subsection (2) is not a condition precedent to the making of the rule.
- (4) A failure to refer a statutory rule under subsection (2) does not affect the validity or operation of the rule but the rule may be revoked under subsection (1).

13 Effect on local laws

- (1) A local law made under Part 5 of the **Local Government Act 1989** has no force or effect to the extent that it provides for any matter set out in Part 1 of Schedule 1.
- (2) Subsection (1) does not apply to a local law made under the powers conferred by the building regulations.

14 Accreditation of building products

- (1) A building product, construction method, design, component or system connected with building work and accredited by the Building Regulations Advisory Committee or any other person or body prescribed for the purposes of this section is accredited for the purposes of this Act and the building regulations.
- (2) The accreditation is subject to any conditions or variations imposed by the Building Regulations Advisory Committee or the prescribed person or body from time to time and remains in force until the accreditation is revoked by the Committee, person or body.

15 Effect of accreditation

- (1) The building regulations may provide for the issue of certificates of accreditation for building products, construction methods, designs, components and systems accredited by the

Building Regulations Advisory Committee or a prescribed person or body.

- (2) The relevant building surveyor must not refuse to approve building work on the ground that any building product, construction method, design, component or system connected with the building work is unsatisfactory if the product, method, design, component or system is accredited by the Building Regulations Advisory Committee or a prescribed person or body and it complies with that accreditation.

15A Building regulations with respect to swimming pools and spas

S. 15A
inserted by
No. 68/2001
s. 6.

- (1) The Governor in Council may make regulations for or with respect to—
- (a) the construction, installation, maintenance and operation of swimming pools and spas and associated services; and
 - (b) the construction, installation, maintenance, operation and use of—
 - (i) equipment associated with swimming pools and spas, including safety equipment; and
 - (ii) swimming pool barriers and spa barriers and associated services.
- (2) Despite section 262(f), regulations made under subsection (1) may impose penalties not exceeding 50 penalty units for a contravention of those regulations.

S. 15B
inserted by
No. 21/2017
s. 19.

15B Maintenance of exits

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) keeping exits in buildings and places of public entertainment and paths of travel to and from exits maintained, accessible and free from obstruction; and
 - (b) requiring, testing or maintaining safety and emergency services, installations or equipment in buildings and places of public entertainment.
- (2) Despite section 262(f), regulations made under subsection (1) may impose penalties not exceeding 100 penalty units for a contravention of those regulations.
- (3) This section does not apply to a building that is a Class 1a or Class 10 building within the meaning of the Building Code of Australia.

Part 3—Building permits

Division 1—Building permit required

16 Offences relating to carrying out building work

- (1) A person must not carry out building work unless a building permit in relation to the work has been issued and is in force under this Act.

Penalty: 500 penalty units, in the case of a natural person;

2500 penalty units, in the case of a body corporate.

- (2) A person must not carry out building work unless the work is carried out in accordance with this Act, the building regulations and the building permit issued in relation to that work.

Penalty: 500 penalty units, in the case of a natural person;

2500 penalty units, in the case of a body corporate.

- (3) An owner of land must ensure in relation to building work carried out on that land that a building permit in relation to the work has been issued and is in force under this Act.

Penalty: 500 penalty units, in the case of a natural person;

2500 penalty units, in the case of a body corporate.

S. 16
amended by
No. 33/2010
s. 3,
substituted by
No. 15/2016
s. 44.

S. 16(3)
substituted by
No. 21/2017
s. 20(1).

S. 16(4)
substituted by
No. 21/2017
s. 20(2).

- (4) A building practitioner or an architect who is engaged to carry out building work must ensure that a building permit in relation to the work has been issued and is in force under this Act.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

S. 16(4A)
inserted by
No. 21/2017
s. 20(2).

- (4A) A builder named in a building permit must ensure that the building work to which the building permit applies is carried out in accordance with this Act, the building regulations and the building permit.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (5) Subsection (3) does not apply to an owner if the owner has engaged a building practitioner or architect to carry out the building work on that land.

S. 16(6)
amended by
No. 21/2017
s. 20(3).

- (6) Subsections (1), (2), (3), (4) and (4A) do not apply if the building work is exempted by or under this Act or the regulations.

S. 16A
inserted by
No. 21/2017
s. 21(1).

16A Exception if permit suspended

- (1) It is an exception to an offence under section 16(1), (3) or (4) if a building permit was not in effect because it was suspended under section 25AE and the accused at the time of the alleged offence—

(a) was not aware that an event mentioned in section 25AE(1) had occurred in relation to the building permit; and

(b) could not reasonably be expected to have known that the event had occurred.

(2) The exception in subsection (1) does not apply to the accused if the accused is an architect or a building practitioner who is engaged to carry out the building work to which the building permit applies.

16B Indictable offences relating to carrying out building work

S. 16B
inserted by
No. 21/2017
s. 21(2).

(1) A person who is in the business of building must not carry out building work for which a building permit is required if the person knows that—

(a) a building permit is required to carry out that work; and

(b) a building permit to carry out that work is not in force.

Penalty: 600 penalty units or imprisonment for 5 years or both, in the case of a natural person;

3000 penalty units, in the case of a body corporate.

(2) An offence against subsection (1) is an indictable offence.

(3) A person who is in the business of building must not carry out building work if the person knows that the building work is not being carried out in accordance with—

(a) this Act; or

(b) the building regulations; or

(c) the building permit issued in relation to that work.

Penalty: 600 penalty units or imprisonment for 5 years or both, in the case of a natural person;

3000 penalty units, in the case of a body corporate.

(4) An offence against subsection (3) is an indictable offence.

(5) Subsections (1) and (3) do not apply if the building work is exempted by or under this Act or the regulations.

(6) In this section—

person in the business of building includes a person who is in the business of managing or arranging the carrying out of building work.

Division 2—Applications for building permits

17 Applications for building permits

An application for a building permit may be made to a municipal building surveyor or to a private building surveyor appointed under Part 6—

(a) by or on behalf of the owner of the building or the owner of the land, in or on which the building work is to be carried out; or

(b) if the land in or on which the building work is to be carried out is a lot of a kind referred to in section 9AA(1) of the **Sale of Land Act 1962**, by the purchaser under a contract for the sale of that lot.

18 Schedule 2 to apply

Schedule 2 applies in relation to an application for a building permit under this Part.

Notes

- 1 A person applying for a building permit must pay the building permit levy determined under Subdivision 4 of Division 2 of Part 12.
- 2 An application for a building permit must include information that enables the building permit levy to be determined (see section 205H(1)).

Notes to s. 18
inserted by
No. 34/2013
s. 18.

18A Notice to Development Victoria of application

(1) This section applies if—

- (a) an application for a building permit relates to the carrying out of building work on land in a project area within the meaning of the **Development Victoria Act 2003**; and
- (b) a resolution is in force under Division 5A of Part 3 of that Act levying a general development charge or an infrastructure recovery charge in respect of that project area.

(2) The relevant building surveyor must without delay—

- (a) notify Development Victoria in writing of—
 - (i) the application; and
 - (ii) the cost of the building work estimated under Subdivision 4 of Division 2 of Part 12; and

S. 18A
(Heading)
amended by
No. 10/2017
s. 31(1).

S. 18A
inserted by
No. 35/2006
s. 9.

S. 18A(1)(a)
amended by
No. 10/2017
s. 31(2).

S. 18A(2)(a)
amended by
Nos 35/2011
s. 17(1),
10/2017
s. 31(3).

S. 18A(2)(a)(ii)
amended by
No. 34/2013
s. 19(1)(a).

S. 18A(2)(a)(iii)
amended by
No. 34/2013
s. 19(1)(b).

(iii) any refusal of the application under section 205H(3)(b) or (c); and

(iv) any decision of the Building Appeals Board to modify the cost of the building work; and

S. 18A(2)(b)
amended by
Nos 35/2011
s. 17(1),
10/2017
s. 31(3).

(b) provide Development Victoria with a copy of any relevant planning permit that authorises both the construction of the buildings to which the building work relates and a subdivision of the land on which the building work is to be carried out.

S. 18B
inserted by
No. 23/2010
s. 14.

18B Notice to Commissioner of State Revenue of application

- (1) This section applies if—
 - (a) an application for a building permit relates to the carrying out of building work on land in respect of which there is a GAIC recording (within the meaning of Part 9B of the **Planning and Environment Act 1987**); and
 - (b) the application is not an excluded event (within the meaning of section 201RB of that Act); and
 - (c) none of the circumstances described in section 201SA of that Act applies to the land.
- (2) The relevant building surveyor, within 14 days after receiving the application, must give a notice of the application to the Commissioner of State Revenue referred to in section 62 of the **Taxation Administration Act 1997**.
- (3) A notice under subsection (2) must contain the following information—
 - (a) a description of the land;

- (b) a description of the building work specified in the application and the purpose of the building work;
- (c) the date the application was made;
- (d) the applicant's name and contact details;
- (e) the name and contact details of any owner of the land, if the applicant is not the owner;
- (f) the estimated cost of the building work specified in the application.

S. 18B(3)(f)
amended by
No. 21/2017
s. 59(2).

Division 3—Decisions on building permits

19 Decision on application for building permit

- (1) The relevant building surveyor must decide an application for a building permit by—
 - (a) issuing the permit; or
 - (b) issuing the permit with conditions; or
 - (c) refusing the permit.
- (2) The regulations may prescribe a time within which the relevant building surveyor must decide an application for a building permit.
- (3) The relevant building surveyor is taken to have refused a building permit if the application is not decided within the prescribed time.

S. 19(3)
amended by
No. 21/2017
s. 99.

20 Types of permit

A building permit may be—

- (a) a permit for the whole of the proposed building work; or
- (b) a permit for a stage of proposed building work.

21 Requirement for occupancy permit

- (1) The relevant building surveyor must specify in a building permit—
 - (a) whether an occupancy permit is required under subsection (2) in respect of the building work; and
 - (b) whether the occupancy permit is required for the whole or part of the building in respect of which the building work is carried out.
- (2) An occupancy permit is required in respect of all building work except—
 - (a) building work which the relevant building surveyor considers to be minor; or
 - (b) building work which the relevant building surveyor considers does not compromise the suitability of the building for occupation; or
 - (c) prescribed building work.

S. 22
amended by
No. 34/2013
s. 34(Sch. 1
item 1).

22 Guarantees and bonds

In prescribed circumstances, a building permit may be issued subject to a condition that the applicant deposit with the relevant council or, in the case of a permit issued by a private building surveyor, with the Authority—

- (a) a bond for an amount determined in accordance with the regulations; or
- (b) an undertaking to pay that amount together with a guarantee provided by a body that is permitted to use the expression "bank" under section 66 of the Banking Act 1959 of the Commonwealth—

to secure the complete and satisfactory carrying out of the work authorised by the building permit.

S. 22(b)
substituted by
No. 11/2001
s. 3(Sch.
item 8).

23 Reporting authority to be notified of permit

If the relevant building surveyor issues a building permit which differs from or fails to implement the recommendations in a reporting authority's report under Schedule 2 on the application for the permit, the relevant building surveyor must notify the reporting authority without delay of the permit and give the reporting authority a copy of the permit.

24 Refusal of building permit

- (1) Subject to section 24A and Division 4, the relevant building surveyor must not issue a building permit unless he or she is satisfied that—
- (a) the building work and the building permit will comply with this Act and the building regulations; and
 - (b) any consent of a reporting authority required under this Act or the regulations or under any other Act or regulations is obtained or taken to have been obtained in accordance with Schedule 2; and
 - (c) any relevant planning permit or other prescribed approval has been obtained; and
 - (d) the building permit will be consistent with that planning permit or other prescribed approval.
- (2) Subject to section 24A and Division 4, the relevant building surveyor must not issue a building permit that imposes on the applicant lesser or greater standards or requirements than those prescribed by this Act or the building regulations, unless permitted to do so by this Act or the building regulations.

S. 24(1)
amended by
No. 66/2004
s. 5(1).

S. 24(1)(b)
amended by
Nos 28/2000
s. 13(a),
21/2017 s. 99.

S. 24(1)(c)
substituted by
No. 28/2000
s. 13(b).

S. 24(1)(d)
inserted by
No. 28/2000
s. 13(b).

S. 24(2)
amended by
No. 66/2004
s. 5(1).

S. 24(3)
substituted by
No. 91/1995
s. 137(1),
amended by
No. 35/2004
s. 35(1),
repealed by
No. 66/2004
s. 5(2), new
s. 24(3)
inserted by
No. 35/2006
s. 10,
amended by
Nos 35/2011
s. 17(2),
10/2017
s. 31(4).

(3) The relevant building surveyor must not issue a building permit for the carrying out of building work for which notice is required to be given to Development Victoria under section 18A unless Development Victoria has notified the relevant building surveyor under section 51ZA of the **Development Victoria Act 2003** that—

(a) a general development charge or an infrastructure recovery charge is not payable in respect of the building work for which the permit is to be issued; or

S. 24(3)(b)
amended by
No. 10/2017
s. 31(4)(b).

(b) if a general development charge or an infrastructure recovery charge is payable in respect of that building work, the charge has been paid or the person liable to pay the charge has entered into an agreement with Development Victoria under section 51Y of that Act to pay the charge.

S. 24(4)
repealed by
No. 66/2004
s. 5(2),
new s. 24(4)
inserted by
No. 23/2010
s. 15.

(4) The relevant building surveyor must not issue a building permit for the carrying out of building work on land in respect of which there is a GAIC recording (within the meaning of Part 9B of the **Planning and Environment Act 1987**), unless the applicant produces any of the following certificates relating to that liability issued by the Commissioner of State Revenue under that Part—

- (a) a certificate of release;
- (b) a certificate of exemption;
- (c) a certificate of staged payment approval;
- (d) a certificate of no GAIC liability.

Note

Under Part 9B of the **Planning and Environment Act 1987**, the Commissioner of State Revenue must issue a certificate of release if the person liable to pay a growth areas infrastructure contribution has been released from that liability for various reasons, including the fact that the person has paid the contribution or had the contribution totally reduced. The Commissioner must also issue a certificate of exemption under that section if the person liable to pay a growth areas infrastructure contribution is exempt from the liability to pay the contribution. The Commissioner must also issue a person with a certificate of staged payment approval if the person has been given approval for the staged payment of the contribution.

Note to
s. 24(4)
amended by
No. 21/2017
s. 95(1).

* * * * *

S. 24(4A)(4B)
inserted by
No. 91/1995
s. 137(2),
repealed by
No. 66/2004
s. 5(2).

(5) If an amount of community infrastructure levy is payable under Part 3B of the **Planning and Environment Act 1987** in respect of a development for which building work is required, the relevant building surveyor must not issue a building permit in respect of that building work unless he or she is satisfied that—

S. 24(5)
inserted by
No. 50/1995
s. 5.

(a) that amount of levy has been paid to the relevant collecting agency under that Part; or

S. 24(5)(a)
amended by
No. 101/2004
s. 11.

(b) an agreement to pay that amount of levy has been entered into under that Part.

(6) If a monetary component amount and any land equalisation amount of an infrastructure contribution imposed under an approved infrastructure contributions plan is payable in respect of the carrying out of building work, the relevant building surveyor must not issue a

S. 24(6)
inserted by
No. 7/2018
s. 22.

building permit in relation to that building work unless the applicant satisfies the relevant building surveyor that—

- (a) those amounts have been paid to the collecting agency in accordance with section 46GV(3) of the **Planning and Environment Act 1987**; or
 - (b) the applicant has entered into an agreement with the collecting agency under section 46GV(3) of that Act for the payment of those amounts.
- (7) If any land component of an infrastructure contribution imposed under an approved infrastructure contributions plan in respect of the carrying out of building work includes the provision of inner public purpose land (within the meaning of Part 3AB of the **Planning and Environment Act 1987**), the relevant building surveyor must not issue a building permit for that building work unless the applicant satisfies the relevant building surveyor—
- (a) that the inner public purpose land has been set aside as a road or reserve on a plan under the **Subdivision Act 1988** to vest in the collecting agency or a development agency (as the case requires) under that Act; and
 - (b) the plan has been lodged for registration under section 22 of the **Subdivision Act 1988**.

S. 24(7)
inserted by
No. 7/2018
s. 22.

24A Further limitations on the issue of building permits

- (1) The relevant building surveyor must not issue a building permit in relation to building work unless the relevant building surveyor is satisfied that—
- (a) the building work is to be carried out by a builder who is specified under section 24B for that work; and
 - (b) the builder is named in the building permit; and
 - (c) in the case of building work carried out under a major domestic building contract—
 - (i) if the cost of the building work exceeds the prescribed amount, the following names are identical—
 - (A) the name of the person who is named as the builder in the contract;
 - (B) the name of the person specified as the builder in a certificate of insurance from the insurer providing the required insurance in relation to the building work; and
 - (ii) the major domestic building contract was entered into by a person entitled to do so under section 29 of the **Domestic Building Contracts Act 1995**; and
 - (d) in the case of a builder who is a body corporate, there is specified in the building permit the name of a natural person on whom directions, notices and orders under this Act directed to the body corporate can be served.

S. 24A
inserted by
No. 66/2004
s. 6, amended
by Nos
34/2013
s. 19(2),
15/2016 ss 45,
46(2),
substituted by
No. 21/2017
s. 22.

(2) The regulations may specify the manner in which the relevant building surveyor may be satisfied on the matters in subsection (1)(c)(i).

(3) In subsection (1)(c)(i)—

prescribed amount means—

- (a) the amount prescribed by the regulations (if any); or
- (b) if an amount is not prescribed, \$16 000.

S. 24B
inserted by
No. 21/2017
s 22.

24B Specification of builders in relation to specific building work

(1) This section specifies builders for the purposes of section 24A(1)(a).

(2) If the cost of the building work does not exceed the prescribed amount for this subsection, the builder must be—

- (a) a building practitioner; or
- (b) the owner of the building or land in or on which the building work is to be carried out; or
- (c) an architect who is registered under the **Architects Act 1991**.

(3) If the building work is not domestic building work and the cost of the building work exceeds the prescribed amount for subsection (2), the builder must be—

- (a) a registered building practitioner; or
- (b) the owner of the building or land in or on which the building work is to be carried out; or
- (c) an insured architect.

- (4) If the building work is domestic building work being carried out under a major domestic building contract, the builder must—
- (a) be the builder who entered into that contract; and
 - (b) be registered under Part 11 and whose registration authorises the carrying out of the work.
- (5) If the building work is domestic building work not being carried out under a major domestic building contract and the cost of the work exceeds the prescribed amount for subsection (2) but does not exceed the prescribed amount for section 25B, the builder must be the owner of the building or land in or on which the building work is to be carried out.
- (6) If the building work is domestic building work not being carried out under a major domestic building contract and the cost of the work exceeds the prescribed amount for section 25B, the builder must be an owner referred to in section 25B of the building or land in or on which the work is being carried out.
- (7) In this section, the cost of building work is the cost of that work estimated under Subdivision 4 of Division 2 of Part 12.
- (8) In subsection (2)—
- prescribed amount*** means—
- (a) the amount prescribed by the regulations (if any); or
 - (b) if an amount is not prescribed, \$5000.

25 Reasons for refusal to be given

The relevant building surveyor must notify an applicant for a permit in writing without delay of the refusal of the permit and the reasons for the refusal.

S. 25A
inserted by
No. 66/2004
s. 7, amended
by No.
33/2010 s. 4,
substituted by
No. 21/2017
s. 23.

25A Notice of ending of engagement of builder

- (1) This section applies if—
 - (a) a building permit is issued in relation to building work to be carried out by a building practitioner or an insured architect (the *builder*); and
 - (b) subsequently the engagement of the builder ends before completion of the building work.
- (2) The builder or the owner of the building or land in or on which the building work is to be carried out may give a notice of the ending of the engagement to the relevant building surveyor.

Note

The effect of this notice is that the permit is suspended under section 25AE.

- (3) A notice under subsection (2) may be in a form approved by the Authority (if any).
- (4) For the purposes of section 25AE(1)(e), the day on which the engagement ceases is—
 - (a) the day on which the relevant building surveyor receives the first notice under subsection (2); or
 - (b) any later day specified in that notice.

S. 25AB
inserted by
No. 21/2017
s. 23.

25AB Notice to relevant building surveyor of subsequent engagement of builder

- (1) This section applies if—
 - (a) a building permit is issued in relation to building work; and

- (b) subsequently a building practitioner or insured architect (the *builder*) is engaged to carry out the building work.
- (2) The owner of the building or land in or on which the building work is to be carried out may give the relevant building surveyor written notice of the engagement in accordance with subsection (3).
- (3) A notice under subsection (2) must include—
- (a) the name of the building practitioner and the building practitioner's registration number or the architect's name and registration number (as the case requires); and
 - (b) if the engagement is to carry out domestic building work and the cost of the work exceeds the prescribed amount, an extract of the contract showing the names of the parties to the contract and a certificate of insurance from the insurer providing the required insurance in relation to the building work; and
 - (c) any other prescribed details.
- (4) In this section—
- prescribed amount* means—
- (a) the amount prescribed by the regulations (if any); or
 - (b) if an amount is not prescribed, \$16 000.

25AC Change of builder on building permit

On being notified under section 25AB, the relevant building surveyor may change the builder named on a building permit if the relevant building surveyor is satisfied that the builder complies with the relevant requirements of section 24A.

S. 25AC
inserted by
No. 21/2017
s. 23.

S. 25AD
inserted by
No. 21/2017
s. 23.

25AD Relevant building surveyor to notify Authority and relevant council of certain information

- (1) The relevant building surveyor must give written notice to the Authority and the relevant council of the occurrence of each prescribed event and the prescribed information relating to that event which relates to—
 - (a) the building work to which a building permit applies; or
 - (b) the building permit.
- (2) The notice must be given within the prescribed period after the relevant event.
- (3) In this section—

prescribed period means the longer of—

- (a) the period prescribed by the regulations (if any); or
- (b) 5 business days.

S. 25AE
inserted by
No. 21/2017
s. 23.

25AE Suspension of building permit

- (1) A building permit is suspended on and from the day on which—
 - (a) if the builder named in the building permit is a building practitioner, the building practitioner's registration as a building practitioner is suspended or cancelled; or
 - (b) if the builder named in the building permit is an architect, the architect's registration as an architect is suspended or cancelled under the **Architects Act 1991**; or
 - (c) the builder named in the building permit—
 - (i) dies; or
 - (ii) is imprisoned for an offence; or

- (iii) has become a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (d) if the builder named in the building permit is an owner of land to whom a certificate of consent has been issued in respect of the building work, the certificate of consent is cancelled; or
 - (e) the builder named in the building permit has ceased to be engaged to carry out the building work to which the permit relates.
- (2) A building permit ceases to be suspended under this section on the day on which a builder who complies with the relevant requirements of section 24A is named as the builder in the building permit.
- (3) A building permit is of no effect under this Act during the period that it is suspended under this section.

25B Restrictions on owner-builder

S. 25B
inserted by
No. 66/2004
s. 7,
amended by
Nos 33/2010
s. 5, 34/2013
s. 19(3),
15/2016
s. 27(2) (ILA
s. 39B(1)).

- (1) An owner of land or a building must not carry out domestic building work as builder on that land or in respect of that building if the cost of the work (estimated under Subdivision 4 of Division 2 of Part 12) is more than the prescribed amount unless the owner—
- (a) has been issued with a certificate of consent for the work; or

S. 25B(1)
amended by
No. 15/2016
s. 27(1).

S. 25B(1)(b)
substituted by
No. 15/2016
s. 28(1).

(b) is a builder whose registration under Part 11 authorises the carrying out of that work; or

(c) is an architect who is registered under the **Architects Act 1991**; or

(d) is the Director of Housing; or

(e) is carrying out the work in accordance with an emergency order, a building notice or a building order made under Part 8.

Penalty: 120 penalty units.

S. 25B(1A)
inserted by
No. 15/2016
s. 28(2).

(1A) An owner of land or a building who is required under this section to be issued with a certificate of consent to carry out domestic building work as builder must not enter into a major domestic building contract with another person to carry out the work or any part of the work unless the person is registered as a builder under Part 11 and the registration authorises the person to carry out that work.

Penalty: 60 penalty units, in the case of a first offence.

120 penalty units, in the case of a second or subsequent offence.

S. 25B(1B)
inserted by
No. 15/2016
s. 28(2).

(1B) Subsection (1A) does not apply to an owner of land or a building if the owner took reasonable steps to ensure that the person carrying out the building work is registered as a builder under Part 11 and that the registration authorises the person to carry out that work.

(2) In this section—

prescribed amount means—

- (a) the amount prescribed by the regulations (if any); or
- (b) if an amount is not prescribed, \$16 000.

S. 25B(2)
inserted by
No. 15/2016
s. 27(2).

Division 3A—Certificates of consent for owner-builders

Pt 3 Div. 3A
(Heading and
ss 25C–25I)
inserted by
No. 66/2004
s. 8.

25C Application for owner-builder certificate of consent

- (1) A natural person may apply to the Authority for the issue of a certificate of consent to carry out domestic building work on land.
- (2) The application must—
 - (a) contain the prescribed information; and
 - (b) be made in the prescribed manner; and
 - (c) be accompanied by—
 - (i) the prescribed information; and
 - (ii) the prescribed application fee.

S. 25C
inserted by
No. 66/2004
s. 8,
amended by
No. 15/2016
s. 18(1).

25C(2)(c)
substituted by
No. 15/2016
s. 29.

25D Further particulars

The Authority may ask an applicant under section 25C to give it any more information that it reasonably requires to determine the application and may refuse the application if the applicant does not comply with the request within a reasonable time.

S. 25D
inserted by
No. 66/2004
s. 8,
amended by
No. 15/2016
s. 18(1).

25E Decision on application for certificate of consent

S. 25E
inserted by
No. 66/2004
s. 8.

S. 25E(1)
amended by
No. 15/2016
s. 18(1)

S. 25E(1)(ab)
inserted by
No. 15/2016
s. 30(1).

S. 25E(1)(e)
substituted by
No. 15/2016
s. 30(2).

- (1) The Authority must issue a certificate of consent for domestic building work if it is satisfied that—
- (a) the applicant has complied with sections 25C and 25D; and
 - (ab) the applicant has the prescribed knowledge of the duties and responsibilities of an owner-builder; and
 - (b) the applicant is the owner of the land on which the domestic building work is to be carried out or the application is authorised under section 25F; and
 - (c) the application relates to the carrying out of domestic building work in relation to, or ancillary to, a single dwelling; and
 - (d) the applicant resides and will continue to reside, or intends to reside, in the dwelling; and
 - (e) the applicant has not been issued with a building permit for the carrying out of domestic building work by the applicant as a builder on land owned by the applicant or a related body in the previous 5 years other than in relation to—
 - (i) the dwelling on the land to which the application relates; or
 - (ii) a Class 10 building that is ancillary to the dwelling on the land to which the application relates; and

- (f) if the applicant co-owns the land to which the application relates with another person, a building permit has not been issued to that person for the carrying out of domestic building work by that person as a builder on land owned by that person in the previous 5 years other than in relation to—
- (i) the dwelling on the land to which the application relates; or
 - (ii) a Class 10 building that is ancillary to the dwelling on the land to which the application relates; and
- (g) if the applicant was the co-owner of land (other than land to which the application relates) with another person in the previous 5 years, a building permit has not been issued to that person for the carrying out of domestic building work by that person as a builder on that land in that 5 year period; and
- (h) the applicant—
- (i) is not in the business of building; or
 - (ii) has been exempted from the requirement to be registered under Part 11; or
 - (iii) is a registered building practitioner whose registration does not authorise the carrying out of the work to which the application relates.
- (2) The Authority must refuse to issue a certificate of consent to an applicant if the Authority is satisfied that the applicant has at any time entered into a contract to sell a building constructed by the applicant without obtaining the required insurance in contravention of section 137B(2)(b).

S. 25E(1)(f)
substituted by
No. 15/2016
s. 30(2).

S. 25E(1)(g)
substituted by
No. 15/2016
s. 30(2).

S. 25E(1)(h)
substituted by
No. 21/2017
s. 74.

S. 25E(2)
substituted by
No. 15/2016
s. 30(3).

S. 25E(3)
amended by
No. 15/2016
s. 18(3).

- (3) Subject to subsection (4), the Authority must refuse to issue a certificate of consent if the requirements of subsection (1) are not met.

S. 25E(4)
amended by
No. 15/2016
s. 18(2)(3).

- (4) The Authority may exempt an applicant from the requirement in subsection (1)(e), (1)(f) or (1)(g) if the Authority determines that special circumstances exist.

S. 25E(5)
amended by
No. 15/2016
s. 18(3).

- (5) For the purposes of subsection (4), the Authority may determine that special circumstances exist if it is satisfied that—
- (a) the application arises from a substantial change in the circumstances of the applicant; or
 - (b) the applicant would suffer hardship if the application were refused.

S. 25E(6)
substituted by
No. 15/2016
s. 30(4).

- (6) In this section—

Class 10 building has the same meaning as it has in the Building Code of Australia;

related body means a body corporate of which the applicant is a director or the trustees of a trust of which the applicant is a beneficiary.

S. 25F
inserted by
No. 66/2004
s. 8.

25F Applications in relation to land owned by related bodies

- (1) An applicant for a certificate of consent in respect of domestic building work is not required to be the owner of the land on which the work is to be carried out if—
- (a) the land is owned by a body corporate; and
 - (b) the applicant is a director of the body corporate; and

- (c) the body corporate has in writing authorised the applicant to make the application and to carry out the work.
- (2) An applicant for a certificate of consent in respect of domestic building work is not required to be the owner of the land on which the work is to be carried out if—
 - (a) the land is the subject of a trust; and
 - (b) the applicant is a beneficiary of the trust; and
 - (c) the trustees of the trust have each in writing authorised the applicant to make the application and to carry out the work.

25G Certificate of consent

- (1) A certificate of consent issued under this Division—
 - (a) must contain the prescribed information; and
 - (b) expires—
 - (i) at the end of the prescribed period, if a building permit is not issued in respect of the building work to which the certificate relates within that period; or
 - (ii) on the date that the building permit lapses, if a building permit is issued in respect of the building work to which the certificate relates within the prescribed period.

S. 25G
inserted by
No. 66/2004
s. 8,
amended by
No. 15/2016
s. 31(2) (ILA
s. 39B(1)).

S. 25G(1)(b)
substituted by
No. 15/2016
s. 31(1).

S. 25G(2)
inserted by
No. 15/2016
s. 31(2).

(2) In this section—

S. 25G(2) def.
of *prescribed
period*
amended by
No. 21/2017
s. 95(2).

prescribed period means—

- (a) the prescribed period by the regulations (if any); or
- (b) if a period is not prescribed, 12 months.

S. 25H
inserted by
No. 66/2004
s. 8.

25H Register of certificates

S. 25H(1)
amended by
No. 15/2016
s. 18(4).

(1) The Registrar of the Victorian Building Authority must keep a register of certificates of consent issued under this Division.

(2) The register must be kept in accordance with the regulations.

S. 25H(3)
inserted by
No. 15/2016
s. 32.

(3) The Authority may publish prescribed information kept on the register of certificates of consent on the Authority's website.

S. 25I
inserted by
No. 66/2004
s. 8,
amended by
No. 34/2013
s. 34(Sch. 1
items 2, 3),
repealed by
No. 15/2016
s. 33.

* * * * *

S. 25J
inserted by
No. 34/2013
s. 8,
amended by
Nos 15/2016
s. 18(1),
21/2017
s. 96(1).

25J Review by VCAT

A person to whom a decision of the Authority under this Division applies may apply to VCAT for a review of—

- (a) that decision; or

(b) a failure of the Authority to make that decision within a reasonable time.

S. 25J(b)
amended by
No. 15/2016
s. 18(3).

Division 4—Special provisions

26 Prescribed places of public entertainment

An application for a building permit for a place of public entertainment prescribed or in a class prescribed for the purposes of this section must be made to the Authority.

S. 26
substituted by
No. 34/1997
s. 5,
amended by
No. 34/2013
s. 34(Sch. 1
item 4).

* * * * *

S. 27
repealed by
No. 91/1995
s. 138.

28 Historic buildings and special buildings

(1) Despite section 24, the relevant building surveyor may issue a building permit for the carrying out of building work that does not comply with the building regulations if the work is to be carried out on, or in connection with—

(a) a building included on the Heritage Register established under the **Heritage Act 2017**.

S. 28(1)(a)
substituted by
No. 93/1995
s. 218(1)
(Sch. 2
item 1.1),
amended by
No. 7/2017
s. 296(1).

* * * * *

S. 28(1)(b)
repealed by
No. 28/2000
s. 14(1).

(2) The building permit may be issued to enable the carrying out of work appropriate to the style, manner of construction and materials of the building.

- (3) In deciding an application for a building permit in respect of a building to which subsection (1) applies, the relevant building surveyor must take into account—
- (a) the structural adequacy of the building; and
 - (b) the requirements necessary to make reasonable provision for the amenity of the building and the safety and health of people using the building.
- (4) The consent and report of the Executive Director under the **Heritage Act 2017** must be obtained to an application to demolish or alter a building which is on a register established under that Act.

S. 28(4)
inserted by
No. 28/2000
s. 14(2),
amended by
No. 7/2017
s. 296(2).

29 Subdivision

- (1) Despite anything to the contrary in this Act or in any other Act or law, the relevant building surveyor may refuse to issue a building permit for the construction of a building if—
- (a) the owner from time to time of the land could dispose of part of that land without proceeding under the **Subdivision Act 1988**; and
 - (b) the relevant building surveyor is satisfied that if part of the land were disposed of before the council considered the matter, the building to be constructed would not comply with the provisions of the relevant planning scheme or of any regulation made under this Act or of any local law made under powers conferred by the regulations made under this Act with respect to—
 - (i) the dimensions or area of the land; or

- (ii) the proportion of the area of land on which buildings are to be constructed;
or
 - (iii) the provision of open space on the land.
- (2) The relevant building surveyor must not, under subsection (1), refuse a building permit for the construction of a building on the sole ground that the owner may without notice to the council dispose of part of the land to the Crown or to a public statutory body constituted under a law of the State or of the Commonwealth.

29A Application for building permit for demolition

S. 29A
inserted by
No. 28/2000
s. 15.

- (1) If an application is made to the relevant building surveyor under this Act for a building permit for the demolition of a building on land and—
- (a) the demolition and all other demolitions completed or permitted in respect of the building within the period of 3 years immediately preceding the date of the application would together amount to the demolition of more than one half of the volume of the building as it existed at the date of the first building permit to be issued within that period for the demolition of any part of the building; or
 - (b) the demolition is of any part of the facade of a building—

then the report and consent of the responsible authority under the **Planning and Environment Act 1987** for the planning scheme relating to that land must be obtained to that application.

- (2) The responsible authority as reporting authority must refuse its consent to an application to which subsection (1) applies if a planning permit is required for the demolition and has not been

obtained but must not otherwise refuse its consent to the application.

(3) In this section—

facade means—

- (a) an external wall, including any verandah, balcony or balustrade or architectural feature attached to or forming part of an external wall; or
- (b) a part of a roof; or
- (c) a chimney—

that faces a street and at least part of which is visible from the street it faces;

street includes road, highway, carriageway, square and court.

S. 29B
inserted by
No. 28/2000
s. 15.

29B Suspension of demolition permit pending amendment of planning scheme

(1) If—

- (a) the report and consent of the responsible authority as reporting authority under section 29A has been sought in relation to an application for a building permit; and
- (b) during the prescribed time referred to in clause 6A(2) of Schedule 2—
 - (i) an application is made to the Minister for an exemption under section 20(1) of the **Planning and Environment Act 1987** in respect of an amendment to the planning scheme affecting the land; or
 - (ii) if a request is made to the Minister to prepare an amendment to a planning scheme affecting the land and to exempt himself or herself under section 20(4) of the **Planning and**

Environment Act 1987 from certain requirements in respect of that amendment—

the responsible authority must give written notice without delay to the relevant building surveyor of the application or request.

- (2) On receipt of a notice under subsection (1) the relevant building surveyor must suspend consideration of the application for the building permit.
- (3) The responsible authority must give written notice to the relevant building surveyor without delay of—
 - (a) the withdrawal of an application or request referred to in subsection (1)(b); or
 - (b) the refusal of an application or request referred to in subsection (1)(b); or
 - (c) the coming into operation of an amendment referred to in subsection (1)(b); or
 - (d) the lapsing of an amendment referred to in subsection (1)(b).
- (4) The prescribed time within which the relevant building surveyor must decide an application for a permit—
 - (a) ceases to run at the time that notice affecting the application is received by the relevant building surveyor under subsection (1); and
 - (b) recommences to run only when notice affecting the application is received by the relevant building surveyor under subsection (3).

- (5) If a notice of an amendment has been given to the relevant building surveyor under subsection (3)(c) the relevant building surveyor must, in considering under section 24 whether a building permit is consistent with any relevant planning permit, consider the requirements of the relevant planning scheme as amended by the amendment.

Division 5—Register and records

30 Relevant building surveyor to give copies of permits and documents to council

S. 30
amended by
No. 71/1995
s. 4(a).

- (1) The relevant building surveyor, within 7 days after issuing any building permit under this Part, must give to the relevant council a copy of that permit and any plans and other documents lodged with the application for the permit.

Penalty: 50 penalty units, in the case of a natural person;
250 penalty units, in the case of a body corporate.

S. 30(1A)
inserted by
No. 34/1997
s. 6(1),
amended by
Nos 33/2010
s. 6, 21/2017
s. 17(1).

- (1A) In addition to the requirements of subsection (1), the relevant building surveyor, within the relevant prescribed time, must give to the relevant council a copy of any other prescribed documents relating to the application for the building permit or the permit.

Penalty: 50 penalty units, in the case of a natural person;
250 penalty units, in the case of a body corporate.

- (2) Any documents lodged with the relevant council under subsection (1) or (1A) must be accompanied by the appropriate prescribed lodgement fee (if any) paid to the relevant building surveyor under clause 1 of Schedule 2.

S. 30(2)
inserted by
No. 71/1995
s. 4(b),
amended by
No. 34/1997
s. 6(2).

30A Authority may approve checklist of documents to be certified

S. 30A
inserted by
No. 15/2016
s. 47

- (1) The Authority may approve a checklist of all documents required under section 30 to be given to the relevant council by the relevant building surveyor.
- (2) The Authority must publish the approved checklist on the Authority's website.

30B Relevant building surveyor must certify that documents given to council

S. 30B
inserted by
No. 15/2016
s. 47

The relevant building surveyor must—

- (a) certify on the approved checklist that—
- (i) all documents required under section 30 to be given to the relevant council have been given to that council; and
 - (ii) any lodgement fee required under section 30(2) has been paid.
- (b) give the certified checklist to the relevant council at the same time as the documents required under section 30.

Penalty: 10 penalty units.

31 Register of building permits

- (1) A council must keep a register of all building permits given to it under this Division.
- (2) A council must make the register available for inspection by any person during normal office hours.

32 Keeping of records

A council must keep all documents given to it under this Division for the prescribed period and in the prescribed manner.

S. 32A
(Heading)
amended by
No. 10/2017
s. 31(5).

32A Council to notify Development Victoria of issue of building permit

(1) This section applies if—

S. 32A
inserted by
No. 35/2006
s. 11.

S. 32A(1)(a)
amended by
No. 10/2017
s. 31(6).

- (a) a council has under section 30(1) been given a copy of a building permit issued for building work to be carried out on a property situated in a project area within the meaning of the **Development Victoria Act 2003**; and
- (b) a resolution is in force under Division 5A of Part 3 of that Act levying a general development charge or infrastructure recovery charge in respect of that project area.

(2) The council must within 14 days after being given the copy of the building permit—

S. 32A(2)(a)
amended by
Nos 35/2011
s. 17(3),
10/2017
s. 31(7).

- (a) notify Development Victoria in writing in accordance with subsection (3); and

S. 32A(2)(b)
amended by
Nos 35/2011
s. 17(3),
10/2017
s. 31(7).

- (b) provide Development Victoria with a copy of any relevant planning permit that it holds that authorises both the construction of the buildings to which the building work relates and a subdivision of the land on which the building work is to be carried out.

- (3) The notice must set out the following information—
- (a) the name of the applicant for the permit;
 - (b) the address of the property in respect of which the permit was issued;
 - (c) the nature of the building work for which the permit was issued;
 - (d) the cost of the building work estimated under Subdivision 4 of Division 2 of Part 12;
 - (e) the information referred to in paragraphs (c) and (d) in respect of all other building permits issued for the same land in the previous 3 years.

S. 32A(3)(d)
amended by
No. 34/2013
s. 19(4).

Part 4—Inspection of building work

Division 1—Inspections

Pt 4 Div. 1
(Heading)
inserted by
No. 15/2016
s. 48.

33 Notification during building work

S. 33
amended by
No. 33/2010
s. 7,
substituted by
No. 21/2017
s. 24.

- (1) The person that is named as the builder in a building permit issued for building work must ensure the relevant building surveyor is notified without delay of the completion of each mandatory notification stage of that work.

Penalty: 120 penalty units, in the case of a natural person;

600 penalty units, in the case of a body corporate.

- (2) The person that is named as the builder in a building permit issued for building work must ensure that any person who is carrying out the building work stops carrying out that work or any part of that work on completion of a mandatory notification stage if directed to do so by the relevant building surveyor.

Penalty: 120 penalty units, in the case of a natural person;

600 penalty units, in the case of a body corporate.

- (3) The relevant building surveyor must notify the Authority in the approved form (if any) of any failure of a person to comply with subsection (1) or (2).

34 Inspections at mandatory notification stages

S. 34
substituted by
No. 21/2017
s. 25(1).

On being notified that a mandatory notification stage of building work for which a building permit has been issued under Part 3 has been completed, the relevant building surveyor must cause the building work to be inspected in person.

35 Inspection of building work—general powers

The relevant building surveyor may cause building work for which a permit has been issued under Part 3 to be inspected at any time whether or not a mandatory notification stage has been completed.

35A Record of inspection of building work

S. 35A
inserted by
No. 21/2017
s. 25(2).

- (1) On completion of an inspection under section 34 or 35, the relevant building surveyor must ensure that a record of the inspection containing the prescribed information is made.
- (2) On receipt of a written request from any of the following persons, the relevant building surveyor must without delay give a copy of a record made under subsection (1) to that person—
 - (a) the Authority;
 - (b) the municipal building surveyor for the municipal district in which the building work was inspected;
 - (c) the owner of the building or land in or on which the building work was carried out;
 - (d) any other prescribed person.

35B Persons carrying out inspections must be registered practitioners or prescribed persons

S. 35B
inserted by
No. 21/2017
s. 25(2).

The relevant building surveyor must not cause a person to carry out an inspection under section 34 or 35 on behalf of the relevant building surveyor unless—

- (a) the person is registered as a building surveyor or a building inspector under Part 11 and the person's registration authorises the carrying out of that inspection; or
- (b) in the case of an inspection that is of a prescribed class of inspection, the inspection is carried out by a person of a prescribed class of person.

S. 36
repealed by
No. 46/2018
s. 38.

* * * * *

Pt 4 Div. 2
(Heading)
inserted by
No. 15/2016
s. 49.

Division 2—Directions to fix building work

S. 37
substituted by
No. 15/2016
s. 49.

37 Definitions

In this Division—

authorised person means—

- (a) the Authority; or
- (b) a VBA inspector;

S. 37 def. of
*authorised
person*
amended by
No. 21/2017
s. 18(3).

* * * * *

builder in relation to building work, means the person who is specified as the builder in the building permit issued in relation to that building work;

direction to fix building work means a direction to fix building work given under this Division;

relevant owner, in relation to building work,
means the owner of the building or land in or
on which the building work is being carried
out;

relevant person means a person referred to in
section 37C who can be, or has been, given a
direction to fix building work.

**37A Direction by relevant building surveyor to fix
building work**

S. 37A
inserted by
No. 15/2016
s. 49.

- (1) This section applies if, after the inspection of building work, the relevant building surveyor believes on reasonable grounds that the building work fails to comply with this Act, the building regulations or the building permit issued in relation to the building work.
- (2) The relevant building surveyor must give a direction to fix the building work to a relevant person in accordance with this Division.
- (3) The relevant building surveyor may authorise a building surveyor or a building inspector whose registration under Part 11 authorises the inspection of that building work to give an oral direction to fix the building work to the relevant person on behalf of the relevant building surveyor in accordance with this Division.

37B Direction by authorised person to fix building work

S. 37B
inserted by
No. 15/2016
s. 49.

- (1) This section applies if, after the inspection of building work, an authorised person believes on reasonable grounds that the building work fails to comply with this Act, the building regulations or the building permit issued in relation to the building work.
- (2) The authorised person may give a direction to fix the building work to a relevant person in accordance with this Division.

S. 37B(3)
amended by
No. 21/2017
s. 95(3).

- (3) If, under this section, an authorised person gives a person a direction to fix building work, any direction to fix that work given by or on behalf of a relevant building surveyor under section 37A ceases to have effect.

S. 37C
inserted by
No. 15/2016
s. 49.

37C Method of giving directions

A direction to fix building work may be given as—

- (a) an oral direction to either or both of the following persons—
- (i) the builder;
 - (ii) the person who is apparently in charge of the site on which the building work is being carried out; or
- (b) a written direction to the builder.

S. 37D
inserted by
No. 15/2016
s. 49.

37D Written direction if oral direction not complied with

- (1) This section applies if an oral direction to fix building work has been given under this Division.
- (2) The relevant building surveyor or authorised person must give the builder a written direction to fix building work if the relevant building surveyor or authorised person is not satisfied at the end of the prescribed period after the oral direction was given that the building work complies with this Act, the building regulations or the building permit issued in relation to the building work.
- (3) In this section—
- prescribed period* means—
- (a) the period prescribed by the regulations (if any); or
 - (b) if a period is not prescribed, 7 days.

37E Requirements of directions to fix building work

S. 37E
inserted by
No. 15/2016
s. 49.

A direction to fix building work may require the relevant person to do all or any of the following—

- (a) carry out work so that the building work complies wholly or substantially with this Act, the building regulations and the building permit issued in relation to the building work;
- (b) stop any further building work that may prevent the building work to which the direction applies from being adequately inspected, until the relevant building surveyor or authorised person is satisfied that a requirement under paragraph (a) has been complied with.

37F Written directions to fix building work

S. 37F
inserted by
No. 15/2016
s. 49.

- (1) A written direction to fix building work must be given in a form (if any) approved by the Authority.
- (2) A written direction to fix building work must specify a period within which the direction must be complied with.
- (3) A written direction to fix building work must state the following—
 - (a) that the builder has a right to appeal the decision to give the direction to the Building Appeals Board within a prescribed period; and
 - (b) that the builder may ask the relevant building surveyor or authorised person to extend the period within which the direction must be complied with.

S. 37G
inserted by
No. 15/2016
s. 49.

37G Extension of time to comply with direction

- (1) A builder who is subject to a written direction to fix building work may ask the relevant building surveyor or authorised person to extend the period for compliance with the direction.
- (2) A request under subsection (1) must be made before the end of the specified period for compliance with the direction.
- (3) On a request under subsection (1), the relevant building surveyor or authorised person may grant an extension of the period for compliance with the direction to fix building work if the relevant building surveyor or authorised person considers it appropriate to do so in the circumstances.
- (4) The relevant building surveyor or authorised person must give written notice of the extension to the builder.

S. 37H
inserted by
No. 15/2016
s. 49.

37H Offences relating to compliance with direction

S. 37H(1)
amended by
No. 21/2017
s. 17(2).

- (1) A builder must comply with a written direction to fix building work within the period for compliance specified in the direction.

Penalty: 500 penalty units, in the case of a natural person;

2500 penalty units, in the case of a body corporate.

S. 37H(1A)
inserted by
No. 21/2017
s. 26.

- (1A) A builder, to whom a written direction to fix building work has been given, must ensure that any other person engaged or employed by the builder who is carrying out the building work—
 - (a) carries out the building work in accordance with the direction; and

(b) if required by the direction, stops carrying out the building work in accordance with the direction.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

(2) A builder to whom a direction to fix building work is given must not request or receive from the person for whom the building work was originally carried out (or any agent of that person) any payment for or in respect of any costs arising from anything done for the purpose of complying with the direction.

S. 37H(2)
amended by
No. 21/2017
s. 17(1).

Penalty: 50 penalty units, in the case of a natural person;
250 penalty units, in the case of a body corporate.

37HA Operation of direction may be stayed

S. 37HA
inserted by
No. 15/2016
s. 60.

The relevant building surveyor or the authorised person may stay the operation of a direction to fix building work if—

- (a) the building work is the subject of a domestic building work dispute; and
- (b) the domestic building work dispute has been accepted for conciliation under Part 4 of the **Domestic Building Contracts Act 1995**.

37I Direction may be revoked

S. 37I
inserted by
No. 15/2016
s. 49.

(1) The relevant building surveyor or authorised person may revoke a direction to fix building work given to the relevant person if—

S. 37I(1)
substituted by
No. 15/2016
s. 61.

- (a) the relevant building surveyor or authorised person considers that the relevant person is not able to comply with the direction; or
 - (b) the building work is the subject of a domestic building work dispute and—
 - (i) a dispute resolution order has been issued in relation to the building work; or
 - (ii) the dispute has been resolved by conciliation under Part 4 of the **Domestic Building Contracts Act 1995**; or
 - (iii) the dispute has been determined by VCAT under the **Domestic Building Contracts Act 1995**.
- (2) The relevant building surveyor or authorised person must give written notice of the revocation of a written direction to fix building work to the relevant person.

S. 37J
inserted by
No. 15/2016
s. 49.

37J Relevant building surveyor or authorised person must give copies of directions and other notices to owner

The relevant building surveyor or authorised person must give the following documents to the relevant owner and any other prescribed person in relation to a written direction to fix building work—

- (a) a copy of the direction;
- (b) a written notice of any extension of the period for compliance granted under section 37G;
- (c) a written notice of the stay of the direction under section 37HA or of the revocation of the direction under section 37I.

S. 37J(c)
amended by
No. 15/2016
s. 62.

37K Notice to owner and Authority of non-compliance with direction

S. 37K
inserted by
No. 15/2016
s. 49.

- (1) If a builder fails to comply with a written direction to fix building work within the required period for compliance, the relevant building surveyor or authorised person must give written notice of that failure to the Authority and the relevant owner.
- (2) The relevant building surveyor or authorised person must comply with subsection (1) within 7 days after the end of the required period for compliance.

S. 37K(1)
amended by
No. 21/2017
s. 27.

Division 3—Certificates of final inspection

Pt 4 Div. 3
(Heading)
inserted by
No. 15/2016
s. 50.

38 Certificate of final inspection

- (1) The relevant building surveyor must issue a certificate of final inspection on completion of the inspection following the final mandatory notification stage of building work if—
 - (a) an occupancy permit is not required for the building work; and
 - (b) all directions given under this Part in respect of the building work have been complied with.
- (2) A certificate of final inspection is not evidence that the building or building work concerned complies with this Act or the building regulations.

Part 5—Occupation of buildings and places of public entertainment

Division 1—Occupancy permits (building work)

39 Occupancy permit must be obtained

S. 39(1)
amended by
No. 33/2010
s. 8.

- (1) If a building permit states that an occupancy permit is required for the whole of a building, a person must not occupy that building unless the occupancy permit has been issued under this Division for the building.

Penalty: 120 penalty units, in the case of a natural person.

600 penalty units, in the case of a body corporate.

S. 39(2)
amended by
No. 33/2010
s. 8.

- (2) If a building permit states that an occupancy permit is required for part of a building, a person must not occupy that part of the building unless the occupancy permit has been issued under this Division for that part of the building.

Penalty: 120 penalty units, in the case of a natural person.

600 penalty units, in the case of a body corporate.

40 Occupation must be in accordance with permit

S. 40
amended by
No. 34/1997
s. 7(1).

- (1) A person must not occupy a building in contravention of the current occupancy permit or permits issued under this Division for the building.

S. 40(1)
amended by
No. 33/2010
s. 9.

Penalty: 120 penalty units, in the case of a natural person.

600 penalty units, in the case of a body corporate.

- (2) Subsection (1) does not apply to a person who occupies a building in accordance with an approval given under Division 3.

S. 40(2)
inserted by
No. 34/1997
s. 7(2).

41 Applications for occupancy permits

An application for an occupancy permit required by a building permit must be made to the relevant building surveyor—

- (a) by or on behalf of the owner of the building or the owner of the land, in or on which the building work has been carried out; or
- (b) if the land in or on which the building work has been carried out is a lot of a kind referred to in section 9AA(1) of the **Sale of Land Act 1962**, by the purchaser under a contract for the sale of that lot.

42 Schedule 2 to apply

Schedule 2 applies in relation to an application for an occupancy permit under this Division.

43 Decision on application for occupancy permit

- (1) The relevant building surveyor must decide an application for an occupancy permit under this Division by—
 - (a) issuing the permit; or
 - (b) issuing the permit with conditions; or
 - (c) refusing the permit.
- (2) The regulations may prescribe a time within which the relevant building surveyor must decide an application for an occupancy permit.
- (3) The relevant building surveyor is taken to have refused an occupancy permit if the application is not decided within the prescribed time.

S. 43(3)
amended by
No. 21/2017
s. 99.

S. 44
substituted by
No. 75/1998
s. 6.

44 Refusal of occupancy permit

The relevant building surveyor must not issue an occupancy permit under this Division—

- (a) unless the building, or the part of the building, to which the permit applies is suitable for occupation; and
- (b) if plumbing work for which section 221ZH required the issue of a compliance certificate was carried out in conjunction with the building work on the building or part of the building in respect of which the permit is sought, unless the building surveyor has seen a copy of the compliance certificate.

45 Form of occupancy permit

An occupancy permit under this Division must specify—

- (a) the prescribed classification of the building or part of a building to which it applies; and
- (b) the proposed use of the building or part of a building; and

- (c) the maximum permissible live load within the building or part of a building, if applicable; and
- (d) the maximum number of people to be accommodated within the building or part of a building, as determined in accordance with the regulations; and
- (e) any conditions to which it is subject.

46 Effect of occupancy permit

- (1) An occupancy permit under this Division is evidence that the building or part of a building to which it applies is suitable for occupation.
- (2) An occupancy permit under this Division is not evidence that the building or part of a building to which it applies complies with this Act or the building regulations.

47 Reporting authority to be notified of occupancy permit

If the relevant building surveyor issues an occupancy permit under this Division which differs from or fails to implement the recommendations in a reporting authority's report under Schedule 2 on the application for the permit, the relevant building surveyor must notify the reporting authority without delay of the permit and give the reporting authority a copy of the permit.

48 Reasons for refusal to be given

The relevant building surveyor must notify an applicant under this Division for an occupancy permit in writing without delay of the refusal of the permit and the reasons for the refusal.

Division 2—Occupancy permits (places of public entertainment)

S. 49
amended by
No. 33/2010
s. 10.

49 Public entertainment not to be conducted at place without occupancy permit

A person must not conduct⁴ a public entertainment in a place of public entertainment unless an occupancy permit has been issued under this Division which permits its use for the entertainment.

Penalty: 240 penalty units, in the case of a natural person.

1500 penalty units, in the case of a body corporate.

S. 50
amended by
No. 33/2010
s. 11.

50 Place not to be used for public entertainment without occupancy permit

The owner or occupier of a place of public entertainment must not, for fee or reward, permit the place to be used for the purpose of providing public entertainment unless an occupancy permit has been issued under this Division which permits its use for the entertainment.

Penalty: 240 penalty units, in the case of a natural person.

1500 penalty units, in the case of a body corporate.

51 Use of place of public entertainment must be in accordance with permit

S. 51
amended by
No. 33/2010
s. 12.

The owner or occupier of a place of public entertainment (other than a prescribed temporary structure) must not permit the place to be used for the purpose of providing public entertainment in contravention of the occupancy permit permitting its use for the entertainment.

Penalty: 240 penalty units, in the case of a natural person.

1500 penalty units, in the case of a body corporate.

52 Use of prescribed temporary structure must be in accordance with permit

S. 52
amended by
No. 33/2010
s. 13.

The owner, occupier, lessee or a hirer of a prescribed temporary structure must not permit the structure to be used for the purpose of providing public entertainment in contravention of the occupancy permit permitting its use for the entertainment.

Penalty: 240 penalty units, in the case of a natural person.

1500 penalty units, in the case of a body corporate.

53 Applications for occupancy permits

- (1) An application for an occupancy permit under this Division (other than an occupancy permit referred to in subsection (2)) may be made to a municipal building surveyor or a private building surveyor appointed under Part 6 by or on behalf of the owner of the place of public entertainment concerned.

S. 53(2)
amended by
No. 34/2013
s. 34(Sch. 1
item 5).

- (2) An application for an occupancy permit under this Division for a prescribed temporary structure or for a place of public entertainment prescribed or in a class prescribed for the purposes of this section may be made to the Authority by or on behalf of the owner of the place of public entertainment concerned⁵.
- (3) An application can only be made to a private building surveyor under this Division in conjunction with an application for an occupancy permit under Division 1 in respect of the place of public entertainment concerned.

54 Schedule 2 to apply

Schedule 2 applies in relation to an application for an occupancy permit under this Division.

55 Refusal of occupancy permit

The relevant building surveyor must not issue an occupancy permit under this Division unless the place to which the permit applies is suitable for occupation for the public entertainment or class of public entertainment for which the permit is sought.

56 Decision on application for occupancy permit

- (1) The relevant building surveyor must decide an application for an occupancy permit under this Division by—
 - (a) issuing the permit; or
 - (b) issuing the permit with conditions; or
 - (c) refusing the permit.

- (2) The regulations may prescribe a time within which the relevant building surveyor must decide an application for an occupancy permit.
- (3) The relevant building surveyor is taken to have refused an occupancy permit if the application is not decided within the prescribed time.

S. 56(3)
amended by
No. 21/2017
s. 99.

57 Prescribed temporary structures—special provisions

- (1) An occupancy permit for a prescribed temporary structure may be issued on condition that—
 - (a) the siting of the temporary structure in any municipal district is subject to the approval of the municipal building surveyor of that district; and
 - (b) the erection of the temporary structure is carried out by registered building practitioners.
- (2) More than one occupancy permit can be issued for a prescribed temporary structure but each occupancy permit must not be issued for a period longer than 5 years.

58 Effect of occupancy permit

- (1) An occupancy permit under this Division is evidence that the place to which it applies is suitable for occupation for the purpose of the public entertainment or class of public entertainment for which it was issued.
- (2) An occupancy permit under this Division is not evidence that a place of public entertainment complies with this Act or the building regulations.

59 Form of occupancy permit

- (1) An occupancy permit under this Division must specify—
 - (a) the public entertainment or class of public entertainment to which it applies; and
 - (b) any conditions to which it is subject; and
 - (c) the period of operation of the permit.
- (2) If an occupancy permit is required under Division 1 and this Division in respect of a building or part of a building (other than a prescribed temporary structure), the relevant building surveyor may issue a combined occupancy permit if the requirements of both Divisions have been met.

60 Reporting authority to be notified of occupancy permit

If the relevant building surveyor issues an occupancy permit under this Division which differs from or fails to implement the recommendations in a reporting authority's report under Schedule 2 on the application for the permit, the relevant building surveyor must notify the reporting authority without delay of the permit and give the reporting authority a copy of the permit.

61 Owner to notify others of occupancy permit

- (1) The owner of a building (other than a prescribed temporary structure) must notify an occupier of the building, within 7 days after the occupier first enters into occupation of the building or within 7 days after an occupancy permit is issued in respect of the building (whichever is the later), of any occupancy permit in force under this Division in respect of the building.

Penalty: 120 penalty units.

S. 61(1)
amended by
No. 33/2010
s. 14.

- (2) The owner of a prescribed temporary structure must notify the occupier, lessee or hirer of the structure within 7 days after the occupier, lessee or hirer enters into occupation of, or leases or hires the temporary structure or within 7 days after an occupancy permit is issued in respect of the structure (whichever is the later), of any occupancy permit in force under this Division in respect of the structure.

S. 61(2)
amended by
No. 33/2010
s. 14.

Penalty: 120 penalty units.

62 Reasons for refusal to be given

If the relevant building surveyor refuses an occupancy permit under this Division, the relevant building surveyor must notify the applicant for the permit in writing without delay of the refusal of the permit and the reasons for the refusal.

63 Inspection of places of public entertainment

- (1) The municipal building surveyor of a municipal district may cause any place of public entertainment in that municipal district for which an occupancy permit has been issued under this Division to be inspected from time to time to determine whether or not the permit is being complied with.
- (2) The Authority may cause any place of public entertainment for which an occupancy permit has been issued by the Authority under this Division to be inspected from time to time to determine whether or not the permit is being complied with.

S. 63(2)
amended by
No. 34/2013
s. 34(Sch. 1
item 6).

Division 3—Temporary occupation of buildings

64 Temporary occupation of buildings

S. 64
amended by
No. 71/1995
s. 5(a)(b).

S. 64(1)
amended by
No. 34/1997
s. 8.

(1) A person may, with the approval of a municipal building surveyor or a private building surveyor appointed under Part 6, occupy on a temporary basis a building for which there is not or could not be issued an occupancy permit appropriate to the use of the building.

S. 64(2)
inserted by
No. 71/1995
s. 5(c).

(2) An approval cannot be given under this section for a use of a building or part of a building if a building permit requires an occupancy permit to be issued for that use of the building or part of a building.

65 Who may apply for approval?

An application for approval under this Division may be made to the relevant building surveyor by or on behalf of the owner of the building concerned.

66 Form of application

An application must—

- (a) be in a form approved by the relevant building surveyor; and
- (b) be accompanied by the fees—
 - (i) determined by the council in accordance with the **Local Government Act 1989**; or
 - (ii) in the case of an application to a private building surveyor, determined by the private building surveyor.

67 Determination of applications

The relevant building surveyor must decide the application for approval to occupy a building on a temporary basis by—

- (a) issuing the approval; or
- (b) issuing the approval with conditions; or
- (c) refusing the approval.

68 Form of approval

An approval under this section must—

- (a) be in writing; and
- (b) specify any conditions to which it is subject; and
- (c) specify the period for which it applies.

69 Reasons for refusal to be given

The relevant building surveyor must notify an applicant in writing of the refusal of approval to occupy a building on a temporary basis and the reasons for the refusal.

Division 4—Amendment and cancellation of permits and approvals

70 Amendment of permit or approval

- (1) A municipal building surveyor may amend a permit or approval issued under this Part—
 - (a) on an application by or on behalf of the owner of the building or land concerned; or
 - (b) in any other case, if the amendment is necessary in the public interest.

- (2) Sections 42 to 48 apply (with any necessary modifications) in relation to an application to amend an occupancy permit issued under Division 1 as if it were an application for an occupancy permit under that Division.
- (3) Sections 54 to 62 apply (with any necessary modifications) in relation to an application to amend an occupancy permit issued under Division 2 as if it were an application for an occupancy permit under that Division.
- (4) Sections 66 to 69 apply (with any necessary modifications) in relation to an application to amend an approval given under Division 3 as if it were an application for approval under that Division.

71 Cancellation of permit or approval if fraud or misrepresentation

The relevant building surveyor may cancel a permit or approval issued by the relevant building surveyor under this Part if the permit or approval was obtained by fraud or misrepresentation.

72 Cancellation of occupancy permit on other grounds

A municipal building surveyor may cancel an occupancy permit issued under Division 1 if—

- (a) the building or the part of a building to which the permit relates is no longer suitable for occupation for the classification stated on the permit; or
- (b) the use of the building or part of the building has changed from the proposed use specified on the permit; or
- (c) the strength of the building has become less than required to carry the loads stated on the permit.

S. 72(b)
amended by
No. 21/2017
s. 95(4).

Division 5—Register and records

73 Relevant building surveyor to give copies of documents to council

S. 73
amended by
No. 71/1995
s. 6(a).

- (1) The relevant building surveyor, within 7 days after issuing any occupancy permit or temporary approval or amending any permit or approval under this Part, must give to the relevant council a copy of that permit or approval or amendment and any plans and other documents lodged with the application for the permit or approval or amendment.

S. 73(1)
amended by
Nos 33/2010
s. 15, 21/2017
s. 17(1).

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a body corporate.

- (1A) In addition to the requirements of subsection (1), the relevant building surveyor, within the relevant prescribed time, must give to the relevant council a copy of any other prescribed documents relating to the application for the occupancy permit or temporary approval or the permit or approval.

S. 73(1A)
inserted by
No. 34/1997
s. 9(1),
amended by
Nos 33/2010
s. 15, 21/2017
s. 17(1).

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a body corporate.

- (2) Any documents lodged with the relevant council under subsection (1) or (1A) must be accompanied by the appropriate prescribed lodgement fee (if any) paid to the relevant building surveyor under clause 1 of Schedule 2.

S. 73(2)
inserted by
No. 71/1995
s. 6(b),
amended by
No. 34/1997
s. 9(2).

74 Register of occupancy permits and temporary approvals

- (1) A council must keep a register of all occupancy permits and temporary approvals and amendments given to it under this Division.
- (2) A council must make the register available for inspection during normal office hours by any person.

75 Keeping of records

A council must keep all documents given to it under this Division for the prescribed period and in the prescribed manner.

Building Act 1993
No. 126 of 1993

*	*	*	*	*	Pt 5A (Headings and ss 75A– 75DH) inserted by No. 85/2000 s. 5, amended by No. 96/2004 ss 3–9, repealed by No. 46/2008 s. 248(3).
*	*	*	*	*	Pt 5B (Headings and ss 75E– 75H) inserted by No. 85/2000 s. 5, amended by No. 96/2004 ss 10–12, repealed by No. 46/2008 s. 248(3).
*	*	*	*	*	Pt 5C (Headings and ss 75J– 75JE) inserted by No. 85/2000 s. 5, amended by Nos 11/2002 s. 3(Sch. 1 item 6.1), 96/2004 ss 13, 14, 42/2005 s. 51, repealed by No. 46/2008 s. 248(3).

Part 6—Private building surveyors

Pt 6 Div. 1
(Heading)
inserted by
No. 15/2016
s. 37.

Division 1—Appointments of private building surveyors

76 Functions of private building surveyor

A private building surveyor may be appointed to carry out all or any of the following functions under this Act—

- (a) the issuing of building permits;
- (b) the carrying out of inspections of buildings and building work under Part 4;
- (c) the issuing of occupancy permits and temporary approvals under Part 5.

77 Additional functions

In addition to the functions set out in section 76, a private building surveyor may carry out any other functions conferred on private building surveyors by this Act or the regulations.

78 When may a private building surveyor be appointed?

- (1) Subject to this Part, a person who is entitled to apply for a building permit, occupancy permit or temporary approval under this Act in respect of a building or building work, may appoint a private building surveyor to carry out the functions set out in section 76 in respect of that building or building work.

S. 78(1A)
inserted by
No. 15/2016
s. 38,
amended by
No. 21/2017
s. 4(1).

- (1A) A builder who has entered into a major domestic building contract or who acts or proposes to act as a domestic builder in relation to domestic building work, or a related person to that builder, must not appoint a private building surveyor on behalf of the owner of the land on which the domestic building work is to be carried out.

Building Act 1993
No. 126 of 1993
Part 6—Private building surveyors

- (1B) A building surveyor must not accept an appointment referred to in subsection (1A). S. 78(1B)
inserted by
No. 15/2016
s. 38.
- (1C) Nothing in subsection (1A) or (1B) affects the validity of any action taken by a building surveyor who is appointed in contravention of those subsections. S. 78(1C)
inserted by
No. 15/2016
s. 38.
- (2) Except as provided in this Part, a person must not appoint a private building surveyor to complete any functions set out in section 76 in respect of a building or building work if another private building surveyor or a municipal building surveyor has already commenced to carry out functions set out in that section in respect of that building or building work. S. 78(2)
amended by
No. 33/2010
s. 16.
- Penalty: 240 penalty units, in the case of a natural person.
- 1500 penalty units, in the case of a body corporate.
- (3) Subject to this Part, on and from the acceptance of an appointment under this Part in respect of a building or building work, a private building surveyor is responsible for carrying out the functions set out in section 76 in respect of that building or building work.
- (4) Despite the terms of an appointment under this section, a private building surveyor, in carrying out any functions set out in section 76, must comply with this Act and the regulations.

S. 78(5)
inserted by
No. 21/2017
s. 4(2).

(5) In this section—

related person, in relation to a builder, means—

- (a) if the builder is a member of a partnership, another partner in the partnership; or
- (b) if the builder is a body corporate, an officer of the body corporate.

S. 78A
inserted by
No. 21/2017
s. 28.

78A Offence to accept appointment of private building surveyor if unregistered

A person must not accept an appointment as a private building surveyor unless—

- (a) the person is registered under Part 11 as a building surveyor; and
- (b) the person's registration authorises the person to carry out the work.

Penalty: 500 penalty units, in the case of a natural person;

2500 penalty units, in the case of a body corporate.

S. 78B
inserted by
No. 21/2017
s. 28.

78B Private building surveyor prohibited from delegating functions unless authorised

A private building surveyor must not delegate any function specified in section 76 or 77 to another person unless the delegation of the function is expressly authorised under this Act or the regulations.

79 Circumstances in which private building surveyor may not act

S. 79(1)
amended by
Nos 33/2010
s. 17, 15/2016
s. 39(1),
21/2017
s. 17(2).

- (1) Subject to subsection (2), a private building surveyor must not carry out any functions set out in section 76 or 77 in relation to a building or building work if the private building surveyor or a related person—

- (a) prepared the design of the building or building work; or
- (b) is, or within the prescribed period was, employed or engaged by the person or body which prepared the design of the building or building work other than an appointment to carry out a function set out in section 76; or
- (c) has a direct or indirect pecuniary interest in the body which prepared the design of the building or building work; or
- (d) has a direct or indirect pecuniary interest in the building or building work or in any body carrying out the building work.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (1A) A private building surveyor must not carry out any function as a private building surveyor in relation to which the private building surveyor or a related person has a conflict of interest. S. 79(1A)
inserted by
No. 15/2016
s. 39(2).
- (2) The Authority, on the application of a private building surveyor, may exempt the private building surveyor from all or any of the requirements of subsection (1) or (1A) in respect of any particular building or building work. An exemption must be in writing. S. 79(2)
amended by
Nos 34/2013
s. 34(Sch. 1
item 7),
15/2016
s. 39(3).
- (2A) A private building surveyor must not carry out any functions set out in section 76 or 77 in relation to a building or building work if the private building surveyor— S. 79(2A)
inserted by
No. 71/1995
s. 7(1),
amended by
Nos 33/2010
s. 17, 15/2016
s. 39(4).
 - (a) is also an officer or employee of a council and the building is situated in or the building work is to be carried out in the municipal district of that council; or

(b) is engaged by a council under section 215 to carry out the functions of municipal building surveyor and the building is situated in or the building work is to be carried out in that municipal district.

Penalty: 500 penalty units.

(3) Except as provided in this Part, a private building surveyor must not accept an appointment to complete any functions set out in section 76 in respect of a building or building work if another private building surveyor or a municipal building surveyor has already commenced to carry out functions set out in that section in respect of that building or building work.

(4) In this section—

S. 79(4)
inserted by
No. 15/2016
s. 39(5).

S. 79(4) def. of
related person
substituted by
No. 21/2017
s. 5.

related person, in relation to a private building surveyor, means—

- (a) if the private building surveyor is a member of a partnership, another partner in the partnership; or
- (b) if the private building surveyor is a body corporate, a director of the body corporate or any related body corporate of the body corporate; or
- (c) any employer of the private building surveyor; or
- (d) any employee or contractor of the private building surveyor; or
- (e) the spouse or domestic partner or a sibling, parent or child of the private building surveyor; or

- (f) any person with whom the private building surveyor has a contractual arrangement that might reasonably be seen to give rise to a conflict between the private building surveyor's functions as a private building surveyor and the private building surveyor's interests under the arrangement.

80 Private building surveyor to notify council

A private building surveyor must, within 7 days after accepting an appointment under this Part, notify the relevant council in writing of the appointment and the building or building work in respect of which the private building surveyor is appointed.

80A Designated building surveyors

- (1) This section applies if a registered body corporate accepts an appointment as a private building surveyor under this Part.
- (2) The registered body corporate must ensure that the work as building surveyor is carried out by a director or employee of the body corporate (the *designated building surveyor*)—
- (a) who is registered under Part 11 as a building surveyor as the case requires; and
 - (b) whose registration authorises the director or employee to carry out that work.

Penalty: 1200 penalty units.

S. 80A
inserted by
No. 21/2017
s. 6 (as
amended by
No. 47/2017
s. 14).

- (3) The registered body corporate must within 7 days after accepting the appointment—
- (a) notify the relevant council in writing of the designated building surveyor referred to in subsection (2); and
 - (b) give a copy of that notice to the person who appointed the registered body corporate under this Part.

Penalty: 1200 penalty units.

- (4) If the designated building surveyor notified to the relevant council is replaced by another director or employee of the body corporate for any period, the registered body corporate must within 7 days after the replacement is made—
- (a) notify the relevant council in writing of the new designated building surveyor; and
 - (b) give a copy of that notice to the person who appointed the registered body corporate under this Part.

S. 80B
inserted by
No. 21/2017
s. 6 (as
amended by
No. 47/2017
s. 14).

80B Duties of designated building surveyors

A designated building surveyor—

- (a) is not excused from compliance with any duties under this Act and the building regulations or under any other Act in relation to any work as a building surveyor carried out by the designated building surveyor on behalf of the registered body corporate; and
- (b) has the same functions in relation to the carrying out of the functions of a building surveyor on behalf of the registered body corporate as if the designated building surveyor were the private building surveyor.

Division 1A—Transfer of functions of private building surveyor

Pt 6 Div. 1A
(Heading and
ss 80C, 80D)
inserted by
No. 21/2017
s. 29.

80C A private building surveyor may transfer functions relating to building work to another building surveyor

S. 80C
inserted by
No. 21/2017
s. 29.

- (1) Subject to subsection (2), a private building surveyor (the *transferring building surveyor*) may transfer all functions under this Act or the building regulations that relate to building work in respect of which the transferring building surveyor has been appointed to another private building surveyor or a municipal building surveyor (the *new relevant building surveyor*).
- (2) A transfer may not be effected under subsection (1) unless the person who appointed the transferring building surveyor and the new relevant building surveyor both agree to the transfer of the functions.
- (3) A transfer under subsection (1) may be for a period of time or permanently.
- (4) A transfer under subsection (1) has no effect unless—
 - (a) the transfer is made in a form approved by the Authority; and
 - (b) a copy of the transfer form is given by the transferring building surveyor to the new relevant building surveyor; and
 - (c) the new relevant building surveyor gives a copy of the transfer form to the Authority and the relevant council.

- (5) A transfer under subsection (1) takes effect on the latest of the following dates—
- (a) the date a copy of the transfer form is given to the Authority;
 - (b) the date a copy of the transfer form is given to the relevant council;
 - (c) the date specified in the transfer form (if any) on which the transfer is to take effect.
- (6) On a transfer of the functions under subsection (1) taking effect—
- (a) the appointment of the transferring building surveyor under section 76 in respect of the functions is taken to be terminated; and
 - (b) the new relevant building surveyor is taken to be appointed in respect of the functions by the person who appointed the transferring building surveyor.
- (7) If a transfer of the functions under subsection (1) is not permanent, at the end of the period of transfer—
- (a) the appointment of the new relevant building surveyor is taken to be terminated in respect of the functions; and
 - (b) the transferring building surveyor is taken to be appointed in respect of the functions by the same person who had appointed the transferring building surveyor before the transfer.

- (8) The new relevant building surveyor to whom the functions relating to building work are transferred under subsection (1) must give a copy of the transfer form to the person who appointed the transferring building surveyor and to the builder engaged to carry out the building work.

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a corporation.

80D Authority may direct transfer of functions of employee building surveyor

S. 80D
inserted by
No. 21/2017
s. 29.

- (1) The Authority may direct a registered building surveyor that has employed or engaged a person to act as a private building surveyor (the *employee building surveyor*) to transfer all functions under this Act or the building regulations being carried out by the employee building surveyor to—
- (a) another private building surveyor employed or engaged by the registered building surveyor; or
 - (b) the registered building surveyor, if a natural person.
- (2) The Authority may direct a registered building surveyor that has employed or engaged a person as a designated building surveyor to transfer all functions under this Act or the building regulations being carried out by the designated building surveyor to another designated building surveyor employed or engaged by the registered building surveyor.

- (3) The Authority may give a direction under subsection (1) or (2) if—
- (a) the registration of the employee building surveyor or designated building surveyor (as the case may be) has been suspended or cancelled; or
 - (b) the employee building surveyor or designated building surveyor (as the case may be)—
 - (i) has died; or
 - (ii) is in prison; or
 - (iii) has become a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
 - (iv) has become an insolvent under administration; or
 - (v) in the opinion of the Authority is incapable of carrying out the work because the building surveyor is mentally or physically infirm or for any other reason; or
 - (vi) in the opinion of the Authority has ceased to carry out the functions of a private building surveyor or a designated building surveyor (as the case may be).
- (4) A direction given under subsection (1) or (2)—
- (a) must be given in writing; and
 - (b) may specify a period within which the functions of the employee building surveyor or designated building surveyor (as the case may be) are to be transferred.
- (5) A registered building surveyor must comply with a direction under subsection (1) or (2).

- (6) If functions are transferred from an employee building surveyor or a designated building surveyor in accordance with a direction under subsection (1) or (2), the relevant registered building surveyor must notify—
- (a) in the case of the transfer of the functions from a private building surveyor, the person who appointed the private building surveyor under section 76 to perform the functions; and
 - (b) in all other cases, the relevant council.

Division 2—Termination of appointment with consent of Authority

Pt 6 Div. 2
(Heading)
inserted by
No. 15/2016
s. 40.

81 Termination of appointment

- (1) Subject to section 80C(6) and (7) and subsection (3), the appointment of a private building surveyor under this Part cannot be terminated without the written consent of the Authority.
- (2) If building work in respect of which a private building surveyor is appointed is terminated before commencement or completion, the owner of the land on which the building work was or was to be carried out must notify the Authority and the relevant council of the termination of the building work.
- (3) On receipt by the Authority of a notice under subsection (2), the appointment of the private building surveyor is taken to be terminated.
- (4) If the appointment of a private building surveyor is terminated under subsection (3), a private building surveyor or municipal building surveyor must not complete the first private building

S. 81(1)
amended by
Nos 34/2013
s. 34(Sch. 1
item 8),
21/2017 s. 30.

S. 81(2)
amended by
Nos 34/2013
s. 34(Sch. 1
item 8),
21/2017
s. 95(5).

S. 81(3)
amended by
Nos 34/2013
s. 34(Sch. 1
item 8),
21/2017 s. 99.

S. 81(4)
amended by
No. 34/2013
s. 34(Sch. 1
item 8).

surveyor's functions in respect of the building work without the written consent of the Authority.

- (5) This section applies despite anything to the contrary in the terms of the appointment or in any other Act or rule of law.

S. 82
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 9).

82 Directions of Authority

S. 82(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 10).

- (1) If—

S. 82(1)(a)
amended by
No. 34/2013
s. 34(Sch. 1
item 10).

- (a) the Authority consents to the termination of an appointment under section 81(1) and a new private building surveyor or a municipal building surveyor is to complete the private building surveyor's functions; or

S. 82(1)(b)
amended by
Nos 34/2013
s. 34(Sch. 1
item 10),
15/2016
s. 40A (as
amended by
No. 21/2017
s. 104).

- (b) the appointment of a private building surveyor has been terminated under section 81(3) or 83H(3) and the Authority consents to a new private building surveyor or a municipal building surveyor completing the private building surveyor's functions—

the Authority may give such written directions as it considers appropriate to facilitate the transfer of the private building surveyor's functions to that other private building surveyor or municipal building surveyor.

- (2) The private building surveyor whose appointment was terminated under section 81, the private building surveyor or municipal building surveyor to whom the functions are to be transferred and the person who appointed the private building surveyor whose appointment was terminated must comply with a direction under subsection (1).

S. 82(2)
amended by
No. 33/2010
s. 18.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

- (3) A direction under subsection (1) has effect despite anything to the contrary in the terms of appointment of the first private building surveyor or the private building surveyor or municipal building surveyor to whom the functions are transferred.

83 Effect of transfer of functions

If the functions of a private building surveyor are transferred to a second building surveyor under this Part, then in respect of any period on or after the date of transfer to the second building surveyor, anything done by the private building surveyor in respect of the building work concerned is, for the purpose only of carrying out the second building surveyor's functions under this Act and the regulations, taken to have been done by the second building surveyor.

S. 83
amended by
No. 21/2017
s. 99.

Pt 6 Div. 3
(Headings
and
ss 83A–83V)
inserted by
No. 15/2016
s. 41 (as
amended by
No. 21/2017
s. 105).

Division 3—Appointment by Authority of manager of business of private building surveyor

Subdivision 1—Preliminary

S. 83A
inserted by
No. 15/2016
s. 41.

83A Definition

In this Division—

expenses, in relation to a manager, means—

- (a) the remuneration payable to the manager; and
- (b) the expenses incurred in the course of management under this Division; and
- (c) any reimbursement of the manager under this Division.

Subdivision 2—Appointment of manager

S. 83B
inserted by
No. 15/2016
s. 41.

83B Appointment of manager

- (1) The Authority may appoint a manager for a private building surveyor's business in any of the following circumstances if the Authority is of the opinion that it is necessary to make the appointment in order to protect the interests of other persons—
 - (a) the private building surveyor has requested the appointment of a manager;
 - (b) the private building surveyor's registration under this Act has been suspended or cancelled;
 - (c) the private building surveyor has died;
 - (d) the private building surveyor is in prison;

- (e) the private building surveyor has become a represented person within the meaning of the **Guardianship and Administration Act 1986**;
 - (f) the private building surveyor has become insolvent under administration;
 - (g) the private building surveyor has ceased to carry out the functions of a private building surveyor.
- (2) A manager may only be appointed in relation to, and the manager's powers and functions under this Division are limited to, the private building surveyor's functions under this Act and any functions that are reasonably necessary to support the carrying out of those functions.
- (3) A manager is eligible for reappointment.

83C Who may be appointed as a manager?

A person must not be appointed as a manager of a private building surveyor's business unless the person is—

- (a) registered as a building surveyor under Part 11 and that registration (including any conditions of registration) authorises the person to carry out all work as a building surveyor; or
- (b) a member of the staff of the Authority who has the qualifications and experience required for registration as a building surveyor under Part 11 that would authorise the person to carry out all work as a building surveyor.

S. 83C
inserted by
No. 15/2016
s. 41.

S. 83D
inserted by
No. 15/2016
s. 41.

83D Terms of appointment

The instrument of appointment of a manager must specify—

- (a) the name of the manager; and
- (b) any remuneration payable to the manager;
and
- (c) any other terms and conditions of the
appointment; and
- (d) any reporting requirements to be observed by
the manager.

S. 83E
inserted by
No. 15/2016
s. 41.

83E Conditions on appointment of manager

- (1) An appointment of a manager is subject to—
 - (a) any conditions imposed by the Authority;
and
 - (b) any conditions imposed by or under the
regulations.
- (2) The conditions may limit the functions of the
private building surveyor that the manager may
carry out.
- (3) The Authority may impose conditions—
 - (a) when the appointment is made; or
 - (b) during the term of the appointment.
- (4) The Authority may revoke or vary conditions
imposed under subsection (1)(a).
- (5) The Authority must give written notice to the
manager of any condition imposed under
subsection (1)(a) or varied or revoked under
subsection (4).

83F Notice of appointment

S. 83F
inserted by
No. 15/2016
s. 41.

- (1) The Authority must serve a notice of the appointment of a manager for a private building surveyor's business, without delay, on—
 - (a) the private building surveyor; and
 - (b) each council in whose municipal district the private building surveyor was carrying out work as a private building surveyor at the time of the appointment; and
 - (c) any person whom the Authority reasonably believes should be served with the notice.
- (2) The notice must—
 - (a) set out the information specified in the instrument of appointment; and
 - (b) state that the private building surveyor may apply to VCAT under section 83R for review of the decision to appoint the manager; and
 - (c) contain or be accompanied by any other information prescribed by the regulations.

83G Effect of service of notice of appointment

S. 83G
inserted by
No. 15/2016
s. 41.

After service on a private building surveyor of a notice of the appointment of a manager for the private building surveyor's business and until the appointment is terminated, the private building surveyor and any partner, officer, employee or agent of the private building surveyor must not participate in that business except under the direct supervision of the manager.

Penalty: 60 penalty units.

Subdivision 3—Management of business

83H Powers of manager

S. 83H
inserted by
No. 15/2016
s. 41 (as
amended by
No. 21/2017
s. 105(2)(3)).

- (1) The manager of a private building surveyor's business may, subject to the terms and conditions of the manager's appointment—
 - (a) carry out work under any existing appointment of the private building surveyor under Division 1; and
 - (b) accept appointment as a private building surveyor and carry out work as a building surveyor on behalf of the business; and
 - (c) complete any existing work of the business; and
 - (d) incur any expenses that are reasonably related to the conduct of the business; and
 - (e) do anything that is ancillary to the exercise of the powers referred to in paragraphs (a) to (d) as if the manager were the private building surveyor.
- (2) The manager of a private building surveyor's business may not act as a private building surveyor for a person who appointed the private building surveyor under Division 1 unless the consent of that person has been obtained.
- (3) If a person refuses consent under subsection (2), the appointment of the private building surveyor by the person is taken to be terminated.

83I Powers of entry etc.

S. 83I
inserted by
No. 15/2016
s. 41 (as
amended by
No. 21/2017
s. 105(4)).

- (1) For the purpose of exercising the manager's powers under section 83H, the manager may exercise any or all of the following powers—

- (a) to enter and remain in or on any building or land used by the private building surveyor's business for or in connection with the conduct of that business, other than any building or land of a person for whom the private building surveyor is acting as a building surveyor;
- (b) to require the private building surveyor or any partner, officer, employee or agent of the private building surveyor or any other person who has or has had control of documents relating to the appointment of the private building surveyor to give the manager—
 - (i) access to the documents the manager reasonably requires; and
 - (ii) information relating to the appointment of the private building surveyor the manager reasonably requires;
- (c) to operate equipment or facilities on the land or in the building, or to require any person on or in the land or building to operate equipment or facilities on the premises, for a purpose relevant to the management of the private building surveyor's business;
- (d) to take possession of any relevant document or thing;
- (e) to secure any relevant document or thing found in or on the building or land against interference, if the document or thing cannot be conveniently removed;
- (f) to take possession of any computer equipment or computer program reasonably required for a purpose relevant to the management of the private building surveyor's business.

- (2) A manager may enter and remain in or on a building or land under subsection (1)(a) only—
 - (a) during normal business hours; or
 - (b) during other hours with the consent of the occupier of the building or land.
- (3) A manager must not enter a building or land under subsection (1)(a) unless, before the entry, the manager has produced for inspection by the occupier—
 - (a) the manager's notice of appointment; and
 - (b) a form of identification that includes the manager's photograph and signature.
- (4) If a manager takes possession of—
 - (a) a document, disk or tape or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied—

under this section the manager, on request by the occupier, the private building surveyor or a person from whom it was taken, must give a copy of the thing or information to that person as soon as practicable after taking possession of it.
- (5) If a manager takes possession of a document or other thing under this section and has not provided a copy of it under subsection (4), the manager must provide a receipt for the document or thing as soon as practicable after taking possession of it.
- (6) If a manager takes possession of a document or other thing under this section, the manager may keep it until it is no longer required for the carrying out of the manager's functions.

- (7) The manager must take all reasonable steps to return the document or other thing to the person entitled to it as soon as it is no longer required for the carrying out of the manager's functions.
- (8) Nothing in this section limits any other power the manager has as a private building surveyor under Division 2 of Part 13 or the building regulations.

83J Acts of manager taken to be acts of private building surveyor

S. 83J
inserted by
No. 15/2016
s. 41.

- (1) An act done by the manager of a private building surveyor's business is, for the purpose of any proceedings or transaction that relies on that act, taken to have been done by the private building surveyor.
- (2) Nothing in this section subjects a private building surveyor or any partner, officer, employee or agent of a private building surveyor to any personal liability in relation to any act done by the manager of the private building surveyor's business.

83K Protection from liability

S. 83K
inserted by
No. 15/2016
s. 41.

A manager, or a person acting at the direction of the manager, is not liable for anything done or omitted to be done in good faith—

- (a) in carrying out a function of the manager under this Division; or
- (b) in the reasonable belief that the act or omission was in the carrying out of a function of the manager under this Division.

83L Payment of expenses of management

S. 83L
inserted by
No. 15/2016
s. 41.

- (1) The Authority must pay to the manager out of the Building account so much of the expenses of the management of the private building surveyor's business as have not otherwise been paid to the manager out of the receipts of the business.

- (2) The Authority may recover an amount paid under this section in a court of competent jurisdiction as a debt owed by the private building surveyor.
- (3) Any amount recovered under this section must be paid into the Building account.

S. 83M
inserted by
No. 15/2016
s. 41.

83M Business accounts

The regulations may make provision for or with respect to—

- (a) the accounts that are to be kept with respect to the income accrued, and the expenses incurred, by the manager of a private building surveyor's business in connection with the conduct of that business; and
- (b) the purposes for which the money in any of those accounts may be expended.

S. 83N
inserted by
No. 15/2016
s. 41.

83N Records and accounts of business under management

The manager of a private building surveyor's business must maintain the records and accounts of the business—

- (a) separately from the records and accounts of the business before the manager was appointed; and
- (b) separately from the records and accounts of any other private building surveyor's business for which the manager is appointed as manager; and
- (c) separately from the records and accounts of the manager's own business; and
- (d) in the manner prescribed by the regulations.

83O Reports by manager

S. 83O
inserted by
No. 15/2016
s. 41.

- (1) A manager must provide written reports in accordance with any reporting requirements to be observed by the manager as specified in the instrument of appointment.
- (2) If the instrument of appointment does not specify any reporting requirements, a manager must provide—
 - (a) written reports as required from time to time by the Authority; and
 - (b) a written report to the Authority at the termination of the appointment containing the information required by the Authority.
- (3) On the conclusion of the management of a private building surveyor's business, the manager must when giving the Authority the final report, lodge with the Authority all of the manager's records that relate to the management.

83P Deceased estates

S. 83P
inserted by
No. 15/2016
s. 41.

- (1) It is the duty of the manager for a private building surveyor's business to co-operate with the legal personal representative of a deceased private building surveyor for the orderly winding up of the estate.
- (2) The manager is not, in the exercise or performance of powers and duties as manager, a legal personal representative of the deceased private building surveyor, but nothing in this subsection prevents the manager from exercising or performing powers or duties as a legal personal representative if otherwise appointed as representative.

- (3) Subject to subsections (1) and (2) and to the terms of the manager's appointment, if the manager was appointed before the death of the private building surveyor, the manager's appointment, powers and duties are not affected by the death.

Subdivision 4—Termination of appointment

83Q Termination of manager's appointment

S. 83Q
inserted by
No. 15/2016
s. 41.

- (1) The appointment of a manager for a private building surveyor's business terminates in any of the following circumstances—
- (a) the term of the appointment comes to an end;
 - (b) the appointment is set aside by VCAT under this Division;
 - (c) the manager has completed the work of the private building surveyor for which the manager was appointed;
 - (d) a determination of the Authority that the appointment be terminated has taken effect.
- (2) The Authority may determine in writing that the appointment be terminated immediately or with effect from a specified date.
- (3) If the appointment terminates, the former manager must, as soon as practicable after the termination, transfer and deliver all documents of the private building surveyor to—
- (a) another manager appointed for the private building surveyor's business; or
 - (b) the private building surveyor, if another manager is not appointed for the private building surveyor's business.

- (4) The former manager need not transfer documents to the private building surveyor in accordance with subsection (3) unless the manager's expenses have been paid to the Authority.
- (5) The Authority must serve a written notice of the termination on all persons originally served with notice of the appointment.

Subdivision 5—Applications to VCAT

83R Review of decision to appoint manager

S. 83R
inserted by
No. 15/2016
s. 41.

- (1) The following persons may apply to VCAT for review of the decision of the Authority to appoint a manager for a private building surveyor's business or the conditions of that appointment—
 - (a) the private building surveyor;
 - (b) an employee of the private building surveyor;
 - (c) any other person whose interests may be adversely affected by the appointment.
- (2) The application is to be made within 7 days after notice of the appointment of the manager is served under section 83F.
- (3) On an application under this section, VCAT may—
 - (a) affirm the appointment; or
 - (b) set aside the appointment; or
 - (c) impose or vary any conditions of the appointment; or
 - (d) make any other orders it considers appropriate.

- (4) Unless VCAT otherwise directs, an application under this section for review of a decision to appoint a manager of a private building surveyor's business does not stay the operation of the decision.

S. 83S
inserted by
No. 15/2016
s. 41.

83S Directions of VCAT

VCAT may, on application by—

- (a) a manager of a private building surveyor's business; or
- (b) the private building surveyor; or
- (c) any other person affected by the management by the manager of the private building surveyor's business—

give directions in relation to any matter affecting that management or the manager's powers, duties or functions under this Division.

Subdivision 6—General

S. 83T
inserted by
No. 15/2016
s. 41 (as
amended by
No. 21/2017
s. 105(5)).

83T Confidentiality

- (1) A manager must not disclose information obtained as a result of the manager's appointment except—
- (a) so far as is necessary for exercising powers or functions of the manager; or
 - (b) as provided in subsection (2).

Penalty: 60 penalty units.

- (2) A manager may disclose information to any of the following—
- (a) any court, tribunal or other person acting judicially;
 - (b) the Authority or an employee of the Authority;
 - (c) a council or a municipal building surveyor;

- (d) the private building surveyor or any partner, employee or agent of the private building surveyor;
- (e) a person who has at any time appointed the private building surveyor under Division 1 if the information relates to that person;
- (f) another manager appointed in relation to the private building surveyor's business or a person employed by that other manager.

83U Offence to obstruct manager

A person must not without reasonable excuse hinder, obstruct or delay a manager in the carrying out of the manager's functions under this Division.

Penalty: 120 penalty units.

S. 83U
inserted by
No. 15/2016
s. 41.

83V Owner may recover money paid to private building surveyor

- (1) This section applies if an owner of a building or land has appointed a private building surveyor and paid money to that private building surveyor for the private building surveyor to carry out certain functions under section 76 relating to that building or land.
- (2) The owner may recover all or part of the money paid to the private building surveyor in a court of competent jurisdiction as a debt due to the owner if—
 - (a) the private building surveyor can no longer carry out the functions referred to in subsection (1) for any of the reasons listed in paragraphs (a) to (g) of section 83B(1); and
 - (b) before becoming unable to carry out those functions, the private building surveyor had not completed those functions; and

S. 83V
inserted by
No. 15/2016
s. 41 (as
amended by
No. 21/2017
s. 105(6)).

- (c) the uncompleted functions are not to be completed by a manager appointed under section 83B because the owner has not consented to the completion of the work by a manager.

Note

Under section 83H(2) a person who appointed a private building surveyor must consent to the manager completing the work for which the private building surveyor was appointed.

Part 7—Protection of adjoining property

84 Notice of building work to be given

- (1) An owner who is required by the building regulations to carry out protection work in respect of an adjoining property before or during the carrying out of building work for which a building permit is required must, before commencing the building work, serve on the owner of the adjoining property and the relevant building surveyor notice of the proposed building work.
- (2) The notice must include—
 - (a) prescribed details of the proposed building work as at the date of the notice; and
 - (b) prescribed details of the proposed protection work setting out the nature, location, time and duration of the protection work; and
 - (c) any other prescribed information.

S. 84(2)
substituted by
No. 66/2004
s. 9(1).

85 Adjoining owner must respond to notice

- (1) The adjoining owner, not later than 14 days after service on the adjoining owner of the notice of proposed building work, must—
 - (a) give to the owner a notice agreeing to the proposed protection work; or
 - (b) give to the owner and the relevant building surveyor a notice—
 - (i) disagreeing with the proposed protection work; or
 - (ii) requiring more information to be given to enable the proposal to be considered by the relevant building surveyor.

S. 85(1)(a)
amended by
No. 66/2004
s. 9(2).

S. 85(1)(b)
amended by
No. 66/2004
s. 9(2).

S. 85(2)
amended by
No. 21/2017
s. 99.

(2) Subject to sections 90 and 91, an adjoining owner who fails to give a notice under subsection (1) within the required time is taken to have agreed to the proposed protection work.

S. 85(3)
inserted by
No. 66/2004
s. 9(3).

(3) A notice given under this section must contain the prescribed information.

S. 86
amended by
No. 21/2017
s. 99.

86 Effect of agreement

If the adjoining owner agrees or is taken to have agreed to the proposed protection work, the owner may proceed to carry out the protection work after obtaining any necessary permits or approvals required by this or any other Act or the building regulations.

87 Effect of disagreement or request for further information

- (1) On receipt of a notice under section 85(1)(b), the relevant building surveyor must examine the proposal for protection work and determine the appropriateness or otherwise of the work.
- (2) If the relevant building surveyor considers it appropriate in the case of a notice under section 85(1)(b)(ii), the relevant building surveyor—
 - (a) may ask the owner to give more information before making a determination under subsection (1); and
 - (b) if more information is requested, must make a copy of that information available to the adjoining owner.
- (3) In determining a matter under this section, the relevant building surveyor may make any inquiries he or she thinks fit but is not required to give any person a hearing.

- (4) The relevant building surveyor must give the owner and the adjoining owner notice in writing of a determination under this section.

88 Work not to be carried out until protection requirements met

- (1) An owner who is required by the building regulations to carry out protection work in respect of an adjoining property must not carry out any building work giving rise to that requirement until—

S. 88(1)
amended by
No. 33/2010
s. 19.

- (a) the adjoining owner agrees or is taken to agree to the protection work; or

S. 88(1)(a)
amended by
No. 21/2017
s. 99.

- (b) the matter is determined by the relevant building surveyor under this Part; or

- (c) in the case of an appeal to the Building Appeals Board in relation to the matter, the matter is determined by the Building Appeals Board.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

Note

There is a right of appeal to the Building Appeals Board under section 141 against a determination under section 87 as to the appropriateness of protection work or a requirement under section 87 to give more information. Under section 146, a decision under section 87 in respect of which there is a right of appeal does not take effect until the end of the appeal period, or the decision is affirmed on appeal.

Note to
s. 88(1)
inserted by
No. 21/2017
s. 75,
substituted by
No. 47/2017
s. 10.

S. 88(2)
amended by
No. 33/2010
s. 19.

- (2) The owner must carry out any protection work required by the building regulations—
- (a) if the adjoining owner has agreed to the protection work, in accordance with that agreement; or
 - (b) if the relevant building surveyor has made a determination under this Part in respect of the protection work, in accordance with that determination; or
 - (c) if the Building Appeals Board has made a determination under Part 10 in respect of the protection work, in accordance with that determination.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

89 Emergency procedures

S. 89(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 11).

- (1) The Authority, on the application of an owner or adjoining owner may declare that emergency protection work is required in respect of a particular adjoining property.
- (2) Sections 84 to 88 do not apply to any emergency protection work to be carried out in accordance with a declaration under subsection (1).

S. 89(3)
amended by
No. 33/2010
s. 20.

- (3) The owner must carry out emergency protection work in accordance with—
- (a) the declaration under subsection (1); or

- (b) if the Building Appeals Board has made a determination under Part 10 in respect of the protection work, in accordance with that determination.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

90 Absent or incapable owners

- (1) If an owner is required under the building regulations to carry out protection work in respect of an adjoining property but the adjoining owner cannot be found or is incapable of acting, the owner may apply to the Minister for the appointment of a suitable person to act as agent for the adjoining owner during the adjoining owner's absence or incapacity.
- (2) An application must be in writing and set out the circumstances of the case and the grounds of the application.
- (3) Before making an application under this section, the owner must make all reasonable inquiries to determine whether any person has been appointed as administrator of the estate of the adjoining owner under the **Guardianship and Administration Act 1986**.

S. 90(3)
amended by
No. 52/1998
s. 311(Sch. 1
item 10.2).

91 Appointment of agent for adjoining owner

- (1) If the Minister is satisfied—
- (a) that the adjoining owner cannot, after reasonable inquiry, be found or that the adjoining owner is incapable of acting in the matter of any agreement or disagreement;
and

(b) that the owner has made all reasonable inquiries under section 90(3)—

the Minister may, in writing, appoint a suitable person to act as the agent of and in the place of the adjoining owner for the purposes of this Part.

- (2) The appointment is to be subject to such terms and conditions as to the discharge of the person's duties as agent and as to the payment of fees and otherwise as the Minister thinks fit.
- (3) The Minister must cause an agent appointed under this section to be notified in writing of—
 - (a) the appointment; and
 - (b) the nature of the agent's duties; and
 - (c) the fees to be paid to the agent by the owner; and
 - (d) any other terms and conditions to which the appointment is subject.
- (4) An adjoining owner may revoke the appointment of an agent under this section but that revocation does not affect the validity of anything done by the agent under the appointment before the revocation.

92 Adjoining owner may inspect plans

At any time after notice of intention to commence the carrying out of building work is given under this Part, the relevant building surveyor must make available to the adjoining owner, on request, for inspection, without charge, any plans, drawings and specifications of the proposed building work in the possession or control of the relevant building surveyor.

93 Owner to arrange insurance cover

- (1) Before any protection work is commenced in respect of an adjoining property, an owner must ensure that a contract of insurance is in force, in accordance with this section, against—

S. 93(1)
substituted by
No. 68/2001
s. 7(1),
amended by
No. 33/2010
s. 21(1).

- (a) damage by the proposed protection work to the adjoining property; and
- (b) any liabilities likely to be incurred to adjoining occupiers and members of the public during the carrying out of the building work and for a period of 12 months after that building work is completed.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

- (2) The contract of insurance must be entered into with an insurer and for an amount—
- (a) agreed to by the owner and the adjoining owner; or
- (b) in the event of a dispute, determined by the Building Appeals Board under Part 10.

- (3) The owner must lodge a copy of the contract of insurance with the adjoining owner before the commencement of the protection work.

S. 93(3)
amended by
Nos 68/2001
s. 7(2)(3),
33/2010
s. 21(2),
21/2017
s. 17(1).

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a body corporate.

S. 93(4)
substituted by
No. 68/2001
s. 7(4),
amended by
No. 33/2010
s. 21(1).

- (4) The owner must ensure that the contract of insurance is renewed or extended as often as may be necessary during the carrying out of the building work and for 12 months after that work is completed.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

S. 93(5)
inserted by
No. 68/2001
s. 7(4),
amended by
Nos 33/2010
s. 21(2),
21/2017
s. 17(1).

- (5) The owner must lodge a copy of a document evidencing the renewal or extension of the contract of insurance with the adjoining owner as soon as it is practicable to do so after the renewal or extension.

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a body corporate.

94 Survey of adjoining property

- (1) Before the commencement of any protection work, the owner or the owner's agent in company with the adjoining owner or the adjoining owner's agent, must—
- (a) make a full and adequate survey of the adjoining property; and
 - (b) record in writing or by any other means any of the parties desires all existing cracks and defects in the adjoining property.
- (2) The record must be signed or otherwise acknowledged as an agreed record of the condition of the adjoining property before the commencement of any protection work.

- (3) The record is admissible in evidence in any proceedings relating to the adjoining property and is evidence of the condition of the adjoining property at the time the record was made.

95 Entry on adjoining property

- (1) An owner or the agent of an owner may enter between the hours of 8 a.m. and 6 p.m. on, over, under or into the air space above any adjoining property—
- (a) to carry out any survey under section 94; or
 - (b) to carry out the protection work required by the building regulations and agreed or taken to be agreed to or determined under this Part.
- (2) The owner must give the adjoining owner not less than 24 hours' notice, or such other notice as may be agreed between the parties, before the owner or the owner's agent enters an adjoining property under subsection (1).

S. 95(1)(b)
amended by
No. 21/2017
s. 99.

S. 95(2)
amended by
Nos 33/2010
s. 22, 21/2017
s. 17(1).

Penalty: 50 penalty units, in the case of a natural person;
250 penalty units, in the case of a body corporate.

- (3) In the course of carrying out any protection work under this Part, an owner may without doing any unnecessary damage remove any furniture or fittings in the adjoining property which obstruct the carrying out of the work.

96 Adjoining owner and adjoining occupier not to obstruct owner

If notice of entry has been given in accordance with section 95(2), the adjoining owner or the adjoining occupier must not—

- (a) refuse to admit the owner or the owner's agents to the adjoining property in accordance with the notice for the purpose of carrying out the survey or protection work; or
- (b) obstruct or hinder the owner or the owner's agents in carrying out the survey or protection work on, over, under or in the air space above the adjoining property.

Penalty: 10 penalty units and in the case of a continuing offence an additional penalty of 1 penalty unit for every day that the refusal, obstruction, or hindrance continues after the day appointed for entry in the notice.

97 Expenses of adjoining owner

S. 97(1)
amended by
No. 34/1997
s. 10.

- (1) The owner must pay to the adjoining owner all costs and expenses necessarily incurred by the adjoining owner in assessing proposed protection work and in supervising the carrying out of protection work in respect of the adjoining property and—
 - (a) agreed between the adjoining owner and the owner; or
 - (b) in the absence of an agreement, determined by the Building Appeals Board under Part 10.
- (2) The costs and expenses of an adjoining owner which are agreed or determined may be recovered in a court of competent jurisdiction as a debt due to the adjoining owner.

98 Compensation

An owner must compensate any adjoining owner or adjoining occupier for inconvenience, loss or damage suffered by the adjoining owner or adjoining occupier in connection with the carrying out of protection work under this Part.

99 Liability not affected

Nothing in this Part relieves an owner from any liability to which the owner would otherwise be subject for injury to the adjoining owner or adjoining occupier because of the protection work carried out by the owner under this Part.

100 Saving for easements

Nothing in this Part relating to the carrying out of protection work (other than overhead protection work) authorises any interference with an easement of light or other easement in or relating to a party wall or prejudicially affects the right of any person to preserve any right in connection with a party wall which is demolished or rebuilt or to take any necessary steps for that purpose.

101 Lodgment of plans after completion of protection work

- (1) Not later than 2 months after the completion of any protection work carried out under this Part, the owner must serve on the adjoining owner and the relevant building surveyor a complete set of plans, drawings and specifications showing the protection work which has actually been carried out in respect of the adjoining property.

**S. 101(1)
amended by
Nos 33/2010
s. 23, 21/2017
s. 17(1).**

Penalty: 50 penalty units, in the case of a natural person;
250 penalty units, in the case of a body corporate.

Building Act 1993
No. 126 of 1993
Part 7—Protection of adjoining property

S. 101(2)
amended by
Nos 33/2010
s. 23, 21/2017
s. 17(1).

(2) The relevant building surveyor, within 7 days after receiving plans, drawings and specifications under subsection (1), must give a copy of those documents to the relevant council.

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a body corporate.

Part 8—Enforcement of safety and building standards

Division 1—Emergency orders

Pt 8 Div. 1
(Heading and
ss 102–105)
amended by
No. 71/1995
s. 8 (as
amended by
No. 34/1997
s. 32),
substituted as
Pt 8 Div. 1
(Heading and
ss 102–105B)
by
No. 21/2017
s. 31.

102 Emergency orders

S. 102
substituted by
No. 21/2017
s. 31.

A municipal building surveyor may make an emergency order under this Division if the municipal building surveyor is of the opinion that the order is necessary because of a danger to life or property arising out of the condition or use or proposed use of—

- (a) a building; or
- (b) the land on which building work is being or is proposed to be carried out; or
- (c) a place of public entertainment.

103 Orders to vacate

S. 103
substituted by
No. 21/2017
s. 31.

- (1) An emergency order may—
 - (a) direct an owner or occupier to evacuate a building or land or a place of public entertainment within a specified time or times; and

(b) if an order under paragraph (a) is given,
direct any person to vacate a building or land
or a place of public entertainment within a
specified time or times.

(2) An emergency order may also prohibit any person
from entering, using or occupying a building, land
or a place of public entertainment for the period
determined in accordance with section 105A
unless permitted by the municipal building
surveyor.

S. 104
substituted by
No. 21/2017
s. 31.

104 Orders to owners, occupiers or builders

(1) An emergency order may require the owner or
occupier of a building or land or a place of public
entertainment—

(a) not to conduct or not to allow the conduct of
a public entertainment or immediately cease
to conduct a public entertainment; or

(b) to within a specified time stop building work
or to carry out building work or other work
necessary to make the building, land or place
safe or to secure the building, land or place
from access.

(2) An emergency order may require the owner of a
building or land or a place of public entertainment
to cause an inspection of that building, land or
place to be conducted by a specified person within
a specified time.

S. 104(3)
amended by
No. 46/2018
s. 39(1).

(3) An emergency order may require the owner of a
building or a place of public entertainment or a
builder to cause specified material used in that
building or place to be tested (other than
destructively tested) by a specified person within a
specified time.

S. 104(4)
inserted by
No. 46/2018
s. 39(2).

(4) An emergency order may require the owner of a
building or a place of public entertainment that is
a building, or a builder, to, in accordance with the

regulations (if any), arrange for, within a specified time, a specified building product or material used in that building to be subjected to destructive testing conducted by a prescribed testing authority if the municipal building surveyor believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations.

- (5) An owner or builder referred to in subsection (4) must provide the results of the destructive testing of the building product or material to the municipal building surveyor or another person authorised by the municipal building surveyor to receive the results within the time specified in the emergency order.

S. 104(5)
inserted by
No. 46/2018
s. 39(2).

105 Form and service of emergency order

- (1) An emergency order must be in writing and must contain any matters required by the regulations.
- (2) The municipal building surveyor must cause an emergency order to be served on the person to whom it is directed without delay after it is made.
- (3) The municipal building surveyor must give a copy of an emergency order to any private building surveyor appointed to perform a function in relation to a building, land or place to which the order relates.

S. 105
substituted by
No. 21/2017
s. 31.

105A Duration of order

- (1) An emergency order under section 103 must specify a period, not exceeding 48 hours for the duration of the order.
- (2) If, before the end of the period specified in the emergency order, the municipal building surveyor issues a building notice asking an owner to show cause why entry into, or the use or occupation of, the building or place that is subject to the order

S. 105A
inserted by
No. 21/2017
s. 31.

should not be prohibited, the emergency order remains in force until the earlier of—

- (a) the end of the specified period under section 108 for the building notice; or
 - (b) 14 days.
- (3) Subject to this section, an emergency order remains in force until—
- (a) it is complied with; or
 - (b) it is cancelled by—
 - (i) the municipal building surveyor under section 105B; or
 - (ii) the Building Appeals Board under section 142.

S. 105B
inserted by
No. 21/2017
s. 31.

105B Cancellation of emergency order

A municipal building surveyor may cancel an emergency order by written notice given to the person to whom the notice was directed if the order was made in error or the circumstances giving rise to the making of the order have changed.

Division 2—Building notices and building orders

106 Building notices

Subject to section 107, a municipal building surveyor or a private building surveyor may cause a building notice to be served on an owner of a building, land on which building work is being or is proposed to be carried out or a place of public entertainment if the building surveyor is of the opinion that any one of the following circumstances exists—

- (a) building work has been carried out on the building, land or place without a building permit required by this Act, or in

- contravention of a building permit or this Act or the building regulations;
- (b) the use of the building or place contravenes this Act or the building regulations;
- (ba) safety or emergency services, installations or equipment have not been maintained in accordance with the occupancy permit and the regulations;
- (c) the building or place is unfit for occupation or for use as a place of public entertainment;
- (d) the building, land or place or building work on the building, land or place is a danger to the life, safety or health of any member of the public or of any person using the building, land or place or to any property.

S. 106(ba)
inserted by
No. 21/2017
s. 32.

107 Actions by private building surveyors

- (1) A private building surveyor may only serve a building notice or make a building order under this Division in respect of a building, land or place in relation to which the private building surveyor is appointed to carry out a function under this Act.
- (2) The power for a private building surveyor to serve a building notice or make a building order in respect of a building, land or place under subsection (1) continues after a certificate of final inspection has been issued under Part 4, or an occupancy permit or temporary approval has been issued under Part 5, in relation to the building, land or place.

S. 107
amended by
No. 46/2018
s. 40 (ILA
s. 39B(1)).

S. 107(2)
inserted by
No. 46/2018
s. 40.

108 Contents and form of building notice

- (1) A building notice may require the owner of a building, land or place of public entertainment to show cause within a specified period—

S. 108(1)
substituted by
No. 21/2017
s. 33.

S. 108(1A)
inserted by
No. 21/2017
s. 33.

- (a) why entry to, or the use or occupation of the building, land or place should not be prohibited; or
 - (b) why the owner should not evacuate the building.
- (1A) A building notice may require the owner of a building, land or place of public entertainment to show cause within a specified period why the owner should not carry out building work, protection work or work required by the regulations in relation to the building, land or place.
- (2) A building notice must be in writing and must contain any matters required by the regulations.

109 Representations by owner

An owner may, in the manner specified in the notice, make representations to the relevant building surveyor about the matters contained in the notice.

110 Cancellation of building notice

The relevant building surveyor may cancel a building notice if he or she considers it appropriate to do so after considering any representations made under section 109.

111 Building orders—general

- (1) Subject to section 107, a municipal building surveyor or a private building surveyor may make a building order under this section after the end of the time allowed by the building notice for making representations.
- (2) Before making an order, the relevant building surveyor must consider any representations made by the owner concerned.

- (3) A building order under this section may—
- (a) direct an owner or occupier to evacuate a building or land or a place of public entertainment within a specified time or times; and
 - (b) if an order under paragraph (a) is given, direct any person to vacate a building or land or a place of public entertainment within a specified time or times.
- (4) A building order under this section may prohibit any person from entering, using or occupying a building, land or a place of public entertainment for a specified period unless permitted by the municipal building surveyor.
- (5) A building order under this section may direct the owner of a building, land or a place of public entertainment to carry out building work, protection work or other work required by the regulations in relation to the building, land or place.
- (6) A building order may require the owner of a building or land or a place of public entertainment to cause an inspection of that building, land or place to be conducted by a specified person within a specified time.
- (7) A building order may require the owner of a building or a place of public entertainment or a builder to cause specified material used in that building or place to be tested (other than destructively tested) by a specified person within a specified time.
- (8) A building order may require the owner of a building or a place of public entertainment that is a building, or a builder, to, in accordance with the regulations (if any), arrange for, within a specified time, a specified building product or material used

S. 111(3)
substituted by
No. 21/2017
s. 34.

S. 111(4)
inserted by
No. 21/2017
s. 34.

S. 111(5)
inserted by
No. 21/2017
s. 34.

S. 111(6)
inserted by
No. 21/2017
s. 34.

S. 111(7)
inserted by
No. 21/2017
s. 34,
amended by
No. 46/2018
s. 41(1).

S. 111(8)
inserted by
No. 46/2018
s. 41(2).

in that building to be subjected to destructive testing conducted by a prescribed testing authority if the relevant building surveyor believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations.

S. 111(9)
inserted by
No. 46/2018
s. 41(2).

- (9) An owner or builder referred to in subsection (8) must provide the results of the destructive testing of the building product or material to the relevant building surveyor or another person authorised by the relevant building surveyor to receive the results within the time specified in the building order.

112 Building orders to stop building work

- (1) Subject to section 107, a municipal building surveyor or a private building surveyor may make a building order that requires an owner or other person to stop building work.
- (2) The order may be made if, in the opinion of the relevant building surveyor, the building work—
- (a) contravenes this Act or the building regulations; or
 - (b) is a danger to the life, safety or health of any member of the public or any person using the building, land or place or to any property; or
 - (c) affects the support of any adjoining property.
- (3) The order may be made without first serving a building notice.
- (4) The order may be made even if a building order has been made under section 111 in respect of the building work or the building, land or place on which the building work is being carried out.
- (5) If an order to stop building work is made under this section, the person to whom it is directed must stop the building work except—

S. 112(5)
substituted by
No. 21/2017
s. 35.

- (a) building work carried out in compliance with an order under section 111 in relation to the building work; or
 - (b) building work carried out in compliance with a direction to fix building work; or
 - (c) building work exempted by the building surveyor under subsection (6).
- (6) The relevant building surveyor may exempt any part of the building work from a building order under this section if the relevant building surveyor considers that it is necessary for the building work to be carried out—
- (a) in the interests of the safety or security of the building, land or place on which the building work is being carried out; or
 - (b) in the interests of the safety or health of any member of the public; or
 - (c) to prevent a nuisance to members of the public or occupiers of nearby properties.

S. 112(6)
inserted by
No. 21/2017
s. 35.

113 Building orders—minor work

Subject to section 107, a municipal building surveyor or a private building surveyor may make a building order requiring the owner of a building, land on which building work is being or is proposed to be carried out or a place of public entertainment to carry out building work, protection work or other work required by the regulations to be carried out without first serving a building notice if the building surveyor is of the opinion that the work required to be carried out is of a minor nature.

S. 113
amended by
No. 21/2017
s. 36.

114 Form and service of building order

- (1) A building order—
 - (a) must be in writing; and
 - (b) must specify the time or times within which the order must be complied with; and
 - (c) must contain any other matters required by the regulations.
- (2) The relevant building surveyor must cause a building order to be served on the person to whom it is directed without delay after it is made.

115 Failure to comply with order by private building surveyor

- (1) If a person fails to comply with a building order made by a private building surveyor, the private building surveyor must refer the matter to the Authority and must take no further action in respect of the matter under this Part.
- (2) A referral under subsection (1) must be made within 14 days after the final date for compliance specified in the order.

116 Amendment or cancellation of certain building orders

- (1) An owner who is required to comply with a building order may, if there is a change in circumstances after the service of the order, request the relevant building surveyor to amend or cancel the building order.
- (2) On a request being made, the relevant building surveyor may—
 - (a) amend or cancel the building order; or
 - (b) refuse to amend or cancel the building order.

S. 115(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 12).

- (3) The relevant building surveyor is taken to have refused a request under this section if he or she has not decided the request within the prescribed time. **S. 116(3) amended by No. 21/2017 s. 99.**
- (4) The relevant building surveyor must inform the owner in writing without delay of the relevant building surveyor's decision under subsection (2). **S. 116(4) inserted by No. 21/2017 s. 37.**

117 Duration of order

A building order remains in force, and, if amended, remains in force as amended, until—

- (a) it is complied with; or
- (b) it is cancelled by the relevant building surveyor or the Building Appeals Board.

Division 3—General

118 Contravention of emergency order or building order

- (1) A person to whom an emergency order or building order is directed must comply with that order. **S. 118(1) amended by No. 33/2010 s. 24.**
- Penalty: 500 penalty units, in the case of a natural person.
- 2500 penalty units, in the case of a body corporate.
- (2) A person must not occupy a building, land or place in contravention of an emergency order or building order. **S. 118(2) amended by No. 33/2010 s. 24.**
- Penalty: 500 penalty units, in the case of a natural person.
- 2500 penalty units, in the case of a body corporate.
- (3) It is a sufficient defence to a prosecution under this section in relation to a public entertainment if the accused satisfies the court that he or she was unaware and ought not reasonably to have been **S. 118(3) amended by No. 68/2009 s. 97(Sch. item 13).**

aware of the fact that the public entertainment was the subject of an emergency order under this Part.

S. 118A
inserted by
No. 15/2016
s. 51.

118A Building notices and building orders to be last resort

A municipal building surveyor or private building surveyor must not cause a building notice to be served on an owner or make a building order in relation to the carrying out of building work unless—

- (a) a direction to fix the building work was given under Division 2 of Part 4 and it is clear that the direction will not be complied with; or
- (b) the municipal building surveyor or private building surveyor is satisfied that it is either not possible or not appropriate to give a direction to fix the building work under that Division.

119 Building permit not required

Despite anything to the contrary in this Act or the building regulations, a person who carries out work in accordance with an emergency order or building order in force under this Part is not required to obtain a building permit or comply with the building regulations unless the relevant building surveyor so directs.

120 Completion of work required by emergency order or building order

S. 120(1)
amended by
No. 33/2010
s. 25.

- (1) On completion of the work required to be carried out by an emergency order or building order, the owner must notify the relevant building surveyor in writing, without delay.

Penalty: 50 penalty units.

- (2) The relevant building surveyor must inspect the notified work and—
 - (a) report to the relevant council that the order has been fully complied with; or
 - (b) require the order to be fully complied with.

121 Work may be carried out by municipal building surveyor

If an owner fails to carry out work as required by an emergency order or building order made by a municipal building surveyor, the municipal building surveyor may cause that work to be carried out.

122 Minister may authorise action where immediate danger

If the Minister reasonably believes that a building or place of public entertainment presents an immediate danger to life or property and the owner—

- (a) cannot immediately be contacted; or
- (b) is unwilling or unable to take immediate action to comply with an emergency order—

the Minister may require a municipal building surveyor to take any necessary action.

123 Recovery of costs

- (1) If a municipal building surveyor carries out any work or takes any action under this Division, the relevant council may recover the costs of carrying out the work or taking the action from the owner in a court of competent jurisdiction as a debt due to the council.
- (2) If a municipal building surveyor carries out any work or takes any action under this Division, the relevant council may apply any sum or part of any sum for which a bond or undertaking is deposited

with the council under a condition imposed on a permit under section 22 towards the costs of carrying out the work or taking the action.

124 Police assistance

S. 124(1)
amended by
No. 37/2014
s. 10(Sch.
item 9.2).

- (1) A municipal building surveyor may request the assistance of a police officer, and a police officer may assist—
 - (a) in evacuating a building, land or place of public entertainment in accordance with an emergency order; or
 - (b) in removing persons from a building, land or place of public entertainment in or on which the municipal building surveyor or any person assisting the building surveyor is carrying out work or taking any action in accordance with an emergency order or building order.

S. 124(2)
amended by
No. 37/2014
s. 10(Sch.
item 9.2).

- (2) A police officer may use reasonable force in carrying out a function under subsection (1).

125 Relevant building surveyor to notify council

S. 125(1)
amended by
Nos 33/2010
s. 26, 21/2017
s. 17(1).

- (1) The relevant building surveyor, within 7 days after making any emergency order, building notice or building order under this Part, must give to the relevant council a copy of the notice or order.

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a body corporate.

- (2) The relevant building surveyor, within 7 days after an emergency order, building notice or building order under this Part has been fully complied with or is amended or cancelled,

must give a written notice of the compliance,
amendment or cancellation to the relevant council.

126 Register of orders

- (1) The relevant council must keep a register of all emergency orders, building notices or building orders given to the council under this Part.
- (2) The council must make the register available for inspection by any person during normal office hours.

Part 9—Liability

Division 1—Immunity

127 Immunity for Commissioners and staff

S. 127
amended by
No. 34/2013
s. 20,
substituted by
No. 21/2017
s. 76.

- (1) A Commissioner or any person appointed or engaged by the Authority is not liable for anything done or omitted to be done in good faith—
 - (a) in carrying out a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the carrying out of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a Commissioner or a person appointed or engaged by the Authority attaches instead to the Authority.

127A Immunity for members of public authorities and staff

S. 127A
inserted by
No. 21/2017
s. 76.

- (1) A member of a public authority or any person appointed or engaged by a public authority is not liable for anything done or omitted to be done in good faith—
 - (a) in carrying out a function under this Act or the regulations; or
 - (b) in the reasonable belief that the act or omission was in the carrying out of a function under this Act or the regulations.
- (2) Any liability resulting from an act or omission that would, but for subsection (1), attach to a member of a public authority or a person appointed or engaged by a public authority attaches instead to the public authority.
- (3) In this section *public authority* does not include a council.

128 Immunity for building surveyor relying on certificate

A municipal building surveyor or a private building surveyor appointed under Part 6 is not liable for anything done or omitted to be done in good faith in reliance on a certificate given by a registered building practitioner under section 238.

Division 2—Limitation of actions

Pt 9 Div. 2
(Heading)
substituted by
No. 54/2007
s. 5.

129 Definitions

In this Division—

building action means an action (including a counter-claim) for damages for loss or damage arising out of or concerning defective building work;

building work includes the design, inspection and issuing of a permit in respect of building work⁶.

130 Division not to affect certain matters

Nothing in this Division—

- (a) applies to or affects any right to recover damages for death or personal injury arising out of or concerning defective building work; or
- (b) affects the operation of any immunity given by Division 1.

* * * * *

S. 131
amended by
Nos 2/1996
s. 9, 52/1998
s. 311(Sch. 1
item 10.3),
repealed by
No. 60/2003
s. 17.

Ss 132, 133
repealed by
No. 60/2003
s. 17.

* * * * *

134 Limitation on time when building action may be brought

Despite any thing to the contrary in the **Limitation of Actions Act 1958** or in any other Act or law, a building action cannot be brought more than 10 years after the date of issue of the occupancy permit in respect of the building work (whether or not the occupancy permit is subsequently cancelled or varied) or, if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the building work.

S. 134A
inserted by
No. 39/1996
s. 6.

134A Limitation on time when plumbing action may be brought

Despite anything to the contrary in the **Limitation of Actions Act 1958** or in any other Act or law, if a compliance certificate is issued in respect of plumbing work under Part 12A, an action (including a counter-claim) for damages for loss or damage arising out of or concerning any defects in the work cannot be brought more than 10 years after the date of issue of the certificate.

Division 3—Insurance

S. 135
substituted by
No. 91/1995
s. 139.

135 Order requiring insurance

- (1) The Minister may, by order published in the Government Gazette—
 - (a) require building practitioners in specified categories or classes of building practitioners or any part of a class or category of building practitioners to be covered by insurance; and

- (b) require specified classes of persons to whom section 137B or 137D applies to be covered by insurance for the purposes of that section; and
- (c) specify the kinds and amount of insurance by which building practitioners and persons in each specified category or class or part of a category or class are required to be covered.
- (2) An order under subsection (1) or subsection (4) must state the date of taking effect of the order which must not be earlier than one month after the date of publication of the order in the Government Gazette.
- (3) The Minister may in a particular case vary any excess specified in an order under subsection (1) if the Minister is satisfied that it is appropriate to do so.
- (4) The Minister may, by order published in the Government Gazette, amend or revoke an order made under subsection (1).
- (5) The Minister may consult with the Authority before making an order under this section.
- (6) For the purposes of this Act, a person is covered by the required insurance if—
- (a) the person holds the required insurance; or
 - (b) the building work carried out by or on behalf of the person is covered by the required insurance; or
 - (c) in the case of a person who manages or arranges the carrying out of domestic building work, the work carried out by the person and the building work which the person manages or arranges is covered by the required insurance; or

S. 135(2)
amended by
No. 36/2002
s. 9(1).

S. 135(4)
substituted by
No. 36/2002
s. 9(2).

S. 135(5)
amended by
No. 15/2016
s. 18(1).

(d) the person is not a party to the required insurance but is specified or referred to in the insurance, whether by name or otherwise, as a person to whom the insurance cover extends.

(7) In this section *insurance* includes—

- (a) professional indemnity insurance;
- (b) a performance bond;
- (c) a guarantee;
- (d) an indemnity;
- (e) public liability insurance;
- (f) insurance relating to a particular building work project;
- (g) insurance taken out by any body or person which relates to the work of a building practitioner;
- (h) any agreement or instrument in the nature of an item set out in paragraphs (a) to (g).

S. 136
substituted by
No. 91/1995
s. 140.

136 Offence to work as building practitioner without required insurance

S. 136(1)
amended by
No. 33/2010
s. 27.

(1) A building practitioner (other than a builder carrying out or managing or arranging the carrying out of domestic building work) must not carry out work as a building practitioner unless the building practitioner is covered by the required insurance.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

- (2) A builder must not carry out or manage or arrange the carrying out of domestic building work under a major domestic building contract unless the builder is covered by the required insurance.

S. 136(2)
amended by
No. 33/2010
s. 27.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

- (3) Despite section 135(6), a builder referred to in subsection (2) is taken not to be covered by the required insurance if the name of that builder specified in the major domestic building contract is not identical to the name of the builder specified in the certificate of insurance from the insurer providing the required insurance in relation to the building work.

S. 136(3)
inserted by
No. 15/2016
s. 52 (as
amended by
No. 21/2017
s. 107).

137 Offence to claim to be insured when uninsured

A building practitioner who is not covered by the required insurance, must not hold himself or herself out as being covered by that insurance.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

S. 137
amended by
Nos 91/1995
s. 141,
33/2010 s. 28.

137AA Insurance for domestic building work to be provided by designated insurers

- (1) If an order under section 135 requires a builder to be covered by insurance relating to the carrying out of domestic building work or managing or arranging the carrying out of domestic building work, the insurance required by the order must be provided by a designated insurer.

S. 137AA
inserted by
No. 102/2003
s. 42.

- (2) For the purposes of subsection (1) a designated insurer is—
- (a) a general insurer within the meaning of the Insurance Act 1973 of the Commonwealth;
or
 - (b) a Lloyd's underwriter within the meaning of the Insurance Act 1973 of the Commonwealth authorised under that Act to carry on insurance business in Australia; or
 - (ba) the Victorian Managed Insurance Authority;
or
 - (c) an insurer specified by the Minister by notice under this section.
- (3) The Minister may by notice published in the Government Gazette specify an insurer for the purposes of this section.
- (4) The Minister must not specify an insurer under subsection (3) unless the Minister is satisfied that the insurer has an acceptable international credit rating and that the insurer does not carry on insurance business in Australia.
- (5) For the purposes of this section an acceptable international credit rating is a rating that—
- (a) is provided by a credit rating agency specified under subsection (6); and
 - (b) is equal to or exceeds the rating specified in relation to that agency under subsection (6).

S. 137AA
(2)(ba)
inserted by
No. 33/2010
s. 29,
amended by
No. 21/2017
s. 79.

- (6) The Minister may by notice published in the Government Gazette—
 - (a) specify a credit rating agency for the purposes of this section; and
 - (b) specify a rating in relation to that agency.
- (7) The Minister may by notice published in the Government Gazette amend or revoke any notice published under this section.
- (8) The Minister must consult with the Minister for the time being administering the **Victorian Managed Insurance Authority Act 1996** before publishing any notice under this section.
- (9) In this section *insurance* has the same meaning as it has in section 135.
- (10) This section applies only to insurance taken out on or after the commencement of section 42 of the **Wrongs and Other Acts (Law of Negligence) Act 2003**.

137A Insurance for domestic building work

- (1) Without limiting section 135, if an order under that section requires a builder to be covered by insurance relating to the carrying out of domestic building work or managing or arranging the carrying out of domestic building work, the insurance required by the order may, subject to any exemptions or exclusions set out in the order, relate to losses resulting from—
 - (a) breaches of warranties implied into the major domestic building contract for that work under the **Domestic Building Contracts Act 1995**;
 - (b) domestic building work which is defective within the meaning of that Act;

S. 137A
inserted by
No. 91/1995
s. 142.

S. 137A(1)(a)
amended by
No. 52/1998
s. 311(Sch. 1
item 10.4).

S. 137A(1)(d)
amended by
Nos 17/1999
s. 22(1),
72/2010
s. 48(Sch.
item 2(1)).

- (c) non-completion of the domestic building work;
 - (d) conduct by the builder in connection with the major domestic building contract for that work which contravenes section 18, 29, 34 or 151, or Subdivision B of Division 1 of Part 3-2, of the Australian Consumer Law (Victoria).
- (2) An order under section 135 may require insurance cover of a kind referred to in—
- (a) subsection (1)(a) to extend to each person who is or may become entitled to the benefit of any of those warranties; or
 - (b) subsection (1)(b) to extend to any person on whose behalf the domestic building work is being carried out and to the owner for the time being of the building or land in respect of which the building work was being carried out.

S. 137A(3)
inserted by
No. 26/2001
s. 9(1),
repealed by
No. 21/2017
s. 100(1).

* * * * *

S. 137A(3)
inserted by
No. 17/1999
s. 22(2),
renumbered
as s. 137A(4)
by No.
11/2002
s. 3(Sch. 1
item 6.2),
substituted by
No. 72/2010
s. 48(Sch.
item 2(2)).

- (4) A reference—
- (a) in any order made under section 135; or
 - (b) in any instrument or agreement which is required insurance—
- to "section 9, 11 or 12 of the **Fair Trading Act 1999**" is, to the extent that it relates to any period on or after the commencement of section 8 of the **Fair Trading Amendment (Australian Consumer Law) Act 2010**, taken to include a reference to "section 18, 29, 34 or 151 of the Australian Consumer Law (Victoria)".

137B Offence for owner-builder to sell building without report or insurance

S. 137B
inserted by
No. 91/1995
s. 142.

(1) This section does not apply to—

(a) the construction of a building (other than a home) by—

(i) a registered building practitioner; or

(ii) an architect registered under the **Architects Act 1991**; or

(b) except as provided in subsection (5), the construction of a home under a major domestic building contract; or

(c) a building that is exempted from the operation of this section by VCAT under the **Domestic Building Contracts Act 1995**; or

S. 137B(1)(c)
substituted by
No. 52/1998
s. 311(Sch. 1
item 10.5),
amended by
No. 21/2017
s. 96(1).

(d) a building to which section 137E applies.

S. 137B(1)(d)
amended by
No. 21/2017
s. 100(2)(a).

* * * * *

S. 137B(1)(e)
repealed by
No. 21/2017
s. 100(2)(b).

(2) A person who constructs a building must not enter into a contract to sell the building under which the purchaser will become entitled to possess the building (or to receive the rent and profits from the building) within the prescribed period unless—

- (a) in the case of a person other than a registered building practitioner—
 - (i) the person has obtained a report on the building from a prescribed building practitioner that contains the matters that are required by the Minister by notice published in the Government Gazette; and
 - (ii) the person obtained the report not more than 6 months before the person enters into the contract to sell the building; and
 - (iii) the person has given a copy of the report to the intending purchaser; and
- (b) the person is covered by the required insurance (if any); and
- (c) the person has given the purchaser a certificate evidencing the existence of that insurance; and
- (d) in the case of a contract for the sale of a home, the contract sets out the warranties implied into the contract by section 137C.

Penalty: 100 penalty units.

- (3) A contract entered into in contravention of subsection (2) is not void by reason only of the contravention but is voidable at the option of the purchaser at any time before completion of the contract.
- (4) A person who enters into a major domestic building contract with a builder for the construction of more than 4 homes may, with the consent of the builder, apply in writing to the Director of Consumer Affairs Victoria within the meaning of the **Australian Consumer Law and Fair Trading Act 2012** to exempt the builder

S. 137B(4)
amended by
Nos 17/1999
s. 22(3),
35/2000 s. 42,
30/2003
s. 82(1),
21/2012
s. 239(Sch. 6
item 5.1).

from the requirement to be covered by the required insurance in respect of that building work.

- (5) If, on an application under subsection (4), the Director of Consumer Affairs Victoria, in writing, exempts a builder from the requirement to be covered by insurance in respect of building work—
- S. 137B(5) amended by Nos 17/1999 s. 22(4), 35/2000 s. 42, 30/2003 s. 82(1).**

(a) the builder is not required to be covered by the required insurance in respect of that building work; and

(b) this section (except subsection (2)(a)) applies to the sale of a home constructed under that major domestic building contract.

- (5AA) A reference in subsection (2) to a person who constructs a building includes a reference to—
- S. 137B(5AA) inserted by No. 36/2008 s. 3(1).**

(a) a mortgagee in possession of the land on which the building is situated; and

(b) an executor or administrator of the estate of the person who constructed the building.

- (5AAB) A mortgagee, executor or administrator referred to in subsection (5AA) may rely on anything which was done by the person who constructed the building under subsection (2)(a) in the 6 months before a contract of sale is entered into by the mortgagee, executor or administrator as if it had been done by the mortgagee, executor or administrator.
- S. 137B(5AAB) inserted by No. 36/2008 s. 3(1).**

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S. 137B(5A) inserted by No. 26/2001 s. 9(2), repealed by No. 21/2017 s. 100(1).

(6) This section applies whether or not the construction of the building is complete at the date of the contract of sale.

(7) In this section—

S. 137B(7)
def. of
certified
date of
commence-
ment
inserted by
No. 36/2008
s. 3(2).

certified date of commencement, in relation to a building, means the date certified by the owner of the building by statutory declaration as the date of commencement of the building work for the construction of the building;

completion date means—

- (a) the date of issue of the occupancy permit in respect of the building (whether or not the occupancy permit is subsequently cancelled or varied); or
- (b) if an occupancy permit is not issued, the date of issue under Part 4 of the certificate of final inspection of the building work for the construction of the building;

construct in relation to a building, means—

- (a) build, rebuild, erect or re-erect the building; or
- (b) make alterations to the building; or
- (c) enlarge or extend the building; or
- (d) cause any other person to do anything referred to in paragraph (a), (b) or (c) in relation to the building; or
- (e) manage or arrange the doing of anything referred to in paragraph (a), (b) or (c) in relation to the building;

home has the same meaning as it has in the
Domestic Building Contracts Act 1995;

S. 137B(7)
def. of
home
amended by
No. 52/1998
s. 311(Sch. 1
item 10.6).

prescribed period means—

- (a) in relation to a contract for the sale of a building on which domestic building work has been carried out—
 - (i) 6 years and 6 months (or such longer period (not exceeding 10 years) as is prescribed) after the completion date for the construction of the building; or
 - (ii) if neither an occupancy permit nor a certificate of final inspection is issued or required to be issued in respect of the construction of the building—
 - (A) 7 years after the date of the issue of the building permit in respect of the construction of the building; or
 - (B) if a building permit is not issued or required to be issued in respect of the construction of the building, 6 years and 6 months after the certified date of commencement for the building; and
- (b) in relation to a contract for the sale of any other building—10 years after the completion date for the construction of that building;

S. 137B(7)
def. of
prescribed period
amended by
Nos 2/1996
s. 10(1),
75/1998 s. 19,
36/2008
s. 3(3).

S. 137B(7)
def. of
*prescribed
building
practitioner*
amended by
Nos 2/1996
s. 10(2),
52/1998
s. 311(Sch. 1
item 10.6).

prescribed building practitioner means—

- (a) an architect registered under the **Architects Act 1991**; or
- (b) a building surveyor, building inspector or an engineer registered under Part 11; or
- (c) a person recognised by the Minister under section 28 of the **House Contracts Guarantee Act 1987** by order in force immediately before the commencement of section 166 of the **Domestic Building Contracts Act 1995**.

S. 137C
inserted by
No. 91/1995
s. 142.

137C Warranties for purposes of homes under section 137B

- (1) The following warranties are part of every contract to which section 137B applies which relates to the sale of a home—
 - (a) the vendor warrants that all domestic building work carried out in relation to the construction by or on behalf of the vendor of the home was carried out in a proper and workmanlike manner; and
 - (b) the vendor warrants that all materials used in that domestic building work were good and suitable for the purpose for which they were used and that, unless otherwise stated in the contract, those materials were new; and
 - (c) the vendor warrants that that domestic building work was carried out in accordance with all laws and legal requirements, including, without limiting the generality of this warranty, this Act and the regulations.

- (2) In addition to the purchaser under a contract to which section 137B applies, any person who is a successor in title to the purchaser may take proceedings for a breach of the warranties listed in subsection (1) as if that person were a party to the contract.
- (3) A provision of an agreement or instrument that purports to restrict or remove the right of a person to take proceedings for a breach of any of the warranties listed in subsection (1) is void to the extent that it applies to a breach other than a breach that was known or ought reasonably to have been known to the person to exist at the time the agreement or instrument was executed.

137D Insurance requirements for the purposes of homes under section 137B

S. 137D
inserted by
No. 91/1995
s. 142.

- (1) Without limiting section 135, if an order under that section requires a person to whom section 137B applies to be covered by insurance for the purposes of section 137B in respect of the sale of a home the insurance required by that order—
 - (a) may, subject to any exemptions or exclusions set out in the order, relate to losses resulting from breaches of warranties implied into the contract for the sale of the home under section 137C; and
 - (b) must provide that the insurer is not liable in respect of any defect which is referred to in the report provided to the purchaser under section 137B, if a report is required under that section.
- (2) An order under section 135 may require insurance cover of a kind referred to in subsection (1)(a) to extend to each person who is or may become entitled to the benefit of any of those warranties.

S. 137E
inserted by
No. 91/1995
s. 142,
amended by
No. 33/2010
s. 30.

137E Insurance requirements for home sold before completion

A person must not enter into a contract for the sale by the person of land on which a home is being constructed, or is to be constructed, if the contract provides for or contemplates that the construction of the home will be completed before the completion of the contract unless—

S. 137E(a)
amended by
Nos 2/1996
s. 11 (as
amended by
No. 34/1997
s. 33(1)),
21/2017
s. 100(3)(a).

- (a) the home is being constructed under a major domestic building contract or the contract of sale is a major domestic building contract or provides that the home is to be constructed under a major domestic building contract.

S. 137E(b)
repealed by
No. 21/2017
s. 100(3)(b).

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Penalty: 120 penalty units.

Part 10—The Building Appeals Board and its jurisdiction

Division 1—Rights of appeal

138 Building and occupancy permits

- (1) An appeal may be made to the Building Appeals Board against—
 - (a) the refusal or deemed refusal of a permit; or
 - (b) the imposition of a condition on a permit other than a prescribed condition or a condition required by or under this Act or the regulations to be included in a permit; or
 - (c) the amendment or cancellation of a permit; or
 - (d) the refusal or deemed refusal of an application to amend or cancel a permit; or
 - (e) the failure, within a reasonable time, to decide an application to amend or cancel a permit, if no time is prescribed within which the decision must be made.
- (2) An appeal may be made to the Building Appeals Board against a requirement of a reporting authority or relevant building surveyor to—
 - (a) give more information about a permit application; or
 - (b) amend a permit application.
- (3) If a condition of a permit leaves anything to be determined or approved by a person or body or confers any similar discretion on a person or body, an appeal may be made to the Building Appeals Board against—

- (a) the person's or body's failure, within a reasonable time, or refusal to make that determination, give that approval or exercise that discretion; or
 - (b) that determination or approval or the exercise of that discretion.
- (4) An appeal under this section may be made by—
- (a) the owner of the building or land in respect of which the permit is sought; or
 - (b) if the land in respect of which the permit is sought is a lot of a kind referred to in section 9AA(1) of the **Sale of Land Act 1962**, the purchaser under a contract of sale of that lot.
- (5) A prescribed reporting authority may appeal to the Building Appeals Board against a decision to issue a permit that differs from, or fails to implement, the authority's recommendations in a report on the application for the permit.

S. 138A
inserted by
No. 15/2016
s. 53.

138A Directions to fix building work

A person may appeal to the Building Appeals Board against a decision to give that person a written direction to fix building work under Division 2 of Part 4.

139 Temporary occupation of buildings

The owner of a building may appeal to the Building Appeals Board against—

- (a) the refusal of approval under Division 3 of Part 5 to occupy the building on a temporary basis; or

- (b) the imposition of a condition on an approval under Division 3 of Part 5, other than a prescribed condition or a condition required by or under this Act or the regulations to be included in the approval; or
- (c) the amendment or cancellation of an approval under Division 3 of Part 5; or
- (d) a failure within a reasonable time to decide an application to issue, amend or cancel an approval under Division 3 of Part 5.

140 Private building surveyors

- (1) An owner who appoints a private building surveyor or a private building surveyor may appeal to the Building Appeals Board against the Authority's failure, within a reasonable time, or refusal to consent to the termination of the building surveyor's appointment.

S. 140(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 13).

- (2) If under Part 6—

S. 140(2)
amended by
No. 34/2013
s. 34(Sch. 1
item 14(b)).

- (a) an owner has notified the Authority that building work has been terminated; and
- (b) the owner proposes to appoint another private building surveyor or a municipal building surveyor in respect of that building work—

S. 140(2)(a)
amended by
No. 34/2013
s. 34(Sch. 1
item 14(a)).

that owner or building surveyor may appeal to the Building Appeals Board against the Authority's failure, within a reasonable time, or refusal to consent to that appointment.

141 Protection work

An owner required to carry out protection work or an adjoining owner may appeal to the Building Appeals Board against—

- (a) a determination under section 87 as to the appropriateness of the work; or
- (b) a declaration under section 89; or
- (c) a failure, within a reasonable time, or refusal to make that determination or declaration; or
- (d) a request under section 87 to give more information.

S. 141(d)
amended by
No. 21/2017
s. 95(6).

142 Building notices and orders

- (1) The owner of a building or land, may appeal to the Building Appeals Board against—
 - (a) a decision to serve a building notice on the owner under Division 2 of Part 8; or
 - (b) the failure within a reasonable time, or refusal to cancel a building notice on being requested to do so by the owner.
- (2) The owner of a building or land may appeal to the Building Appeals Board against—
 - (a) the making of a building order under Division 2 of Part 8 applying to that building or land; or
 - (b) the imposition of any condition in that order; or
 - (c) a refusal to amend or cancel that order; or
 - (d) a failure, within a reasonable time, to amend or cancel that order; or
 - (e) a requirement under Division 3 of Part 8 that the building order be fully complied with.

- (3) The owner or occupier of a building or land may appeal to the Building Appeals Board against—
- (a) a refusal of the municipal building surveyor to cancel an emergency order under Division 1 of Part 8 applying to that building or land; or
 - (b) a failure, within a reasonable time, to cancel that order.

S. 142(3)
inserted by
No. 71/1995
s. 10.

* * * * *

S. 143
amended by
No. 66/2004
s. 10,
repealed by
No. 34/2013
s. 21.

144 Appeals—Building regulations

If the building regulations leave a matter to be determined or approved by a person or body or confer a similar discretion on a person or body, the owner of the building or land who requests the determination to be made, approval to be given, or discretion to be exercised may appeal to the Building Appeals Board against—

- (a) that determination or approval or the exercise of that discretion; or
- (b) the failure within a reasonable time, or refusal to make that determination, give that approval or exercise that discretion.

144A Appeals—Building and Construction Industry Security of Payment Act 2002

S. 144A
inserted by
No. 15/2002
s. 53.

- (1) A person may appeal to the Building Appeals Board against a decision of the Authority under section 42 of the **Building and Construction Industry Security of Payment Act 2002**—

S. 144A(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 15).

S. 144A(2)
amended by
No. 34/2013
s. 34(Sch. 1
item 15).

- (a) to refuse an application by the person for an authority to nominate adjudicators for the purposes of that Act; or
 - (b) to withdraw the person's authority to nominate adjudicators for the purposes of that Act.
- (2) A person may appeal to the Building Appeals Board against a decision of the Authority under section 43 of the **Building and Construction Industry Security of Payment Act 2002**—
- (a) to impose a condition on the person's authority to nominate adjudicators for the purposes of that Act; or
 - (b) to vary a condition of the person's authority to nominate adjudicators for the purposes of that Act.

Division 2—Appeals

145 Division additional to other powers

This Division is in addition to and does not take away from any other provision of this Act about the powers or procedure of the Building Appeals Board.

146 Effect of decisions under appeal

S. 146(1)
amended by
Nos 71/1995
s. 11(1),
21/2017
s. 38(1).

- (1) Subject to subsections (2), (2A) and (3), a decision in respect of which there is a right of appeal under Division 1 does not take effect until—
 - (a) the end of the appropriate prescribed appeal period, if there is no appeal; or
 - (b) the decision is affirmed on appeal.

- (2) Unless the Building Appeals Board otherwise directs, an appeal under section 138, 138A or 139, does not stay the operation of the decision under appeal. **S. 146(2) amended by Nos 91/1995 s. 143, 36/2008 s. 4, 15/2016 s. 56, 21/2017 s. 80.**
- (2A) Unless the Building Appeals Board otherwise directs, an appeal under section 142(2)(a) against the making of a building order prohibiting the occupation of a building or place does not stay the operation of the decision under appeal if the order was made following the making of an emergency order in respect of the same matter. **S. 146(2A) inserted by No. 21/2017 s. 38(2).**
- (3) An appeal under section 142(3) does not stay the operation of the emergency order to which the appeal relates. **S. 146(3) inserted by No. 71/1995 s. 11(2).**

147 Fast track appeals

- (1) On an appeal under Division 1 any party to the appeal may request the Building Appeals Board to begin to hear or otherwise deal with the appeal within 2 business days after the request is made. **S. 147(1) amended by No. 15/2016 s. 18(5).**
- (2) A request under subsection (1)—
- (a) must be made in writing; and
 - (b) must be accompanied by the appropriate prescribed fee.
- (3) The Building Appeals Board may grant or refuse the request and, if it grants the request, may require the person making the request to pay—
- (a) the reasonable costs of all the parties to the appeal for the proceedings after the request is granted; and
 - (b) if the Board hears the appeal, an additional prescribed fee for the time taken for the hearing (including any adjourned hearing) excluding the first 2 hours of hearing.

148 Nature of an appeal

- (1) An appeal under this Part is in the nature of a re-hearing.
- (2) On an appeal the Building Appeals Board may consider matters not raised before the decision under appeal was made.

149 What action can be taken on appeal?

- (1) The Building Appeals Board must consider and determine an appeal and by its determination may—
 - (a) affirm the decision under appeal; or
 - (b) quash the decision under appeal; or
 - (c) vary the decision under appeal; or
 - (d) set the decision under appeal aside and—
 - (i) substitute its own decision; or
 - (ii) remit the decision to the decision-maker for reconsideration in accordance with any directions or recommendations that it considers appropriate.
- (2) In considering and determining an appeal, the Building Appeals Board has in addition to its other powers all the powers of the decision-maker in relation to the decision under appeal.
- (3) Without limiting subsection (2), on an appeal under section 140 the Building Appeals Board has the same powers as the Authority has under Part 6 to give directions concerning transitional and other arrangements following a consent given by the Authority.
- (3A) For the purposes of this Part, if an appeal is made to the Building Appeals Board against the refusal of a building permit or the imposition of a

S. 149(3)
amended by
No. 34/2013
s. 34(Sch. 1
item 16).

S. 149(3A)
inserted by
No. 30/2001
s. 4.

condition on a building permit, the decision under appeal is to be taken to include the decision or report of the relevant reporting authority if—

- (a) the building permit was refused because the reporting authority refused consent or the condition was imposed as a result of a recommendation in a report of the reporting authority; and
 - (b) the refusal of consent, or the making of the recommendation, was based on a decision made by the reporting authority in relation to the guidelines made under section 188A.
- (4) The Building Appeals Board may make any ancillary or incidental orders that it considers necessary to give effect to its determination on an appeal.

Division 3—Disputes

150 Disputes about inspections

If a dispute arises between an owner and the relevant building surveyor about the exercise of any of the building surveyor's powers under section 228D(6)(ab) either of them may refer the matter to the Building Appeals Board.

S. 150
amended by
No. 46/2018
s. 75(1).

151 Emergency protection work

If an owner and an adjoining owner cannot agree about how or when protection work required by declaration under section 89(1) is to be carried out, either of them may refer the matter to the Building Appeals Board.

152 Insurance

If an owner and an adjoining owner cannot agree about the nature of cover to be provided under a proposed contract of insurance under section 93 or about the amount to be insured under that

contract, either of them may refer the matter to the Building Appeals Board.

153 Surveys of adjoining property

If an owner and an adjoining owner cannot agree about how or when a survey is to be carried out under section 94 or about the adequacy of a survey carried out under that section, either of them may refer the matter to the Building Appeals Board.

154 Cost of supervising protection work

If an owner and an adjoining owner cannot agree about the costs and expenses necessarily incurred by the adjoining owner in supervising protection work under Part 7, either of them may refer the matter to the Building Appeals Board.

155 Other disputes between owners and adjoining owners

If an owner and adjoining owner cannot agree in relation to a matter arising under Part 7, and the Building Appeals Board does not have jurisdiction to deal with that matter under any other provision of this Part, either of them may refer the matter to the Building Appeals Board.

156 Disputes about the building permit levy

If a dispute arises between the applicant for a building permit and the relevant building surveyor about the building surveyor's estimate of the cost of the work for which the permit is sought either of them may refer the matter to the Building Appeals Board.

157 Application and effect of building regulations

If—

- (a) there is a dispute about a building, building work or proposed building work between all or any of the following—
 - (i) the owner of the building or the land on which the building work is being or is to be carried out;
 - (ii) the person who carries out or is to carry out the building work;
 - (iii) the relevant building surveyor;
 - (iv) the Authority; and

S. 157(a)(iv)
amended by
No. 34/2013
s. 34(Sch. 1
item 17).

- (b) the dispute concerns the application or effect of any provision of the building regulations (within the meaning of section 160) or whether any provision of the building regulations is or has been complied with—

any of those persons may refer the matter to the Building Appeals Board.

158 Party walls

- (1) If a dispute arises between the owners of buildings with a party wall about the construction of the wall or how much of the cost of construction is to be met by each of the owners, any of the owners may refer the matter to the Building Appeals Board.
- (2) Subsection (1) is in addition to and does not take away from the **Subdivision Act 1988**.

Division 4—Other proceedings

159 Compensation—protection work

An adjoining owner who suffers inconvenience, loss or damage during the carrying out of protection work under Part 7 may apply to the Building Appeals Board for an order determining the amount (if any) of compensation for that inconvenience, loss or damage.

160 Modification of building regulations

- (1) In this section *provision of the building regulations* means—
- (a) a provision of a regulation made under Part 2 or of a local law made under those regulations; or
 - (b) a provision of a regulation or local law made under Division 3 of Part III of the **Building Control Act 1981**; or
 - (c) a provision of a regulation or by-law made under Division 2 of Part XLIX of the **Local Government Act 1958**; or
 - (d) any other regulation or by-law that, by virtue of a provision of this Act or a corresponding previous enactment, applies or applied at a material time to building work; or
 - (e) a provision of a document applied, adopted or incorporated by reference in an instrument referred to in paragraphs (a) to (d); or
 - (f) a provision of a document referred to in paragraphs (a) to (e) as modified by the Building Appeals Board under this Part, the building referees under the **Building Control Act 1981** or the referees under the Thirty-Third Schedule of the **Local**

Government Act 1958 or a corresponding previous enactment.

- (2) An application may be made to the Building Appeals Board for a determination that a provision of the building regulations—
- (a) does not apply; or
 - (b) applies with the modifications or variations specified in the application—
- to a building or land specified in the application.
- (3) The application may be made by—
- (a) the owner of a building or land; or
 - (b) the purchaser under a contract of sale of a lot of a kind referred to in section 9AA(1) of the **Sale of Land Act 1962**; or
 - (c) a Department Head within the meaning of the **Public Administration Act 2004**; or
 - (d) a public authority; or
 - (e) a municipal building surveyor.
- (4) An application must not be made under this section in relation to an access provision of the building regulations within the meaning of section 160B.

S. 160(3)(c)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 21.1).

S. 160(4)
inserted by
No. 5/2011
s. 4.

160A Application for determination in respect of building design

S. 160A
inserted by
No. 34/1997
s. 11.

- (1) An application may be made to the Building Appeals Board for a determination that a particular design of a building or an element of a building complies with this Act, the building

regulations or any document applied, adopted or incorporated in the building regulations.

- (2) The application may be made by—
- (a) the owner of the building or land; or
 - (b) the purchaser under a contract of sale of a lot of a kind referred to in section 9AA(1) of the **Sale of Land Act 1962**; or
 - (c) the relevant building surveyor; or
 - (d) the Authority.

S. 160A(2)(d)
amended by
No. 34/2013
s. 34(Sch. 1
item 18).

S. 160B
inserted by
No. 5/2011
s. 5.

160B Application for modification of building regulations relating to access for persons with disabilities

- (1) An application may be made to the Building Appeals Board for a determination that an access provision of the building regulations—
- (a) does not apply; or
 - (b) applies with the modifications or variations specified in the application—
- to a building, or land on which a building is to be constructed, specified in the application.
- (2) The application may be made by—
- (a) the owner of the building or land; or
 - (b) the purchaser under a contract of sale of a lot of a kind referred to in section 9AA(1) of the **Sale of Land Act 1962**; or
 - (c) a lessee of the building, who proposes to have, or is having, building work carried out in respect of the building; or
 - (d) any person acting on behalf of a person referred to in paragraph (a), (b) or (c), other than the relevant building surveyor.

- (3) An application must be made on the ground that compliance with the access provision of the building regulations would impose unjustifiable hardship on the applicant.
- (4) In determining whether compliance with an access provision of the building regulations would impose unjustifiable hardship on the applicant, the Building Appeals Board must take into account all relevant circumstances of the particular case including the following—
- (a) any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or reasonably likely to result from, compliance with the provision;
 - (b) any reductions in capital, operating or other costs, or increases in revenue, that would be directly achieved by, or reasonably likely to result from, compliance with the provision;
 - (c) the extent to which the construction of the building has or will be financed by government funding;
 - (d) the extent to which the building—
 - (i) is used for public purposes; and
 - (ii) has a community function;
 - (e) the financial position of the applicant;
 - (f) any effect that compliance with the provision is reasonably likely to have on the financial viability of the applicant;
 - (g) any exceptional technical factors (such as the effect of load-bearing elements on the structural integrity of the building) or geographic factors (such as gradient or topography), affecting a person's ability to comply with the provision;

- (h) financial, staffing, technical, information and other resources reasonably available to the applicant, including any grants, tax concessions, subsidies or other external assistance provided or available;
- (i) whether the cost of alterations to make any premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations;
- (j) benefits reasonably likely to accrue from compliance with the provision, including benefits to persons with disabilities, to building users or to other affected persons, or detriment likely to result from non-compliance;
- (k) detriment reasonably likely to be suffered by the applicant, building developer, or building manager, or by persons with disabilities or other building users, including in relation to means of access, comfort and convenience, if compliance with the provision is required;
- (l) if detriment under paragraph (k) involves loss of heritage significance, the extent to which the heritage features of the building are essential, or merely incidental, to the heritage significance of the building;
- (m) any evidence regarding efforts made in good faith by the applicant or a person required to comply with the provision, including consulting access consultants or the relevant building surveyor;
- (n) if the applicant has given an action plan (within the meaning of Part 3 of the Disability Discrimination Act 1992 of the Commonwealth) to the Authority under

S. 160B(4)(n)
amended by
No. 34/2013
s. 34(Sch. 1
item 19).

section 64 of that Act, the terms of the action plan and any evidence of its implementation;

- (o) the nature and results of any processes of consultation, including at local, regional, State, national, international, industry or other level, involving, or on behalf of the applicant, a building developer, building manager or the relevant building surveyor and persons with disabilities, about means of achieving compliance with the provision, including in relation to the factors listed in this subsection.
- (5) If a substantial issue of unjustifiable hardship is raised having regard to the factors mentioned in subsection (4), the Building Appeals Board must consider the following additional factors—
- (a) the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with the access provision of the building regulations;
 - (b) any measures undertaken, or to be undertaken, by, on behalf of, or in association with, a person or organisation in order to ensure substantially equal access.
- (6) A determination under this section must provide for compliance with an access provision of the building regulations to the maximum extent not involving unjustifiable hardship.
- (7) For the purposes of this section, *unjustifiable hardship* is to be interpreted and applied having due regard to the rights and interests of all relevant parties.

(8) In this section—

access provision of the building regulations
means—

(a) a performance requirement—

(i) that is contained in Section D, Part E3 or Part F2 of the Building Code of Australia Volume One as forming part of the building regulations; and

(ii) in respect of which there is an equivalent performance requirement contained in the Access Code within the meaning of the Disability (Access to Premises - Buildings) Standards 2010 of the Commonwealth; and

Note

The Disability (Access to Premises - Buildings) Standards 2010 of the Commonwealth are available from the Australian Government Attorney-General's Department website at www.ag.gov.au.

(iii) to the extent that the performance requirement relates to the provision of access to buildings and facilities and services within buildings for persons with disabilities; and

(b) a provision of a document applied, adopted or incorporated by reference in a performance requirement referred to in paragraph (a);

applicant means a person referred to in subsection (2)(a), (b) or (c) who has applied under this section or on whose behalf another person has applied under this section;

Building Code of Australia Volume One means Volume One of the National Construction Code Series including any variations or additions in the Appendix Victoria set out in the Appendices to that Volume;

building developer means a person with responsibility for, or control over, the design or construction of the building and includes any of the following—

- (a) a building practitioner of a category referred to in paragraph (e), (f) or (h) of the definition of ***building practitioner***;
- (b) an architect within the meaning of section 3(1) of the **Architects Act 1991**;

building manager means a person with responsibility for, or control over, the management of the building.

- (9) Division 5 (other than section 161) does not apply to an application under this section.

Division 5—Powers concerning disputes and other proceedings

161 General powers

The Building Appeals Board must consider and determine a matter referred or application made to it under this Act or any other Act and may make any order that it considers appropriate in the circumstances.

S. 161
amended by
No. 109/1997
s. 533(Sch. 2
item 1.1).

162 Special powers—modification of regulations

(1) Before determining an application under section 160 the Building Appeals Board—

(a) must consult—

(i) any authority that would be a reporting authority if the application were an application for a permit; and

(ii) the Authority, if the application discloses that any aspect of the matter has been considered by it; and

(iii) if the application shows that any aspect of the matter relates to a building permit, the relevant building surveyor; and

(b) if the application concerns a building included in the Heritage Register established under the **Heritage Act 2017**, must consider any recommendation received from the Heritage Council before the hearing of the application; and

(c) may consult the municipal building surveyor; and

(d) may consult any other body or person.

S. 162(1)(a)(ii) amended by No. 34/2013 s. 34(Sch. 1 item 20).

S. 162(1)(b) amended by Nos 93/1995 s. 218(1) (Sch. 2 item 1.2), 7/2017 s. 296(3).

S. 162(1)(c) amended by No. 71/1995 s. 12(1).

S. 162(1)(d) inserted by No. 71/1995 s. 12(1).

S. 162(1A) inserted by No. 71/1995 s. 12(2).

(1A) The Building Appeals Board must, on the application of any party to the proceedings, make available a copy of any report or information obtained under subsection (1)(d).

- (2) The Building Appeals Board must not determine that a provision of the building regulations does not apply to a building or land unless satisfied that, in the particular circumstances, the provision is inappropriate.
- (3) The Building Appeals Board must not determine that a provision of the building regulations applies to a building or land in a modified or varied form unless satisfied that to do so is reasonable and not detrimental to the public interest.
- (4) The Building Appeals Board may make its determination of an application under section 160 subject to all or any of the following conditions—
- (a) requiring an owner of land to enter into an agreement with a reporting authority or, if there is no reporting authority, with the relevant council; or
 - (b) directing a reporting authority or council to enter into that agreement; or
 - (c) specifying the terms of that agreement; or
 - (d) any other terms and conditions that it considers appropriate.
- (5) A reporting authority or council is authorised to enter into an agreement for the purposes of this section.

S. 162(4)(a)
amended by
No. 71/1995
s. 13(1)(a).

S. 162(4)(b)
amended by
No. 71/1995
s. 13(1)(b).

S. 162(5)
amended by
No. 71/1995
s. 13(2).

163 Agreements

An agreement required to be entered into by a determination under section 162—

- (a) must be in writing under seal; and

- (b) if its terms are not specified in the determination—
 - (i) must provide that the owner agrees to be bound by the covenants in the agreement; and
 - (ii) may prohibit, restrict or regulate the use or development of land or a building or any matter or thing related to that land or building; and
 - (iii) may provide that the agreement lapses at the end of a specified period, on the happening of a specified event, or when the land ceases to be used or developed for a specified purpose; and
 - (iv) is subject to the provisions of this Act concerning termination and variation of agreements; and
- (c) may apply to land even though it was not the subject of the application for the determination.

164 Termination and variation of agreements

S. 164(1)
amended by
No. 71/1995
s. 13(3).

- (1) With the approval of the Building Appeals Board, an owner and a reporting authority or an owner and a council (as the case requires) may, by further agreement, terminate or vary an agreement under this Division.

S. 164(2)
amended by
No. 71/1995
s. 13(4).

- (2) With the approval of the Building Appeals Board, a reporting authority or council may terminate or vary an agreement under this Division in the manner specified in the Board's approval.
- (3) Subject to this section and to a term of an agreement referred to in section 163(b)(iii) an agreement cannot be terminated.

(4) An owner, a reporting authority or a council may apply to the Building Appeals Board for approval under this section and the Board may by determination—

S. 164(4)
amended by
No. 71/1995
s. 13(5).

- (a) grant approval; or
- (b) grant approval with conditions; or
- (c) refuse approval.

165 Lodging and recording of agreements

(1) Without delay after entering into an agreement under section 163 or 164 or after an agreement is terminated or varied, a reporting authority or council (as the case requires) must—

S. 165(1)
amended by
No. 71/1995
s. 13(6).

- (a) lodge a copy of the agreement or variation with the Building Appeals Board or give notice of the termination to the Board; and
- (b) apply in a form approved by the Registrar of Titles to have a recording of the agreement or the variation or termination of the agreement made in the Register.

S. 165(1)(b)
substituted by
No. 85/1998
s. 24(Sch.
item 6.2).

* * * * *

S. 165(1)(c)
repealed by
No. 85/1998
s. 24(Sch.
item 6.2).

(2) On an application under this section, the Registrar of Titles must make any amendments to the Register under the **Transfer of Land Act 1958** that are necessary because of the application and may dispense with the production of any relevant certificate of title or other instrument.

S. 165(3)
amended by
No. 85/1998
s. 24(Sch.
item 6.3).

- (3) Once an agreement is recorded in the Register under the **Transfer of Land Act 1958**—
- (a) the burden of any covenant in the agreement (whether positive or negative) runs with the land, even though there may be no land benefited by the covenant; and
 - (b) any covenant in the agreement may be enforced as a restrictive covenant and binds the owner of the land and the owner's successors in title.

S. 165(4)
inserted by
No. 85/1998
s. 24(Sch.
item 6.4).

- (4) The amendment of this section by section 24 of the **Transfer of Land (Single Register) Act 1998** does not affect the operation, effect or enforcement of a covenant in an agreement entered into under section 163 or 164 and registered under the **Property Law Act 1958** and existing immediately before the commencement of that section 24.

Division 6—The Building Appeals Board

166 Establishment and membership of Building Appeals Board

- (1) There is established by this Act a Board to be called the Building Appeals Board.
- (2) The members of the Building Appeals Board are to be appointed by the Governor in Council on the Minister's recommendation.
- (3) The Building Appeals Board is to consist of—
 - (a) a person appointed to be chairperson of the Board; and
 - (b) a person who, in the Minister's opinion, has experience in the building industry or in matters related to that industry, who is to be appointed deputy chairperson of the Board; and

- (ba) at least one person who is an Australian lawyer of at least 5 years' standing; and
- S. 166(3)(ba) inserted by No. 68/2001 s. 8(1), substituted by No. 18/2005 s. 18(Sch. 1 item 10.1), amended by No. 17/2014 s. 160(Sch. 2 item 11).
- (bb) at least one person who, in the Minister's opinion, is able to represent the interests of users of the services of building practitioners; and
- S. 166(3)(bb) inserted by No. 68/2001 s. 8(1).
- (c) as many other persons as the Minister considers necessary for the purposes of this Act, and who, in the Minister's opinion, have experience in the building industry or in matters related to that industry.
- (4) A person cannot at the same time be a member of the Building Appeals Board and be—
- (a) a Commissioner; or
- S. 166(4)(a) amended by No. 34/2013 s. 22(1).
- * * * * *
- S. 166(4)(b) repealed by No. 15/2016 s. 18(7).
- (c) a member of the Building Advisory Council.
- (5) A person may at the same time be a member of the Building Appeals Board and the Building Regulations Advisory Committee.
- (6) Schedule 3 has effect with respect to the membership and procedure of the Building Appeals Board.

Building Act 1993
No. 126 of 1993
Part 10—The Building Appeals Board and its jurisdiction

S. 167
repealed by
No. 71/1995
s. 14.

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168 Register

The Registrar of the Building Appeals Board must keep a Register of proceedings and determinations of the Board.

Part 11—Registration of building practitioners

Division 1—Offences

Pt 11 Div. 1
(Heading and
ss 169–176)
amended by
Nos 71/1995
ss 15, 16,
91/1995
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(Sch 3 item
21.1), 36/2008
ss 5–7,
33/2010 s. 31,
34/2013 ss 9,
23(1), 24,
15/2016
ss 18(1)–(4),
19–24,
21/2017 s. 81,
substituted as
Pt 11 Div. 1
(Heading and
ss 169–169J)
by
No. 21/2017
s. 7.

169 Representation in relation to registration

A person who is not registered in a particular category or class of building practitioner under this Part must not represent or imply that the person is registered in that category or class of registration.

S. 169
substituted by
No. 21/2017
s. 7.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

S. 169A
substituted by
No. 21/2017
s. 7.

169A Representation in relation to domestic building work

A person who is not registered in a particular category or class of building practitioner under this Part must not represent or imply that the person is able to carry out domestic building work under a major domestic building contract of a kind authorised by that category or class of registration.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

S. 169B
inserted by
No. 21/2017
s. 7.

169B Representation in relation to work as a building surveyor

A person who is not registered in a particular category or class of building surveyor under this Part must not represent or imply that the person is able to accept appointment as a building surveyor, or to carry out work as a building surveyor, of a kind authorised by that category or class of registration.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

169C Representation in relation to work as a building inspector

S. 169C
inserted by
No. 21/2017
s. 7.

A person who is not registered in a particular category or class of building inspector under this Part must not represent or imply that the person is able to carry out work as a building inspector of a kind authorised by that category or class of registration.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

169D Offence to carry out work as building surveyor unless registered

S. 169D
inserted by
No. 21/2017
s. 7.

- (1) A person must not carry out work as a building surveyor unless—
- (a) the person is registered under this Part as a building surveyor; and
 - (b) the person's registration authorises the person to carry out that work.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (2) For the purposes of this Act, carrying out work as a building surveyor includes—
- (a) carrying out functions as a municipal building surveyor; and
 - (b) carrying out work or functions as a private building surveyor; and

(c) carrying out any functions conferred on a building surveyor or relevant building surveyor under this Act or the building regulations or under any other Act or regulations.

(3) Subsection (1) does not apply to a person who is authorised under this Act or the building regulations to carry out work on behalf of a building surveyor.

S. 169E
inserted by
No. 21/2017
s. 7.

169E Offence to carry out work as building inspector unless registered

A person must not carry out work as a building inspector unless—

- (a) the person is registered under this Part as a building inspector; and
- (b) the person's registration authorises the person to carry out that work.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

S. 169F
inserted by
No. 21/2017
s. 7.

169F Offence for person to carry out certain building work unless registered

(1) A person must not carry out building work under a major domestic building contract unless the person is a registered builder.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

(2) Subsection (1) does not apply to an unregistered person who carries out domestic building work under, or in accordance with, a major domestic building contract if—

- (a) the unregistered person carries out that work in partnership with a registered builder; or
 - (b) the unregistered person carries out that work as an employee of a registered builder in the course of the unregistered person's employment; or
 - (c) the unregistered person carries out that work as a subcontractor of a registered builder in accordance with a subcontract with the registered builder.
- (3) If the registered builder in a partnership specified under subsection (2)(a) dies or becomes insolvent and work under the major domestic building contract remains to be carried out, the unregistered person specified in subsection (2)(a) may arrange for another registered building practitioner who is authorised by that registration to carry out work under that major domestic building contract to carry out that work.
- (4) An unregistered person specified in subsection (3) does not commit an offence under subsection (1) because the unregistered person continues to carry out work under that major domestic building contract if an arrangement of a kind specified in subsection (3) has been made and the work is carried out in accordance with that arrangement.
- (5) In this section—

registered builder means a person who carries out building work under a major domestic building contract and is—

- (a) registered under this Part; and
- (b) authorised by that registration to carry out that work;

unregistered person means a person who is not registered under this Part.

S. 169G
inserted by
No. 21/2017
s. 7.

169G Building practitioner body corporate must have at least one nominee director

- (1) A body corporate must not carry out work, or undertake to carry out work, as a registered building practitioner unless the body corporate has at least one nominee director who complies with the relevant requirements of section 171B.

Penalty: 2500 penalty units.

- (2) Subsection (1) does not prevent a body corporate from continuing and completing work in the period applying under section 180C(2) if the work commenced before the commencement of that period.

S. 169H
inserted by
No. 21/2017
s. 7.

169H Advertisements or written statements by registered building practitioners

A registered building practitioner who publishes or causes to be published an advertisement or written statement offering to carry out domestic building work must ensure that the advertisement or statement—

- (a) states the name under which the building practitioner is registered; and
- (b) states the registration number of the registered building practitioner; and
- (c) complies with the requirements of the regulations.

Penalty: 60 penalty units.

S. 169I
inserted by
No. 21/2017
s. 7.

169I Advertisements or written statements by partnerships

A registered building practitioner must not carry on business as a building practitioner in partnership with a person who is not a registered building practitioner unless each

advertisement or written statement relating to that business—

- (a) states the name under which the building practitioner is registered; and
- (b) states the registration number of the registered building practitioner; and
- (c) complies with the requirements of the regulations.

Penalty: 60 penalty units.

169J Exception for certain organisations

S. 169J
inserted by
No. 21/2017
s. 7.

- (1) Sections 169A to 169F do not apply to—
 - (a) anything done in the course of official duties by—
 - (i) an employee under Part 3 of the **Public Administration Act 2004**; or
 - (ii) an officer or employee of the public service of the Commonwealth or a State or Territory of the Commonwealth other than Victoria; or
 - (iii) an officer or employee of a public authority established under a law of the Commonwealth or a State or Territory of the Commonwealth other than Victoria; or
 - (b) an organisation or a member of staff of an organisation for the time being exempted by the Authority.
- (2) An exemption under subsection (1)(b) may be subject to conditions.

Pt 11 Div. 1A
(Headings
and ss 170–
176A)
inserted by
No. 21/2017
s. 7.

Division 1A—Registration

Subdivision 1—Application for registration

S. 170
substituted by
No. 21/2017
s. 7.

170 Who may apply for registration?

An application for registration as a building practitioner may be made by—

- (a) a natural person; or
- (b) a body corporate.

S. 170A
substituted by
No. 21/2017
s. 7.

170A Application for registration—general

An application for registration must—

- (a) be made to the Authority; and
- (b) be in writing in a form approved by the Authority; and
- (c) state each category or class of registration sought; and
- (d) in the case of an application by a body corporate, state each nominee director of the body corporate; and
- (e) be accompanied by the prescribed information (if any); and
- (f) be accompanied by the appropriate application fee—
 - (i) determined in accordance with the guidelines under Division 1 of Part 12; or
 - (ii) prescribed by the regulations.

170B Authority may conduct inquiries and require further information

S. 170B
inserted by
No. 21/2017
s. 7.

- (1) In considering an application for a registration, the Authority may—
 - (a) conduct any inquiries in relation to the application that it thinks fit; and
 - (b) require an applicant to provide further information in relation to the application.
- (2) The Authority may refuse an application for registration if the applicant fails to comply with a requirement under subsection (1)(b) within a reasonable time after the requirement is made.

170C Consent to disclosure of information

S. 170C
inserted by
No. 21/2017
s. 7.

- (1) In considering an application for registration, the Authority may ask the applicant to provide any consent to disclosure of information that the Authority requires to perform, or to have performed, a check on the applicant or on any information included with the applicant's application.
- (2) The Authority may refuse to consider an application for registration if the applicant fails to comply with a request under subsection (1) within 14 days after the request is made.
- (3) In this section, in the case of an applicant that is a body corporate, a reference to an applicant includes a reference to a director of the applicant.

170D Change to information in application

S. 170D
inserted by
No. 21/2017
s. 7.

- (1) An applicant for registration must—
 - (a) give the Authority notice of any material change during the relevant period to the information provided to the Authority by the applicant in support of the application for registration; and

(b) provide the notice referred to in paragraph (a) within 14 days after becoming aware of the change.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

(2) In this section—

material change includes—

- (a) a change of directors of an applicant that is a body corporate; or
- (b) any change prescribed by the regulations;

relevant period means the period between the making of an application for registration and the determination of the application by the Authority.

Subdivision 2—Registration

171 Registration

S. 171
substituted by
No. 21/2017
s. 7.

- (1) The Authority must register an applicant as a building practitioner in a category or class if the Authority is satisfied that—
 - (a) if the applicant is a natural person, the applicant either—
 - (i) holds the prescribed qualification for the registration; or
 - (ii) unless the regulations otherwise provide in relation to a particular category or class, holds a qualification that the Authority considers is, either alone or together with any further certificate, authority, experience or

- examination equivalent to a prescribed qualification; and
- (b) if the applicant is a body corporate, the requirements in sections 171A and 171B have been met; and
 - (c) if the applicant carries on business, or intends to carry on business, as a building practitioner as a member of a partnership, the requirements in section 171C have been met; and
 - (d) the applicant is a fit and proper person to be registered having regard to—
 - (i) the personal probity requirements set out in section 171D; and
 - (ii) the financial probity requirements set out in section 171E; and
 - (e) the applicant is not an excluded person; and
 - (f) the applicant has paid the appropriate application fee—
 - (i) determined in accordance with the guidelines under Division 1 of Part 12; or
 - (ii) prescribed by the regulations; and
 - (g) the applicant meets any other prescribed requirements.
- (2) The Authority must refuse an application for registration if it is not satisfied of the matters specified in subsection (1).
- (3) The Authority is not required to conduct a hearing to determine whether to grant a registration or refuse to grant a registration.

S. 171A
inserted by
No. 21/2017
s. 7.

171A Additional requirements for registration—bodies corporate—general

- (1) This section sets out additional requirements for registration where the applicant is a body corporate.
- (2) The Authority must be satisfied that each director of the body corporate—
 - (a) is a fit and proper person having regard to—
 - (i) the personal probity requirements set out in section 171D; and
 - (ii) the financial probity requirements set out in section 171E; and
 - (b) is not an excluded person.

S. 171B
inserted by
No. 21/2017
s. 7.

171B Additional requirements for registration—nominee directors

- (1) This section sets out further additional requirements for registration where the applicant is a body corporate.
- (2) The Authority must also be satisfied in the case of an application for registration as a builder that the body corporate will have—
 - (a) a nominee director—
 - (i) who is registered under this Part as a builder; and
 - (ii) whose registration authorises the carrying out of building work for each class of registration sought; or
 - (b) two or more nominee directors—
 - (i) each of whom is registered under this Part as a builder; and

- (ii) who between them have registrations under this Part that authorise the carrying out of building work for each class of registration sought.
- (3) The Authority must also be satisfied in the case of an application for registration as a building surveyor that the body corporate will have—
 - (a) a nominee director—
 - (i) who is registered under this Part as a building surveyor; and
 - (ii) whose registration authorises the carrying out of work as a building surveyor for each class of registration sought; or
 - (b) two or more nominee directors—
 - (i) each of whom is registered under this Part as a building surveyor; and
 - (ii) who between them have registrations under this Part that authorise the carrying out of work as a building surveyor for each class of registration sought.
- (4) The Authority must also be satisfied in the case of an application for registration as a building inspector that the body corporate will have—
 - (a) a nominee director—
 - (i) who is registered under this Part as a building inspector; and
 - (ii) whose registration authorises the carrying out of work as a building inspector for each class of registration sought; or

- (b) two or more nominee directors—
 - (i) each of whom is registered under this Part as a building inspector; and
 - (ii) who between them have registrations under this Part that authorise the carrying out of work as a building inspector for each class of registration sought.
- (5) The Authority must also be satisfied in the case of an application for registration as a building practitioner (other than an application to which subsection (2), (3) or (4) applies) that the body corporate will have—
 - (a) a nominee director who is registered under this Part in the same class or classes of registration as the class or classes of registration sought; or
 - (b) two or more nominee directors each of whom is registered under this Part and who between them are registered in the same class or classes of registration as the class or classes of registration sought.

S. 171C
inserted by
No. 21/2017
s. 7.

171C Additional requirements for applicant who is member of partnership

- (1) This section sets out additional requirements for registration where the applicant carries on business, or intends to carry on business, as a building practitioner as a member of a partnership.
- (2) The Authority must be satisfied that each other member of the partnership—
 - (a) is a fit and proper person having regard to—
 - (i) the personal probity requirements set out in section 171D; and

- (ii) the financial probity requirements set out in section 171E; and
- (b) is not an excluded person.

171D Personal probity requirements

For the purposes of this Part, the probity requirements are whether in the past 10 years—

- (a) the person has been convicted or found guilty (whether in Victoria or outside Victoria) of any offence involving fraud, dishonesty, drug trafficking or violence that was punishable by imprisonment for 6 months or more; or
- (b) the person has been convicted or found guilty of an offence under any law regulating building work or building practitioners; or
- (c) the person has had any registration, licence, approval, certificate or other authorisation as a building practitioner suspended or cancelled for any reason other than a failure by the person to renew the registration, licence, approval, certificate or other authorisation; or
- (d) the person has been convicted or found guilty of an offence against—
 - (i) section 10, 11, 12, 17, 19 or 21 of the **Fair Trading Act 1999**; or
 - (ii) section 53, 55, 55A, 56, 58 or 60 of the Trade Practices Act 1974 of the Commonwealth; or
 - (iii) section 29, 33, 34, 35, 36, 50, 151, 157, 158 or 168 of the Australian Consumer Law (Victoria); or
 - (iv) section 29, 33, 34, 35, 36, 50, 151, 157, 158 or 168 of Schedule 2 to the

S. 171D
inserted by
No. 21/2017
s. 7.

Competition and Consumer Act 2010
of the Commonwealth; or

- (e) the person has been subject to an order of a court or VCAT under the following enactments that has not been complied with within the period required by the court or VCAT—
 - (i) this Act or the regulations; or
 - (ii) the **Domestic Building Contracts Act 1995** or the regulations under that Act; or
- (f) the person has failed to meet any other probity requirement prescribed by the regulations.

S. 171E
inserted by
No. 21/2017
s. 7.

171E Financial probity requirements

- (1) For the purposes of this Part, the financial probity requirements are as follows—
 - (a) if the application is for registration as a builder in order to carry out domestic building work with a cost of more than the prescribed amount, whether the applicant is eligible to be covered by the required insurance in relation to managing, arranging or carrying out domestic building work with that cost;
 - (b) if the application is for any other category or class of registration, whether the applicant is covered by the required insurance;
 - (c) whether the person is or has been—
 - (i) an insolvent under administration; or
 - (ii) an externally administered body corporate within the meaning of the Corporations Act;

- (d) whether the person has, is or has been disqualified from managing corporations under Part 2D.6 of the Corporations Act;
- (e) whether an insurer has ever declined, cancelled, or imposed special conditions in relation to, the provision of professional indemnity insurance, public liability insurance or any other indemnity insurance in relation to the person in relation to work as a building practitioner in Victoria or in an equivalent occupation in the building and construction industry in another State or Territory;
- (f) whether the applicant or, in the case of an applicant that is a body corporate, any director of the body corporate, has outstanding—
 - (i) any judgment debt for an amount recoverable by an insurer under a policy of insurance for domestic building work referred to in section 137A or 137B that has not been satisfied within the period required for satisfaction of that debt; or
 - (ii) any judgment debt for an amount owed to the Authority as a debt due under this Act that has not been satisfied within the period required for satisfaction of that debt; or
 - (iii) any judgment debt for an amount payable in relation to a domestic building dispute that has not been satisfied within the period required for satisfaction of that debt; or

- (iv) any amount payable under any dispute resolution order (within the meaning of the **Domestic Building Contracts Act 1995**) or VCAT order requiring the payment of an amount in relation to a domestic building dispute that has not been paid within the period required for compliance with that order; or
- (v) any unpaid adjudicated amount due to be paid under the **Building and Construction Industry Security of Payment Act 2002** if—
 - (A) the period for making an adjudication review application under that Act in relation to that amount has expired; and
 - (B) the practitioner has not made an adjudication review application in relation to that amount within that period;
- (g) whether the applicant is a director of a body corporate that has outstanding any judgment debt or unpaid amount referred to in paragraph (f);
- (h) whether the applicant was a director of a body corporate that had outstanding any judgment debt or unpaid amount referred to in paragraph (f) at the time the applicant was a director;
- (i) whether the person has failed to meet any other financial probity criteria prescribed by the regulations.

(2) In this section—

prescribed amount means—

- (a) the amount prescribed by the regulations (if any); or
- (b) if an amount is not prescribed, \$16 000.

171F Excluded persons

- (1) For the purposes of this Part, a person is an excluded person for registration as a building practitioner in a category or class (a *relevant registration*) if—
- (a) the person is disqualified by an order of a disciplinary body from applying for the relevant registration; or
 - (b) the person previously held a relevant registration that was cancelled by a disciplinary body, if any period during which the person is disqualified from applying for a new relevant registration has not ended; or
 - (c) the person held a similar registration under a corresponding Act and—
 - (i) the similar registration was cancelled as a result of disciplinary action taken by a corresponding disciplinary body; and
 - (ii) either—
 - (A) any period during which the person is disqualified from applying for a new similar registration has not ended; or
 - (B) if the corresponding disciplinary body did not disqualify the person from applying for a new similar registration, a period of 2 years

S. 171F
inserted by
No. 21/2017
s. 7.

after the day the cancellation
occurred has not ended; or

- (d) the person's application for a relevant registration under this Act or a similar registration under a corresponding Act within the previous 2 years was refused on the basis that the person provided information or a document in relation to the application that was false or misleading; or
- (e) an associate or related body corporate of the person is a person who or which held a relevant registration under this Act that was cancelled by a disciplinary body, if any period during which the associate or related body corporate is disqualified from applying for a new relevant registration has not ended; or
- (f) an associate or related body corporate of the person held similar registration under a corresponding Act and—
 - (i) the similar registration was cancelled as a result of disciplinary action taken by a corresponding disciplinary body; and
 - (ii) either—
 - (A) any period during which the person is disqualified from applying for a new similar registration has not ended; or
 - (B) if the corresponding disciplinary body did not disqualify the person from applying for a new similar registration, a period of 2 years after the day the cancellation occurred has not ended; or

- (g) the person is a represented person within the meaning of the **Guardianship and Administration Act 1986**; or
- (h) the person is an excluded person for the relevant registration under the regulations.

(2) In this section—

corresponding Act means an Act or law of another jurisdiction that—

- (a) relates to the registration or regulation of building practitioners; or
- (b) is prescribed by the regulations as a corresponding Act;

corresponding disciplinary body means—

- (a) a body in another jurisdiction that carries out similar functions to a disciplinary body in relation to the discipline of building practitioners; or
- (b) a body that is prescribed by the regulations to be a corresponding disciplinary body for the purposes of this section;

disciplinary body means—

- (a) the Authority; or
- (b) the Building Practitioners Board (established under Part 11 as in force immediately before the commencement of Division 2 of Part 3 of the **Building Legislation Amendment (Consumer Protection) Act 2016**); or
- (c) the Building Appeals Board; or
- (d) VCAT;

similar registration means a registration, licence, approval, certificate or other form of authorisation under a corresponding Act that corresponds to a relevant registration.

S. 171G
inserted by
No. 21/2017
s. 7.

171G Issue of certificate of registration

- (1) If the Authority grants registration as a building practitioner to a person, it must issue a certificate of registration to that person.
- (2) The certificate of registration issued must—
 - (a) be in a form approved by the Authority; and
 - (b) specify the registration number of the building practitioner; and
 - (c) contain the prescribed information.

S. 171H
inserted by
No. 21/2017
s. 7.

171H Conditions on registration

- (1) The Authority—
 - (a) must impose on a registration any prescribed conditions; and
 - (b) may impose on a registration any other conditions that the Authority considers appropriate for the registration.
- (2) A person must comply with any conditions imposed on the person's registration.

Penalty: 50 penalty units, in the case of a natural person;

250 penalty units, in the case of a body corporate.

S. 171I
inserted by
No. 21/2017
s. 7.

171I Period of registration

- (1) Registration under this Part lasts for a period of up to 5 years as determined by the Authority.
- (2) Subsection (1) does not take away from any provision about the suspension or cancellation of registration.

171J Issue of replacement certificate of registration

S. 171J
inserted by
No. 21/2017
s. 7.

The Authority may issue a replacement certificate of registration at the request of the building practitioner if the building practitioner—

- (a) pays the appropriate fee (if any)—
 - (i) determined in accordance with the guidelines under Division 1 of Part 12; or
 - (ii) prescribed by the regulations; and
- (b) satisfies the Authority that the certificate of registration issued has been lost, damaged or destroyed.

Subdivision 3—Annual fee and proof of insurance

172 Annual fee and proof of insurance

S. 172
substituted by
No. 21/2017
s. 7.

- (1) A registered building practitioner must, on each anniversary of the practitioner's registration—
 - (a) pay to the Victorian Building Authority Fund the appropriate annual fee—
 - (i) determined in accordance with the guidelines under Division 1 of Part 12; or
 - (ii) prescribed by the regulations; and
 - (b) if, under Part 9, the applicant is required to be covered by insurance, give written proof to the Authority that—
 - (i) until the next anniversary of the registration or, subject to any conditions the Authority imposes, any lesser period approved by the Authority, the practitioner will be covered by the required insurance; or

- (ii) to the extent that a builder is engaged in domestic building work with a cost that is more than the prescribed amount, the practitioner is eligible to be covered by the required insurance.
- (2) In this section—
- prescribed amount* means—
- (a) the amount prescribed by the regulations (if any); or
 - (b) if an amount is not prescribed, \$16 000.

Subdivision 4—Renewal and surrender of registration

173 Renewal and surrender of registration

S. 173
substituted by
No. 21/2017
s. 7.

- (1) The Authority may grant a renewal of registration on the application of the registered building practitioner.
- (2) An application for the renewal of registration must be made at least 3 months before the registration expires.
- (3) This Division applies to a renewal of registration in the same manner as it applies to a registration.
- (4) A prescribed qualification accepted under section 171 for the registration of a building practitioner is taken to be the appropriate prescribed qualification for the renewal of that registration.
- (5) Without limiting subsection (1), in considering whether to grant a renewal of registration, the Authority may have regard to—
 - (a) whether the applicant has complied with any prescribed continuing professional development requirements; and

- (b) whether the applicant complies with any other renewal criteria or conditions prescribed by the regulations.
- (6) A building practitioner's registration is taken to be current despite the expiration date of the registration having passed if—
 - (a) the building practitioner applied for the renewal of the registration within the time specified in subsection (2); and
 - (b) a decision in relation to the renewal of the registration is not made by the Authority before the registration of the building practitioner would otherwise have expired but for this section.
- (7) A registration continued under subsection (6) remains current until the Authority makes a decision in relation to the application for renewal of the registration under this section.
- (8) A renewal of registration granted after a building practitioner's registration would otherwise have expired but for subsection (6) must include the period for which the building practitioner was taken to be registered.

173A Authority may permit late renewals

- (1) The Authority may renew the registration of a person even though the person did not apply for the renewal within the time required by section 173(2).
- (2) However, the Authority may only do this if—
 - (a) the person pays the late renewal fee—
 - (i) determined in accordance with the guidelines under Division 1 of Part 12; or
 - (ii) prescribed by the regulations; and

S. 173A
inserted by
No. 21/2017
s. 7.

- (b) if the registration has expired, it is satisfied that—
- (i) the person did not represent that the person was registered after the expiry of the person's registration; and
 - (ii) the person did not carry out building work under a major domestic building contract after the expiry of the person's registration; and
 - (iii) in the case of a building surveyor or building inspector, the person did not carry out work as a building surveyor or building inspector (as the case applies) after the expiry of the person's registration.

S. 173B
inserted by
No. 21/2017
s. 7.

173B Surrender of registration

A registered building practitioner may, with the consent of the Authority, surrender the practitioner's registration.

Subdivision 5—Nominee directors

New s. 174
inserted by
No. 21/2017
s. 7.

174 General duty of nominee director

- (1) A nominee director of a registered body corporate must ensure that the body corporate complies with the requirements of this Act and the regulations.

Penalty: 500 penalty units.

- (2) Nothing in subsection (1) affects the obligation on a body corporate to comply with the requirements of this Act and the regulations.

Subdivision 6—Register of Building Practitioners

175AA Definitions

In this Subdivision—

criminal proceeding means a proceeding for an offence against a relevant law;

criminal sanction means a conviction or finding of guilt in a criminal proceeding in relation to an offence under a relevant law and any penalty imposed for that offence;

disciplinary proceeding means—

- (a) a proceeding under Subdivision 5 of Division 3; or
- (b) a proceeding on an application for review under Division 4 of a decision under Subdivision 5 of Division 3;

disciplinary sanction means a decision in a disciplinary proceeding to cancel or suspend a registration or to take disciplinary action;

relevant law means—

- (a) this Act or the regulations; or
- (b) the **Domestic Building Contracts Act 1995** and the regulations under that Act.

175 The Register of Building Practitioners

- (1) The Authority must keep a Register of Building Practitioners.
- (2) The Register must—
 - (a) be in the form (if any) and contain the information (if any) required by the regulations; and

S. 175AA
inserted by
No. 21/2017
s. 7.

S. 175
substituted by
No. 21/2017
s. 7.

- (b) include the names and categories and classes of registration of persons registered under this Part.
- (3) The Register may include details of—
 - (a) any criminal sanction imposed on the registered person; and
 - (b) any disciplinary sanction imposed on the registered person.

S. 175A
inserted by
No. 21/2017
s. 7.

175A Time for inclusion of information in the Register of Building Practitioners

- (1) If, under section 175(2), the regulations require the details specified in section 175(3) to be included in the Register of Building Practitioners, the Authority must record that information in the Register as soon as practicable after the prescribed period after the criminal sanction or disciplinary sanction is imposed.
- (2) Information about a disciplinary sanction is to remain on the register until the expiry of 5 years after the sanction is imposed or ceases to have effect, whichever is the later.
- (3) Information about a criminal sanction is to remain on the register for 5 years after the sanction is imposed or ceases to have effect, whichever is the later.
- (4) In this section—

prescribed period means—

 - (a) in the case of a disciplinary sanction, the later of the following to occur—
 - (i) the end of the period within which an application for review of the decision to impose a disciplinary sanction may be made to VCAT;

- (ii) if an application for review of the decision to impose a disciplinary sanction is made to VCAT, a decision by VCAT affirming the decision; or
- (b) in the case of a criminal sanction arising from a criminal proceeding, the later of the following to occur—
 - (i) the end of the period within which an appeal may be brought against the criminal sanction;
 - (ii) if an appeal is brought against the criminal sanction, a decision made dismissing the appeal.

175B Changes to information on the Register of Building Practitioners

S. 175B
inserted by
No. 21/2017
s. 7.

- (1) A registered building practitioner must give the Authority written notice of any change to the information required to be kept on the Register of Building Practitioners provided to the Authority within 14 days after the change occurs.

Penalty: 10 penalty units, in the case of a natural person;

50 penalty units, in the case of a body corporate.

- (2) The Authority must update the Register of Building Practitioners on receiving notification of any change of information under subsection (1).

175C Authority to be advised of nominee director changes

S. 175C
inserted by
No. 21/2017
s. 7.

A registered body corporate must give to the Authority written notice containing the prescribed information within 5 business days after the body corporate—

- (a) ceases to have a nominee director; or
- (b) changes a nominee director.

Penalty: 1200 penalty units.

S. 175D
inserted by
No. 21/2017
s. 7.

175D Publication of information on Register of Building Practitioners

- (1) The Authority must publish on an Internet site maintained by the Authority the information on the Register of Building Practitioners that is required by the regulations to be published.
- (2) The Authority may publish on an Internet site maintained by the Authority the information on the Register of Building Practitioners that is permitted by the regulations to be published.

Subdivision 7—General

S. 176
substituted by
No. 21/2017
s. 7.

176 Certificate of registration to be returned to Authority

- (1) The Authority may ask a person who holds a registration under this Division for the return of the certificate of registration—
 - (a) for the purpose of altering the details on the certificate of registration; or
 - (b) if the registration is suspended or cancelled; or
 - (c) for any purpose authorised by this Act or the regulations.
- (2) A person who holds a registration under this Division must return the certificate of registration to the Authority as soon as is practicable after being asked to do so by the Authority under subsection (1).

Penalty: 10 penalty units.

176A Registered building practitioner to produce certificate of registration for inspection

S. 176A
inserted by
No. 21/2017
s. 7.

A registered building practitioner or, in the case of a registered body corporate, the nominee director of the registered building practitioner must produce their certificate of registration for inspection if asked to do so by—

- (a) any person—
 - (i) with whom the registered building practitioner has entered into a major domestic building contract; or
 - (ii) to whom the registered building practitioner has made a statement indicating that the practitioner is willing or prepared to enter into a major domestic building contract; or
- (b) the owner or occupier of any land or building—
 - (i) on which building work is being carried out by the registered building practitioner; or
 - (ii) to which a major domestic building contract entered into by the registered building practitioner applies; or
- (c) a private building surveyor in relation to any land or building—
 - (i) on which building work is being carried out by the registered building practitioner; or
 - (ii) to which a major domestic building contract entered into by the registered building practitioner applies; or
- (d) a VBA inspector; or
- (e) a plumbing inspector; or

- (f) a compliance auditor; or
- (g) a municipal building surveyor or a person authorised by a municipal building surveyor; or
- (h) an Energy Safe inspector.

Penalty: 10 penalty units.

Pt 11 Div. 2
(Heading and
ss 177–182)
amended by
Nos 91/1995
ss 148–151,
34/1997 ss 12,
13, 52/1998
s. 311(Sch. 1
items 10.7,
10.8), 26/2001
s. 11(2),
68/2001 s. 10,
36/2002 s. 11,
36/2008
ss 8–11,
9/2012 ss 3, 4,
34/2013 ss 10,
34(Sch. 1
items 21–24),
15/2016
s. 18(1)–
(3)(6)(7),
substituted as
Pt 11 Div. 2
(Heading and
ss 177–177D)
by
No. 15/2016
s. 25.

Division 2—Codes of conduct for building practitioners

New s. 177
inserted by
No. 15/2016
s. 25.

177 Authority may approve codes of conduct for building practitioners

- (1) The Authority may approve codes of conduct for building practitioners in accordance with this Division.
- (2) A code of conduct may make different provision for different categories or classes of building practitioners.

177A Code of conduct prepared by Authority or industry

S. 177A
inserted by
No. 15/2016
s. 25.

- (1) A code of conduct approved by the Authority under this Division may be—
 - (a) a code of conduct prepared by the Authority; or
 - (b) a code of conduct prepared and submitted to the Authority by an organisation representing building practitioners.
- (2) In preparing a code of conduct under subsection (1)(a), the Authority—
 - (a) must consult with any prescribed organisation representing building practitioners; and
 - (b) may consult with any other organisation.
- (3) The Authority may make changes to a code of conduct submitted to the Authority under subsection (1)(b).
- (4) Before making changes to a code of conduct under subsection (3), the Authority—
 - (a) must consult with the organisation that submitted the code of conduct; and
 - (b) may consult with any other organisation.

177B Code of conduct must be published

S. 177B
inserted by
No. 15/2016
s. 25.

A code of conduct approved by the Authority under this Division must be published in the Government Gazette.

177C Commencement of code of conduct

S. 177C
inserted by
No. 15/2016
s. 25.

A code of conduct comes into operation on the later of—

- (a) the day on which the code of conduct is published in the Government Gazette; or

(b) the day specified in the code of conduct as the day on which the code of conduct comes into operation.

S. 177D
inserted by
No. 15/2016
s. 25.

177D Building practitioners must comply with approved code of conduct

A building practitioner must comply with any code of conduct approved under this Division that is applicable to the building practitioner's category or class of registration.

Note

Section 179(1)(b) provides that disciplinary action may be taken by the Authority against a registered building practitioner who fails to comply with an approved code of conduct.

* * * * *

Pt 11 Div. 2A
(Heading and
s. 182A)
inserted by
No. 34/2013
s. 11,
amended by
15/2016
s. 18(1)(3)(7),
repealed by
No. 15/2016
s. 25.

Division 3—Disciplinary proceedings and action

Subdivision 1—Preliminary

Pt 11 Div. 3
(Heading and
ss 183–187
amended by
Nos 2/1996
s. 12, 34/1997
ss 14, 15,
18/1998 s. 5,
68/2001
s. 8(2),
35/2004 s. 36,
66/2004 ss 12,
13, 18/2005
s.18(Sch. 1
item 10.2),
34/2013
s. 22(2),
17/2014
s. 160(Sch. 2
item 11),
repealed by
No. 15/2016
s. 17,
new Pt 11
Div. 3
(Headings
and ss
178–183E)
inserted by
No. 15/2016
s. 25.

178 Meaning of disciplinary action

In this Division, *disciplinary action* in relation to a registered building practitioner means one or more of the following—

- (a) reprimand the practitioner;
- (b) direct the practitioner—
 - (i) to do a specified thing, including to rectify or complete specified building work; or
 - (ii) not to do a specified thing;
- (c) require the practitioner to successfully complete a specified course of training within a specified period;

New s. 178
inserted by
No. 15/2016
s. 25.

Building Act 1993
No. 126 of 1993
Part 11—Registration of building practitioners

S. 178(d)
amended by
No. 21/2017
s. 8(1).

- (d) impose a penalty of not more than 150 penalty units, in the case of a natural person, or 750 penalty units, in the case of a body corporate, unless—
 - (i) a charge has been filed in the Magistrates' Court in relation to the matter; or
 - (ii) the matter has been dealt with by a court exercising its criminal jurisdiction; or
 - (iii) the matter has been dealt with by the issue of an infringement notice;
- (e) vary a condition (other than a prescribed condition), or impose a condition, on the practitioner's registration;
- (f) suspend registration for not more than 3 years either wholly, or as a partial suspension in relation to a specified matter;
- (g) cancel registration;

S. 178(ga)
inserted by
No. 21/2017
s. 8(2).

- (ga) disqualify the practitioner from being a nominee director of a registered body corporate or a specified registered body corporate for a specified period not exceeding the period during which the body corporate is registered;

S. 178(gb)
inserted by
No. 21/2017
s. 8(2).

- (gb) in the case of a registered body corporate, disqualify a registered building practitioner who is an officer of the body corporate from being a nominee director, or being otherwise involved in the management, of the body corporate for a specified period not exceeding the period during which the body corporate is registered;

(h) disqualify the practitioner for a specified period of up to 3 years from being registered in any category or class of building practitioner.

S. 178(h)
substituted by
No. 46/2018
s. 45.

178A Division applies to suspended practitioners

S. 178A
inserted by
No. 15/2016
s. 25.

- (1) Subject to subsection (2), this Division (except Subdivision 3) applies to a building practitioner whose registration is suspended but who was registered at the time the conduct that forms the ground for disciplinary action occurred as if the practitioner were a registered building practitioner.
- (2) The Authority must not give a show cause notice under Subdivision 5 in relation to a matter to a building practitioner whose registration is suspended after the end of the 3 year period immediately following the suspension if the suspension relates to that matter.

Subdivision 2—Grounds for disciplinary action

179 Grounds for disciplinary action

New s. 179
inserted by
No. 15/2016
s. 25.

- (1) Each of the following is a ground for which disciplinary action may be taken against a registered building practitioner—
 - (a) the practitioner has contravened—
 - (i) this Act or the regulations under this Act; or
 - (ii) the **Domestic Building Contracts Act 1995** or the regulations under that Act; or
 - (iii) a prescribed Act or law or a prescribed provision of a prescribed Act or law;
 - (b) the practitioner has engaged in unprofessional conduct or has failed to comply with a code of conduct;

- (c) the practitioner has failed to comply with an order or direction (other than an oral direction to fix building work under Division 2 of Part 4) given to the practitioner—
- (i) by the relevant building surveyor under this Act; or
 - (ii) an authorised person under Division 2 of Part 4;
- (ca) the practitioner has failed to comply with a Ministerial direction under section 188AA;
- (d) the practitioner has failed to comply with a determination or direction of the Authority or VCAT under this Act or the **Domestic Building Contracts Act 1995**;
- (da) the practitioner has failed to comply with a dispute resolution order under the **Domestic Building Contracts Act 1995**; or
- (db) the practitioner has been issued with a breach of dispute resolution order notice under section 49U(5) of the **Domestic Building Contracts Act 1995** for failure to comply with a dispute resolution order under that Act and the chief dispute resolution officer has given written notice to the Authority accordingly;
- (e) the practitioner has failed to comply with a reasonable direction of an insurer in relation to—
- (i) the completion or rectification of defective building work; or
 - (ii) any payment to be made to the insurer in relation to the rectification or completion of defective building work

S. 179(1)(ca)
inserted by
No. 46/2018
s. 46(1).

S. 179(1)(da)
inserted by
No. 15/2016
s. 63(1).

S. 179(1)(db)
inserted by
No. 46/2018
s. 46(2).

- in accordance with the required insurance;
- (f) the practitioner has engaged in conduct in relation to the practitioner's practice as a building practitioner that is—
- (i) constituted by a pattern of incompetence; or
 - (ii) negligent in a particular matter;
- (g) the Authority believes on reasonable grounds that the practitioner is not a fit and proper person to practise as a building practitioner; **S. 179(1)(g) amended by No. 46/2018 s. 46(3).**
- (h) the practitioner has obtained the practitioner's registration under this Part or any required insurance on the basis of information or a document that was false or misleading;
- (ha) the practitioner is a body corporate and the practitioner has no nominee director; **S. 179(1)(ha) inserted by No. 21/2017 s. 9.**
- (hb) the practitioner is a nominee director and the practitioner has failed to comply with a duty under section 174; **S. 179(1)(hb) inserted by No. 21/2017 s. 9.**
- (hc) the practitioner has failed to comply with a direction under section 80D; **S. 179(1)(hc) inserted by No. 21/2017 s. 9.**
- (i) the practitioner has failed to comply with a condition of the practitioner's registration;
- (j) the practitioner has failed to comply with an undertaking given to the Authority under this Act;

- (k) the practitioner has made or purported to make an appointment of a building surveyor in contravention of section 78(1A) or has accepted such an appointment or purported appointment in contravention of section 78(1B);
 - (l) the practitioner has not completed the relevant prescribed continuing professional development requirements (if any);
 - (m) the practitioner has not paid a fee or other amount required to be paid under—
 - (i) this Act or the regulations; or
 - (ii) the **Domestic Building Contracts Act 1995** or the regulations under that Act; or
 - (iii) a prescribed Act or law;
 - (n) the practitioner has not paid an adjudicated amount due to be paid under the **Building and Construction Industry Security of Payment Act 2002** and—
 - (i) the period for making an adjudication review application under that Act in relation to that amount has expired; and
 - (ii) the practitioner has not made an adjudication review application in relation to that amount within that period;
 - (o) a ground for immediate suspension exists in relation to the practitioner.
- (2) The Authority may make inquiries to determine whether a ground exists for taking disciplinary action under this Part.

- (3) Without limiting its powers to consider information, the Authority may have regard to a report of an assessor under section 48R of the **Domestic Building Contracts Act 1995** where relevant to any matter being dealt with under this Division. S. 179(3)
inserted by
No. 15/2016
s. 63(2).
- (4) For the avoidance of doubt, a disciplinary action on the ground set out in subsection (1)(da) or (db) may be commenced together with or separately to any disciplinary action relating to the building work that is the subject of the dispute resolution order. S. 179(4)
inserted by
No. 46/2018
s. 46(4).
- (5) If the breach of dispute resolution order notice referred to in subsection (1)(db) is cancelled by the chief dispute resolution officer under section 49V of the **Domestic Building Contracts Act 1995**—
(a) the ground for disciplinary action under subsection (1)(db) ceases to exist; and
(b) any suspension or partial suspension imposed by the Authority or VCAT in relation to that ground is terminated. S. 179(5)
inserted by
No. 46/2018
s. 46(4).
- (6) A disciplinary action relating to the building work that is the subject of the dispute resolution order referred to in subsection (5) is not terminated by reason of the cancellation of the breach of dispute resolution order notice. S. 179(6)
inserted by
No. 46/2018
s. 46(4).
- (7) In this section—
chief dispute resolution officer has the same meaning as in the **Domestic Building Contracts Act 1995**. S. 179(7)
inserted by
No. 46/2018
s. 46(4).

New s. 179A
inserted by
No. 15/2016
s. 25.

179A Conduct of body corporate or partnership to be conduct of building practitioner director or partner

If a body corporate or a partnership of which a registered building practitioner is a director or partner contravenes this Act or the regulations or the **Domestic Building Contracts Act 1995** or the regulations under that Act in the carrying out of building work, that contravention is taken to have been a contravention by the registered building practitioner for the purposes of section 179.

S. 179B
inserted by
No. 46/2018
s. 47.

179B Mandatory cancellation of registration if practitioner is not a fit and proper person

- (1) If the Authority or VCAT makes a finding in the course of disciplinary proceedings that a registered building practitioner is not a fit and proper person, the Authority or VCAT must cancel the registered building practitioner's registration.
- (2) A cancellation under subsection (1)—
 - (a) may be limited to cancellation of the registered building practitioner's registration in a specific category or class; or
 - (b) may relate to cancellation of all categories or classes of registration of the practitioner.
- (3) The Authority or VCAT may take other disciplinary action in accordance with section 179 in addition to a cancellation of registration under subsection (1).

Subdivision 3—Immediate suspension of registration

180 Grounds for immediate suspension

A ground for the immediate suspension of the registration of a registered building practitioner exists if—

- (a) the practitioner is insolvent under administration or is an officer of a body corporate that is subject to external administration within the meaning of section 5-5 of Schedule 2 to the Corporations Act; or
- (b) the practitioner has contravened—
 - (i) a prescribed provision of this Act or the regulations; or
 - (ii) a prescribed provision of the **Domestic Building Contracts Act 1995** or the regulations under that Act; or
 - (iii) a prescribed Act or law or a prescribed provision of a prescribed Act or law; or
- (c) the practitioner has been convicted of an indictable offence involving fraud, dishonesty, drug trafficking or violence; or
- (d) the practitioner has ceased to be covered by the required insurance; or
- (e) the practitioner is a body corporate and the practitioner has no nominee director; or
- (f) the practitioner is an excluded person; or

New s. 180
inserted by
No. 15/2016
s. 25.

S. 180(a)
amended by
No. 47/2017
s. 11.

S. 180(e)
substituted by
No. 21/2017
s. 10.

S. 180(f)
inserted by
No. 21/2017
s. 10.

S. 180(g)
inserted by
No. 21/2017
s. 10.

(g) the practitioner has failed to comply with a condition of the practitioner's registration.

New s. 180A
inserted by
No. 15/2016
s. 25.

180A Immediate suspension of registration

S. 180A(1)
amended by
No. 21/2017
ss 11(1), 95(7).

(1) Subject to section 180C, the Authority may, by written notice given to a registered building practitioner, immediately suspend the registration of the registered building practitioner if the Authority reasonably believes a ground for immediate suspension exists under section 180 (other than paragraph (d)) in relation to the practitioner.

(2) The Authority must, by written notice given to a registered building practitioner, immediately suspend the registration of the registered building practitioner if the Authority reasonably believes that the practitioner has ceased to be covered by the required insurance.

S. 180A(2A)
inserted by
No. 46/2018
s. 48(1).

(2A) The Authority must, by written notice given to a registered building practitioner, immediately suspend the registration of the registered building practitioner if the Authority considers it is in the interests of the public to do so pending the show cause process.

S. 180A(2B)
inserted by
No. 46/2018
s. 48(1).

(2B) For the purpose of subsection (2A), matters that the Authority may have regard to in deciding whether it is in the interests of the public to immediately suspend the registration of a registered building practitioner include the following—

(a) whether the registered building practitioner is performing, has performed or has allowed others under the practitioner's control to

- perform building work that poses a serious risk to neighbouring properties;
- (b) whether the registered building practitioner is performing, has performed or has allowed others under the practitioner's control to perform building work that poses a risk to the health and safety of persons;
 - (c) whether the registered building practitioner has been the subject of multiple adverse disciplinary actions by the Authority.
- (3) The Authority may suspend a registration under subsection (1) either wholly or as a partial suspension in relation to a specified matter.
- (4) The notice must state the following—
- (a) the decision;
 - (b) the ground or grounds under section 180 for the decision;
 - (c) the period of the suspension;
 - (d) that the building practitioner may apply to VCAT under this Part for review of the decision.
- (5) The Authority must provide written reasons for the immediate suspension within 5 business days after giving the notice.
- (6) The Authority must give the building practitioner a show cause notice under section 182 without delay after giving the notice under subsection (1).

S. 180A(6)
amended by
No. 46/2018
s. 48(2).

180B Period of suspension

S. 180B
inserted by
No. 15/2016
s. 25.

- (1) A suspension under section 180A—
- (a) takes effect when the notice is given to the building practitioner; and

- (b) continues for the period specified in the notice unless either of the following occurs—
 - (i) the suspension is revoked by the Authority;
 - (ii) the suspension is set aside on an application for review under this Part.
- (2) The Authority must revoke a suspension under section 180A(1) if the Authority determines that no ground for immediate suspension under that provision exists.
- (3) The Authority must revoke a suspension under section 180A(2) if the practitioner gives the Authority written proof that—
 - (a) the practitioner is covered by the required insurance; and
 - (b) the insurance cover is provided until the next anniversary of the practitioner's registration.

S. 180C
inserted by
No. 21/2017
s. 12.

180C Period of grace where director dies or resigns or is removed or disqualified

- (1) This section applies if a registered building practitioner that is a body corporate no longer has any nominee director because a nominee director has—
 - (a) died; or
 - (b) resigned as director; or
 - (c) been removed as a director; or
 - (d) been disqualified from being a director under Part 2D.6 of the Corporations Act.
- (2) The Authority must not suspend the registration of the body corporate under section 180A, or take any other disciplinary action, for the failure to have a nominee director unless the body corporate

still has no nominee director at the end of 30 days or any longer period approved under subsection (3) after the death, resignation, removal or disqualification.

- (3) The Authority, at the written request of the registered building practitioner, may approve a longer period for the purposes of subsection (2).
- (4) The approval may be subject to any conditions the Authority thinks fit.

Subdivision 4—Ability to practise

181 Ability to practise

- (1) This section applies if the Authority is satisfied that a registered building practitioner is incapable of practising as a building practitioner because of physical or mental infirmity.
- (2) The Authority may decide to—
 - (a) suspend the person's registration for not more than 3 years; or
 - (b) cancel the person's registration.
- (3) A decision under subsection (2)(a) may be made more than once.
- (4) Subdivision 5 and Division 4 apply to a proposed decision under this section as if—
 - (a) the circumstances in subsection (1) were a ground for disciplinary action; and
 - (b) the decision were a disciplinary action.

New s. 181
inserted by
No. 15/2016
s. 25.

181A Revocation of suspension

- (1) A person may apply to the Authority to revoke the suspension of the person's registration under section 181.
- (2) An application must be made in the form and contain the information required by the Authority.

S. 181A
inserted by
No. 15/2016
s. 25.

- (3) The Authority must consider the application unless the Authority considers it to be frivolous, vexatious or lacking in substance.
- (4) The Authority may at any time revoke a suspension under section 181 if it is satisfied that the registered building practitioner is capable of practising as a building practitioner.
- (5) The Authority must, without delay, give written notice of the decision to the registered building practitioner.

Subdivision 5—Show cause process

182 Show cause notice

New s. 182
inserted by
No. 15/2016
s. 25.

S. 182(1)
amended by
No. 46/2018
s. 49(1).

S. 182(1A)
inserted by
No. 46/2018
s. 49(2).

- (1) Subject to subsection (6), if the Authority reasonably believes a ground for taking disciplinary action against a registered building practitioner exists and proposes to take that action, the Authority must give the registered building practitioner a notice under this section (a *show cause notice*).
- (1A) In the case of disciplinary action on the ground set out in section 179(1)(db), the Authority must give a show cause notice by the later of the following—
 - (a) within 28 days of receiving the breach of dispute resolution order notice from the chief dispute resolution officer;
 - (b) within the prescribed period.
- (2) The show cause notice must state the following—
 - (a) that the Authority proposes to take disciplinary action;
 - (b) the disciplinary action proposed to be taken;

- (c) the registration in relation to which the proposed action is to be taken;
 - (d) the ground for the proposed action;
 - (e) an outline of the facts and circumstances forming the basis for the ground for the proposed action;
 - (f) an invitation to the registered building practitioner to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- (3) The show cause period must be a period ending at least 14 days after the show cause notice is given to the registered building practitioner.
- (4) The Authority, at the request of the registered building practitioner, may extend the show cause period stated in the show cause notice and in that case the extended period becomes the show cause period.
- (5) In the case of a show cause notice issued in relation to disciplinary action on the ground under section 179(1)(db), the disciplinary action proposed to be taken must include a suspension under section 178(1)(f).
- (6) The Authority is not required to give the registered building practitioner a show cause notice if—
- (a) the Authority has issued a notice of immediate suspension under section 180A(2); and
 - (b) the Authority does not propose to take any other disciplinary action.

S. 182(5)
inserted by
No. 46/2018
s. 49(3).

S. 182(6)
inserted by
No. 46/2018
s. 49(3).

New s. 182A
inserted by
No. 15/2016
s. 25.

182A Representations about show cause notice

- (1) The registered building practitioner may—
 - (a) make written representations about the show cause notice to the Authority within the show cause period; or
 - (b) make oral representations about the show cause notice to the Authority at the time within the show cause period, and at the place, agreed by the Authority and the registered building practitioner.
- (2) The Authority must keep a record of oral representations made to it under subsection (1)(b).

S. 182B
inserted by
No. 15/2016
s. 25.

182B Decision about whether to take disciplinary action

Within 28 days after the show cause period ends, the Authority must decide whether a ground exists to take disciplinary action against the registered building practitioner.

S. 182C
inserted by
No. 15/2016
s. 25.

182C Ending show cause process without further action

If the Authority no longer believes a ground exists to take disciplinary action against the registered building practitioner, the Authority—

- (a) must take no further action about the show cause notice; and
- (b) must revoke any suspension under section 180A(1) that relates to the matter that is the subject of the show cause notice; and
- (c) must, as soon as practicable after making its decision, give notice to the registered building practitioner that no further action will be taken about the show cause notice.

182D Disciplinary or other action by Authority on giving of undertaking

S. 182D
inserted by
No. 15/2016
s. 25,
amended by
No. 46/2018
s. 50(1)(2) (ILA
s. 39B(1)).

- (1) If the Authority believes a ground exists to take disciplinary action against the registered building practitioner (other than the ground under section 179(1)(db)), the Authority may—
- (a) accept an undertaking from the practitioner under section 234B; and
 - (b) do any of the following—
 - (i) defer taking the proposed disciplinary action for a specified period;
 - (ii) take disciplinary action that the Authority considers to be less serious than the proposed disciplinary action;
 - (iii) take no further action.
- (2) Despite subsection (1), if the Authority believes that the ground under section 179(1)(db) exists to take disciplinary action against the registered building practitioner, and if the registered building practitioner demonstrates that there may be exceptional circumstances in relation to any failure by the practitioner to seek review of the breach of dispute resolution order notice within the time limit fixed under section 66 of the **Domestic Building Contracts Act 1995**, the Authority may—
- (a) accept an undertaking from the practitioner under section 234B that the practitioner will—
 - (i) make an application to VCAT as soon as possible for extension of the time limit to apply for review of the decision to issue a breach of dispute resolution order notice; and

S. 182D(2)
inserted by
No. 46/2018
s. 50(2).

- (ii) inform the Authority—
 - (A) when the application has been made; and
 - (B) as to the outcome of the application; and
 - (C) as to the date of any hearing relating to the application; and
 - (b) defer taking the proposed disciplinary action for a specified period, which may be extended by the Authority if the practitioner's application to VCAT is successful.
- (3) For the avoidance of doubt—
- (a) the Authority cannot accept an undertaking from the registered building practitioner in relation to subsection (2) other than the undertaking specified in subsection (2)(a); and
 - (b) if the practitioner fails to comply with the undertaking, or if VCAT rejects the application for an extension of time, the Authority must proceed with the proposed disciplinary action on the ground under section 179(1)(db) that was deferred under subsection (2)(b); and
 - (c) any exceptional circumstances referred to in subsection (2) cannot be taken into account by the Authority in deciding on the disciplinary action to be taken against the practitioner.

S. 182D(3)
inserted by
No. 46/2018
s. 50(2).

182E Taking disciplinary action after show cause notice

S. 182E
inserted by
No. 15/2016
s. 25.

(1) Subject to subsection (1A), if the Authority believes a ground exists to take disciplinary action against the registered building practitioner, the Authority may—

S. 182E(1)
amended by
No. 46/2018
s. 51(1).

- (a) take the disciplinary action proposed in the show cause notice; or
- (b) on the basis of representations made or new evidence received, take disciplinary action that the Authority considers to be less serious than the disciplinary action referred to in paragraph (a).

(1A) If the Authority believes the ground set out in section 178(1)(db) exists to take disciplinary action against the registered building practitioner, the Authority must take the disciplinary action proposed in the show cause notice.

S. 182E(1A)
inserted by
No. 46/2018
s. 51(2).

- (2) The Authority must, as soon as practicable after making its decision, give a written notice about the decision to the registered building practitioner.
- (3) The notice must state the following—
 - (a) the decision;
 - (b) the reasons for the decision;
 - (c) that the practitioner may apply under Division 4 for review of the decision within 28 days.
- (4) The decision takes effect on the later of—
 - (a) the day the notice is given to the registered building practitioner; or
 - (b) the day stated in the notice.

Subdivision 6—General provisions relating to disciplinary action

New s. 183
inserted by
No. 15/2016
s. 25.

183 Notice of decisions

- (1) The Authority must give notice of a decision under this Division in relation to a registered building practitioner to any person who made a complaint to the Authority about the matter to which the decision relates.
- (2) If the Authority is aware that a registered building practitioner is a member of a professional association or is employed by a particular person, the Authority must cause notice of any decision concerning the practitioner made under this Division to be given to that association or employer without delay after the decision takes effect.

S. 183A
inserted by
No. 15/2016
s. 25.

183A Building practitioner to give notice

A person who has had a registration as a building practitioner cancelled or suspended under this Division must, without delay after the decision to cancel or suspend the registration takes effect, give notice in the prescribed form (if any) of the cancellation or suspension to any person who has a contract with the person relating to, or arising out of, the carrying out of the practitioner's work as a registered building practitioner.

Penalty: 50 penalty units.

S. 183B
inserted by
No. 15/2016
s. 25.

183B Complaint privileged

A person is not liable in any way for any loss, damage, or injury suffered by another person solely because the first person in good faith—

- (a) lodged a complaint with the Authority in relation to a registered building practitioner;
- or

- (b) produced or gave a document or any information or evidence to the Authority in relation to a matter that constitutes or may constitute a contravention of—
- (i) this Act or the regulations; or
 - (ii) the **Domestic Building Contracts Act 1995** or the regulations under that Act; or
 - (iii) a prescribed Act or law or a prescribed provision of a prescribed Act or law.

183C Consequences of suspension of registration

S. 183C
inserted by
No. 15/2016
s. 25.

- (1) While a person's registration as a building practitioner is suspended, the practitioner is taken not to be registered under this Part either wholly or, if it is a partial suspension, in relation to the matter specified in the suspension.
- (2) A person whose registration as a building practitioner is suspended may apply for a renewal of that registration during the period of suspension but the renewed registration remains suspended either wholly or as a partial suspension (as the case requires) in accordance with the terms of the suspension until the registration is cancelled or the suspension ends or is revoked.

183D Revocation of suspension

S. 183D
inserted by
No. 15/2016
s. 25.

- (1) The Authority may at any time revoke a suspension under Subdivision 5 if satisfied that it is appropriate to do so.
- (2) The Authority must, without delay, give written notice of the revocation to the registered building practitioner.

S. 183E
inserted by
No. 15/2016
s. 25.

183E Authority may recover penalties

Any amount that the Authority requires a registered building practitioner to pay by way of a penalty under this Division may be recovered in any court of competent jurisdiction as a debt due to the Authority.

Pt 11 Div. 4
(Headings
and
ss 184–187)
inserted by
No. 15/2016
s. 25.

Division 4—Review of decisions relating to building practitioners

Subdivision 1—Preliminary

184 Definitions

In this Division—

affected person means a person directly affected by a reviewable decision;

reviewable decision means any of the following decisions under this Act—

- (a) a decision to refuse to grant registration;
- (b) a decision to impose conditions (other than prescribed conditions) on registration;
- (c) a decision to refuse to renew registration;
- (d) a decision to immediately suspend registration;
- (e) a decision by the Authority to take disciplinary action;
- (f) a decision to give a registered building surveyor or a member of a class of registered building surveyors a direction under section 205M;

New s. 184
inserted by
No. 15/2016
s. 25.

- (g) another decision prescribed by the regulations as being a decision for which a person may apply for internal review or review by VCAT under this Division;

review decision has the meaning set out in section 185C;

reviewer means a person deciding an internal review under this Division.

Subdivision 2—Internal review

185 Applying for internal review

- (1) This section applies if a reviewable decision is made by a delegate of the Authority other than a Commissioner or the chief executive officer of the Authority.
- (2) A person who is directly affected by a reviewable decision may apply to the Authority for an internal review of the decision.
- (3) Subject to subsections (3A) and (4), the application must be made within 28 days after the day the affected person is given notice of the reviewable decision.
- (3A) An application for an internal review of a reviewable decision made in relation to a ground for disciplinary action under section 178(1)(da) or (db) may be made at any time before any disciplinary action imposed by the reviewable decision ceases to have effect.
- (4) The Authority may, at any time, extend the time for applying for an internal review.
- (5) An application for an internal review must be in writing and state fully the grounds of the application.

New s. 185
inserted by
No. 15/2016
s. 25.

S. 185(3)
amended by
No. 15/2016
s. 64(1).

S. 185(3A)
inserted by
No. 15/2016
s. 64(2),
substituted by
No. 46/2018
s. 52.

- (6) Subject to subsection (7), an application for an internal review stays the operation of the decision.
- (7) An application for an internal review does not stay the operation of a decision to immediately suspend registration.

S. 185A
inserted by
No. 15/2016
s. 25.

185A Who may conduct an internal review?

- (1) The Authority must appoint an employee of the Authority to conduct an internal review.
- (2) An internal review must not be conducted by—
 - (a) the person who made the reviewable decision; or
 - (b) a person who was involved in the matters that gave rise to the reviewable decision; or
 - (c) a person who holds a less senior position than a person referred to in paragraph (a) or (b).

S. 185B
inserted by
No. 15/2016
s. 25.

185B Internal review

- (1) Subject to subsection (1A), the reviewer must conduct the internal review on—
 - (a) the material before the Authority that led to the reviewable decision; and
 - (b) the reasons for the reviewable decision; and
 - (c) any other material that was not available at the time of the reviewable decision that the reviewer is satisfied is relevant.

S. 185B(1)
amended by
No. 15/2016
s. 65(1).

- (1A) In the case of an application referred to in section 185(3A), the reviewer may have regard to whether the affected person has done all or any of the following—

S. 185B(1A)
inserted by
No. 15/2016
s. 65(2).

- (a) rectified or completed, or arranged for the rectification or completion of, the work specified in the dispute resolution order;
 - (b) paid compensation to the building owner, or entered into an agreement to pay compensation to the building owner or satisfied any other arrangement agreed with the building owner;
 - (c) reimbursed an insurer, or entered into an agreement to reimburse an insurer, for the costs (including administrative and legal costs) of the rectification or completion work paid for by the insurer or satisfied any other arrangement agreed with the insurer.
- (2) For the review, the reviewer must give the affected person a reasonable opportunity to make written or oral representations to the reviewer.

185C Review decisions

- (1) The reviewer must make a decision (the *review decision*) to—
- (a) affirm the reviewable decision; or
 - (b) amend the reviewable decision; or
 - (c) substitute another decision for the reviewable decision.
- (2) If the review decision affirms the reviewable decision, for the purpose of an application for review by VCAT, the reviewable decision is taken to be the review decision.
- (3) If the review decision amends the reviewable decision, the reviewable decision as amended is taken to be the review decision.
- (4) If the review decision substitutes another decision for the reviewable decision, the substituted decision is taken to be the review decision.

S. 185C
inserted by
No. 15/2016
s. 25.

S. 185D
inserted by
No. 15/2016
s. 25.

185D Notice of review decision

- (1) The Authority must, as soon as practicable after the review decision is made, give the affected person notice (the *review notice*) of the review decision.
- (2) The review notice must state the following—
 - (a) the reasons for the decision;
 - (b) that the affected person may apply to VCAT for review of the decision under this Division.
- (3) If the Authority does not give the review notice within the review period the reviewer is taken to have made a review decision affirming the reviewable decision.
- (4) In this section—

review period means the longer of—

 - (a) the relevant period prescribed by the regulations (if any); or
 - (b) the period ending 28 days after the application is made.

Subdivision 3—Review by VCAT

New s. 186
inserted by
No. 15/2016
s. 25.

186 Application for review by VCAT of reviewable decision

- (1) An affected person who has applied for an internal review of a reviewable decision under Subdivision 2 and is dissatisfied with the review decision may apply to VCAT for review of the review decision.
- (2) An affected person who was not eligible to apply for an internal review of a reviewable decision may apply to VCAT for review of the reviewable decision.

(3) An affected person may apply to VCAT (without applying for internal review) for review of a reviewable decision to immediately suspend, suspend or cancel a registration.

(4) Subject to subsection (5), an application for review of a reviewable decision or review decision must be made within—

S. 186(4)
amended by
No. 15/2016
s. 66(1).

(a) in the case of an application under subsection (1), 14 days after the end of the review period for internal review; or

(b) in any other case, 28 days after the reviewable decision or review decision is made.

(5) An application for review of a reviewable decision imposed for a failure to comply with a dispute resolution order may be made at any time before any disciplinary action imposed by the reviewable decision ceases to have effect.

S. 186(5)
inserted by
No. 15/2016
s. 66(2).

187 Proceedings and decision

New s. 187
inserted by
No. 15/2016
s. 25.

(1) After hearing the matter, VCAT may—

(a) affirm the review decision or reviewable decision; or

(b) amend the review decision or reviewable decision; or

(c) substitute another decision for the review decision or reviewable decision.

(1A) In considering an application for review of a reviewable decision or review decision imposed for a failure to comply with a dispute resolution order, VCAT may have regard to the matters set out in section 185B(1A).

S. 187(1A)
inserted by
No. 15/2016
s. 67.

(2) Subject to subsection (3), an application for review stays the operation of the decision.

- (3) An application for review does not stay the operation of a decision to immediately suspend registration.

Part 12—Building administration

Division 1—Role of Minister

188 Guidelines

- (1) The Minister may from time to time issue guidelines relating to—
- (a) the fees to be charged for applications for permits and approvals and any fees to be charged under this Act and the regulations; and
 - (b) the charges to be made for services provided by the Authority; and
 - (c) the functions of municipal building surveyors and private building surveyors under this Act or the regulations; and
 - (d) the circumstances in which a municipal building surveyor or private building surveyor should, in preparing a building notice or building order, seek assistance from the chief officer or any public authority.
- (2) Guidelines relating to fees—
- (a) may specify the fees or specify maximum or minimum fees; and
 - (b) may specify different fees for different classes of cases.
- (2A) Guidelines relating to the fees chargeable under Part 11 in respect of domestic builders may take into account the costs and expenses incurred in the administration and enforcement of the **Domestic Building Contracts Act 1995** and the regulations under that Act.

S. 188(1)(b)
amended by
No. 34/2013
s. 34(Sch. 1
item 25).

S. 188(1)(d)
amended by
No. 21/2017
s. 95(8).

S. 188(2A)
inserted by
No. 91/1995
s. 152,
amended by
No. 52/1998
s. 311(Sch. 1
item 10.9).

- (3) The guidelines must be published in the Government Gazette.
- (4) A council or private building surveyor, in determining fees for applications for permits, may have regard to the guidelines under subsection (1)(a) about those fees.
- (5) The Authority, in determining fees under Division 1A of Part 11, must have regard to the guidelines under subsection (1)(a) about those fees.
- (6) The Authority must have regard to the guidelines under subsection (1)(b) in fixing charges for the provision of services.
- (7) A municipal building surveyor or private building surveyor must have regard to any relevant guideline under subsection (1)(c) or (d) in carrying out a function under this Act or the regulations.

S. 188(5)
amended by
Nos 15/2016
s. 18(1),
21/2017
s. 11(2).

S. 188(6)
amended by
No. 34/2013
s. 34(Sch. 1
item 26).

S. 188AA
inserted by
No. 46/2018
s. 53.

188AA Ministerial directions to building surveyors

- (1) The Minister may from time to time issue directions relating to the functions of municipal building surveyors and private building surveyors under this Act or the regulations that are not inconsistent with this Act or the regulations.
- (2) A direction issued under subsection(1) must be published in the Government Gazette.
- (3) A municipal building surveyor or private building surveyor must comply with any relevant direction issued under subsection (1) in carrying out a function under this Act or the regulations.

188A Decision guidelines on design and siting of single dwellings⁷

S. 188A
inserted by
No. 30/2001
s. 3.

- (1) The Minister may from time to time issue guidelines relating to the design and siting of single dwellings.
- (2) Without limiting subsection (1), these matters may include—
 - (a) matters relating to the consideration of neighbourhood character and amenity and the acceptability of the design and siting of the proposed dwelling in the neighbourhood;
 - (b) matters relating to the availability of light to, and the overshadowing of, nearby buildings and allotments;
 - (c) matters relating to privacy and overlooking, in relation to nearby buildings and allotments;
 - (d) matters relating to the height of a building, and the distances from buildings to the boundaries of an allotment or to nearby buildings;
 - (e) matters relating to how much of an allotment may be used for buildings, how much of an allotment may be covered by impermeable surfaces and the provision of open spaces on an allotment;
 - (f) matters relating to the preservation of trees, and of architectural or heritage features;
 - (g) matters relating to the provision of car parking in relation to an allotment;
 - (h) matters relating to the use of impermeable surface materials on an allotment and their effect on drainage and runoff;

- (i) matters relating to the energy efficiency of buildings;
 - (j) matters relating to fences and boundary walls on an allotment.
- (3) The guidelines must be published in the Government Gazette.
- (4) In this section *single dwelling* means a building, or buildings, of a class specified by the regulations for the purposes of this section that is, or are, intended to be used as a dwelling.

S. 189
amended by
No. 34/2013
s. 34(Sch. 1
item 27),
substituted by
No. 21/2017
s. 77.

189 Delegation of Minister's functions

- (1) The Minister may by instrument delegate to the Authority any of the Minister's functions under this Act, other than the Minister's power under section 192A(1).
- (2) The Minister may by instrument delegate to any person employed as an executive (within the meaning of the **Public Administration Act 2004**) of the Department of Environment, Land, Water and Planning, the Minister's power under section 192A(1) or 192B(1).

S. 189(2)
amended by
No. 46/2018
s. 54.

S. 190
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 28).

190 Minister may require Authority to act as building surveyor

- (1) If the Minister is of the opinion that it is in the public interest to do so, the Minister may declare any or all of the functions of a municipal building surveyor under this Act and the regulations are to be carried out by the Authority⁸ in relation to the following—
 - (a) specified building work or a class of building work situated within a municipal district or part of that district;

S. 190(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 29),
substituted by
No. 46/2018
s. 55.

- (b) a specified building or class of building situated within a municipal district or part of that district;
 - (c) specified land or a class of land situated within a municipal district or part of that district.
- (2) A declaration under subsection (1) must be published in the Government Gazette.

191 Administration and enforcement outside municipal district

- (1) The Minister may declare that the administration and enforcement of Parts 3, 4, 5, 7 and 8 and the building regulations in any area not being part of a municipal district is to be carried out—
- (a) by a person or body specified by the Minister; and
 - (b) in accordance with the directions of the Minister.
- (2) A declaration or direction under subsection (1) must be published in the Government Gazette.
- (3) Parts 3, 4, 5, 7 and 8 and the building regulations apply to an area referred to in subsection (1) as if—
- (a) any reference to a council were a reference to the person or body specified in the declaration; and
 - (b) any reference to a municipal building surveyor were a reference to a building surveyor registered under Part 11 and authorised in writing by that person or body; and
 - (c) any reference to a municipal district were a reference to that area; and

- (d) any reference in section 66 or clause 1 of Schedule 2 to the **Local Government Act 1989** were a reference to guidelines under section 188 of this Act.

192 Alpine resorts

S. 192(1)
substituted by
No. 89/1997
s. 70(1).

- (1) The Minister, after consulting with the councils concerned, may declare that the administration and enforcement of Parts 3, 4, 5, 7 and 8 and the building regulations in an alpine resort (within the meaning of the **Alpine Resorts Act 1983**) is to be carried out by the Board (within the meaning of the **Alpine Resorts (Management) Act 1997**).
- (2) A declaration under subsection (1) must be published in the Government Gazette.
- (3) Parts 3, 4, 5, 7 and 8 and the building regulations apply in an alpine resort referred to in subsection (1) as if—

S. 192(3)(a)
substituted by
No. 89/1997
s. 70(2)(a).

- (a) any reference to a council were a reference to the Board of the resort; and

S. 192(3)(b)
amended by
No. 89/1997
s. 70(2)(b).

- (b) any reference to a municipal building surveyor were a reference to a building surveyor registered under Part 11 and authorised in writing by the Board of the resort; and
- (c) any reference to a municipal district were a reference to the alpine resort; and
- (d) any reference in section 66 or clause 1 of Schedule 2 to the **Local Government Act 1989** were a reference to guidelines under section 188 of this Act.

192A Designated bushfire prone areas

S. 192A
inserted by
No. 21/2017
s. 78.

- (1) The Minister may determine that an area which is subject, or which is likely to be subject, to bushfires is a designated bushfire prone area.
- (2) A determination under subsection (1) must be published in the Government Gazette, and takes effect on the later of—
 - (a) the day of publication; or
 - (b) any later day specified in the determination.
- (3) The Minister must prepare a map that describes all areas that are designated from time to time as bushfire prone areas by any determination under subsection (1).

Note

The map prepared for the purpose of this subsection, including the map as amended from time to time, will be published on the Land Channel website www.land.vic.gov.au.

- (4) If the Minister alters a designated bushfire prone area or creates a new designated bushfire prone area in a determination under subsection (1), the Minister must, as soon as practicable after making the determination, amend the map prepared under subsection (3) to describe the altered designated bushfire prone area or the new designated bushfire prone area (as the case requires).
- (5) The Minister must give a copy of any map prepared under this section to the Authority.
- (6) The Authority must make a copy of any map given to the Authority under subsection (5) available without charge for inspection by members of the public during business hours at the Authority.

- (7) The Minister must, as soon as practicable after preparing any map under this section, give a copy of the map to each council in respect of which a designated bushfire prone area described by the map is wholly or partially within the council's municipal district.
- (8) A council must make a copy of the most recent map given to it under subsection (7) available for inspection by members of the public without charge during business hours at the office of that council.

S. 192B
inserted by
No. 46/2018
s. 56.

192B Declaration prohibiting use of high risk external wall cladding products

- (1) The Minister may, by notice published in the Government Gazette, declare that an external wall cladding product is prohibited from being used by any person in the course of carrying out any building work in connection with the construction of a building.
- (2) A declaration under subsection (1) does not apply in relation to the use of an external wall cladding product under a permit in respect of which the application for the permit was made to the relevant building surveyor before the declaration took effect.
- (3) The Minister may make a declaration under subsection (1) if the Minister is satisfied that use of the external wall cladding product is or will likely cause—
 - (a) occupants of the building to be at risk of death or serious injury; or
 - (b) occupants of neighbouring buildings to be at risk of death or serious injury; or
 - (c) members of the public to be at risk of death or serious injury; or

- (d) property to be at risk of severe damage.
- (4) A risk referred to in subsection (3) may arise from the use of the external wall cladding product in particular circumstances or because of a certain event including a fire.
- (5) A declaration under this section may apply in relation to—
- (a) a specified use, a class of use or all uses of the external wall cladding product; or
 - (b) a specified building or a specified class of building; or
 - (c) specified persons or a specified class of persons.
- (6) A declaration under this section may be subject to conditions.
- (7) A declaration under this section must include the Minister's reasons for making the declaration.
- (8) At least 48 hours before publishing a declaration under this section in the Government Gazette, the Minister must publish a notice on the Internet that—
- (a) includes a draft of the proposed declaration; and
 - (b) a statement that the Minister intends to make the declaration in no less than 48 hours after the publication of the notice—

unless the Minister believes that the risk of using the external wall cladding product is so serious that in the interests of public safety the declaration must be made immediately.

- (9) A declaration under this section takes effect on the later of the following—
- (a) the date the declaration is published in the Government Gazette;
 - (b) any later date specified in the declaration.
- (10) Before a declaration is made under this section, the Minister may publish a draft of the proposed declaration on the Internet that includes—
- (a) the Minister's reasons for deciding to make the declaration; and
 - (b) a statement that submissions may be made by any person within 28 days after the publication of the draft.
- (11) A person may make a submission to the Minister on the proposed declaration within 28 days after the publication of the draft of the proposed declaration.
- (12) The Minister must consider any submission on the proposed declaration received within 28 days after the draft of the proposed declaration is published.
- (13) The Minister may amend a declaration and in that case the procedures in this section apply as if the amendment were a declaration made under subsection (1).
- (14) The Minister must ensure that a current version of any amended declaration is published on the Internet for as long as the declaration is in force.
- (15) The Minister may, by a notice published in the Government Gazette, revoke a declaration under this section.
- (16) A revocation under subsection (15) takes effect on the day that the notice under subsection (15) is published in the Government Gazette.

Division 2—Victorian Building Authority

Subdivision 1—Establishment

193 Establishment of Authority

The Victorian Building Authority is established.

194 Authority is a body corporate

- (1) The Authority—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued; and
 - (d) may acquire, hold and dispose of real and personal property; and
 - (e) may do and suffer all acts and things that a body corporate may by law do and suffer.
- (2) The official seal of the Authority—
 - (a) must be kept in the custody that the Authority directs; and
 - (b) must not be used except as authorised by the Authority.
- (3) All courts and persons acting judicially must—
 - (a) take judicial notice of the official seal of the Authority affixed to any document; and
 - (b) presume that the seal was duly affixed.

Pt 12 Div. 2
(Heading and
ss 193–205)
amended⁹,
substituted as
Pt 12 Div. 2
(Heading and
ss 193–205R)
by No.
34/2013 s. 4.

S. 193
substituted by
No. 34/2013
s. 4.

S. 194
substituted by
No. 34/2013
s. 4.

S. 195
substituted by
No. 34/2013
s. 4.

195 Authority accountable to Minister

- (1) The Authority is subject to the direction and control of the Minister. Those directions may be general or specific.
- (2) In giving a direction under subsection (1), the Minister may have regard to any advice of the Building Advisory Council or the Plumbing Advisory Council.
- (3) The Authority must give the Minister any information and assistance that the Minister requires and the Authority is able to give.

S. 196
substituted by
No. 34/2013
s. 4.

196 Authority to comply with certain directions by gas safety Minister

- (1) The Minister administering the **Gas Safety Act 1997** may give the Authority written directions in relation to the carrying out of the Authority's functions to the extent that this affects gas safety and persons carrying out gasfitting work.
- (2) A direction must not be given if it affects one person only.
- (3) The Authority must comply with a direction given under this section.

S. 197
substituted by
No. 34/2013
s. 4.

197 Functions of the Authority

The Authority has the following functions—

S. 197(ab)
inserted by
No. 15/2016
s. 18(8).

- (a) to monitor and enforce compliance with this Act and the regulations;
- (ab) to administer the scheme under Part 11 for the registration of building practitioners;

S. 197(ac)
inserted by
No. 15/2016
s. 18(8).

- (ac) to supervise and monitor the conduct and ability to practise of registered building practitioners;

- (ad) to make recommendations to the Minister about the qualifications for registration of building practitioners;
- (ae) to issue certificates of consent;

- (b) to administer the scheme under Part 12A for the licensing and registration of plumbers;
- (c) to participate on behalf of Victoria in the development of national building standards and national plumbing standards;
- (d) to monitor developments relevant to the regulation of building standards and plumbing standards in Victoria;
- (e) to promote the maintenance of adequate levels of competence among plumbers;
- (f) to provide information (including to consumers) on matters relating to—
 - (i) building standards and plumbing standards; and
 - (ii) the regulation of buildings, building work and building practitioners; and
 - (iii) the regulation of plumbing work and plumbers;
- (g) to provide information and training to assist persons and bodies in carrying out functions under this Act or the regulations;
- (h) to promote the resolution of consumer complaints about work carried out by builders and plumbers;
- (i) to conduct or promote research relating to the regulation of the building industry and the plumbing industry in Victoria and to

S. 197(ad)
inserted by
No. 15/2016
s. 18(8).

S. 197(ae)
inserted by
No. 15/2016
s. 18(8).

report on the outcomes of this research in its report of operations under the **Financial Management Act 1994**;

- (j) to monitor the system of collection of the building permit levy;
- (k) to charge and collect fees (determined in accordance with this Act and the regulations) for information and training services provided by the Authority;
- (l) to administer the Victorian Building Authority Fund;
- (m) to advise the Minister on the carrying out of the Authority's functions under this Act and on any other matter referred to it by the Minister;
- (n) to carry out any other function conferred on the Authority by or under this or any other Act or under any agreement to which the State is a party.

S. 198
substituted by
No. 34/2013
s. 4.

198 General powers of the Authority

The Authority may do all things necessary or convenient to enable it to carry out its functions.

S. 199
substituted by
Nos 34/2013
s. 4, 15/2016
s. 55.

199 Delegation by the Authority

S. 199(1)
amended by
No. 21/2017
s. 39.

- (1) The Authority may by instrument delegate to any person any of its functions except a function under section 80D or 205M.

S. 199(2)
amended by
No. 21/2017
s. 39.

- (2) The Authority may by instrument delegate a function under section 80D or 205M to the chief executive officer of the Authority.

Subdivision 2—VBA Board and staff of the Authority

200 Victorian Building Authority Board

**S. 200
substituted by
No. 34/2013
s. 4.**

- (1) The Authority has a governing body known as the Victorian Building Authority Board.
- (2) The VBA Board consists of—
 - (a) a Chief Commissioner who is to be chairperson of the Board; and
 - (b) a Deputy Chief Commissioner who is to be deputy chairperson of the Board; and
 - (c) at least three other Commissioners.
- (3) The VBA Board—
 - (a) is responsible for the governance and strategic management of the Authority; and
 - (b) may carry out the functions of the Authority.
- (4) All acts and things done in the name of, or on behalf of, the Authority by or with the authority of the VBA Board are taken to have been done by the Authority.

201 Appointment of Commissioners to VBA Board

**S. 201
substituted by
No. 34/2013
s. 4.**

- (1) Each Commissioner is to be appointed by the Governor in Council on the recommendation of the Minister.
- (2) The Minister must, so far as is practicable, ensure that the Commissioners appointed have between them skills, experience and knowledge in relation to building, plumbing, architecture, the interests of consumers, dispute resolution, insurance, law, financial management, public administration and the administration of regulatory regimes.

- (3) The Minister must recommend for appointment a person nominated by the Minister responsible for administering the **Domestic Building Contracts Act 1995**.
- (4) The Minister must recommend for appointment a person nominated by the Minister responsible for administering the **Victorian Managed Insurance Authority Act 1996**.
- (5) A Commissioner who was, immediately before being appointed, a member of a statutory superannuation scheme within the meaning of the **Superannuation (Public Sector) Act 1992**, continues to be a member of that superannuation scheme subject to the Act under which the scheme was created.

S. 202
substituted by
No. 34/2013
s. 4.

202 Application of Schedule 3

Part 1 and clauses 9, 10 and 11 of Schedule 3 apply in relation to the VBA Board.

S. 203
substituted by
No. 34/2013
s. 4.

203 Chief executive officer

- (1) The Authority may, with the approval of the Minister, appoint a person as the chief executive officer of the Authority.
- (2) The chief executive officer is responsible to the VBA Board for the day to day management of the Authority.
- (3) The chief executive officer holds office on the terms and conditions determined by the Authority with the approval of the Minister.
- (4) The chief executive officer must not engage in paid employment outside the office of chief executive officer without the permission of the Authority.
- (5) If the chief executive officer was, immediately before being appointed, a member of a statutory superannuation scheme within the meaning of the

Superannuation (Public Sector) Act 1992, the chief executive officer continues to be a member of that superannuation scheme subject to the Act under which the scheme was created.

- (6) The Authority must not appoint as chief executive officer a person who is a Commissioner or a member of the Building Appeals Board, the Building Advisory Council, the Building Regulations Advisory Committee or the Plumbing Advisory Council.
- (7) The Authority may remove the chief executive officer from office with the approval of the Minister.

S. 203(6)
amended by
No. 15/2016
s. 18(9).

204 Authority staff

- (1) The Authority may appoint or engage—
- (a) a Registrar of the Victorian Building Authority; and
- (b) a Registrar of the Building Appeals Board; and

S. 204
substituted by
No. 34/2013
s. 4.

* * * * *

S. 204(1)(c)
repealed by
No. 15/2016
s. 18(7).

- (d) as many other persons as are required to enable the Authority to carry out its functions.
- (2) The Authority may engage a person—
- (a) as an employee of the Authority; or
- (b) as a contractor or consultant; or
- (c) under a secondment or other arrangement for the services of persons employed under Part 3 of the **Public Administration Act 2004**.

- (3) A person who was, immediately before being engaged as an employee by the Authority, a member of a statutory superannuation scheme within the meaning of the **Superannuation (Public Sector) Act 1992**, continues to be a member of that superannuation scheme subject to the Act under which the scheme was created.

Pt 12 Div. 2
Subdiv. 2A
(Heading and
ss 204A–
204C)
inserted by
No. 21/2017
s. 40.

Subdivision 2A—VBA inspectors

S. 204A
inserted by
No. 21/2017
s. 40.

204A Appointment of inspectors

- (1) The Authority may appoint as a VBA inspector—
- (a) a person appointed or engaged by the Authority under section 204; or
 - (b) a person appointed as an inspector, enforcement officer, authorised officer or authorised person by or under any other Act; or
 - (c) a person appointed or authorised as an inspector, investigator, authorised officer or authorised person under a prescribed interstate Act.
- (2) An appointment under subsection (1) must be made by instrument.
- (3) The Authority must not appoint a person as a VBA inspector unless the Authority is satisfied that the person is appropriately qualified or has successfully completed appropriate training.
- (4) A VBA inspector appointed under subsection (1)(a) or (b) may also be appointed or authorised under a prescribed interstate Act as an inspector,

investigator, authorised officer or authorised person under that Act.

(5) In this section—

interstate Act means an Act of another State or Territory.

204B VBA inspector's identification

S. 204B
inserted by
No. 21/2017
s. 40.

The Authority must issue identification to each VBA inspector that—

- (a) contains a photograph of the VBA inspector; and
- (b) states the name of the VBA inspector; and
- (c) states the fact that the VBA inspector is appointed by the Authority.

204C Production of identification

S. 204C
inserted by
No. 21/2017
s. 40.

(1) A VBA inspector must produce the VBA inspector's identification for inspection—

- (a) before exercising a power under this Act or the regulations; and
- (b) at any time during the exercise of a power under this Act or the regulations, if asked to do so.

Penalty: 1 penalty unit.

(2) Subsection (1) does not apply to—

- (a) a requirement made by post; or
- (b) the exercise of a power of entry under section 228I(1).

Subdivision 3—Victorian Building Authority Fund

205 Establishment and structure

S. 205
substituted by
No. 34/2013
s. 4.

(1) The Authority must establish and administer a fund to be known as the Victorian Building Authority Fund.

- (2) The Victorian Building Authority Fund is to be divided into—
 - (a) the Building account; and
 - (b) the Plumbing account.
- (3) The Building account is to be divided into the following accounts—
 - (a) building general account;
 - (b) building permit levy account;
 - (c) domestic building account;
 - (d) domestic building dispute account.

S. 205A
inserted by
No. 34/2013
s. 4.

205A Payments into Building account

- (1) There must be paid into the Building account—
 - (a) all money received or recovered by or on behalf of or paid to the Minister under this Act and the regulations; and
 - (b) all money received or recovered by or on behalf of, or paid to, the Authority under this Act and the regulations or under any other Act or regulations (other than money required by section 205C(a) to be paid into the Plumbing account); and
 - (c) any amounts received by a municipal building surveyor or private building surveyor on account of the building permit levy; and

S. 205A(1)(d)
repealed by
No. 15/2016
s. 18(7).

* * * * *

- (e) any costs or fees received by or on behalf of the Building Appeals Board; and
- (f) income from the investment of the Building account; and

- (g) money appropriated by Parliament for the purposes of the Building account; and
 - (h) any other money required or authorised by or under this or any other Act or the regulations to be paid into the Victorian Building Authority Fund. S. 205A(1)(h) amended by No. 21/2017 s. 95(9).
- (2) Amounts paid into the Building account on account of the building permit levy payable under section 205G(1) must be credited to the building permit levy account.
 - (3) Amounts paid into the Building account that are fees or fines received or recovered by or on behalf of the Authority in relation to the registration or discipline of building practitioners engaged in domestic building work must be credited to the domestic building account. S. 205A(3) amended by No. 15/2016 s. 18(1).
 - (4) Amounts paid into the Building account on account of the building permit levy payable under section 205G(2) must be credited to the domestic building dispute account.
 - (5) Other amounts paid into the Building account must be credited to the building general account.

205B Payments out of the Building account

- (1) Subject to subsection (2), there must be paid out of the Building account—
 - (a) any amounts required to enable the Authority to carry out its functions; and
 - (b) any amounts authorised by the Minister to be paid for a purpose relating to the building industry and approved by the Minister; and
 - (c) any costs and expenses incurred by the Authority in administering or enforcing this Act or the regulations, including, but not limited to—
- S. 205B inserted by No. 34/2013 s. 4.

S.
205B(1)(c)(ii)
amended by
No. 15/2016
s. 18(9).

- (i) the remuneration and allowances of the Commissioners; and
- (ii) the remuneration and allowances of members of the Building Appeals Board, the Building Advisory Council and the Building Regulations Advisory Committee; and
- (iii) the costs incurred in appointing or engaging any person for the purposes of this Act or the regulations; and

S. 205B(1)(ca)
inserted by
No. 21/2017
s. 82(1).

- (ca) the costs and expenses of VCAT in relation to proceedings under this Act; and

S. 205B(1)(d)
amended by
No. 21/2017
s. 96(2).

- (d) in accordance with subsection (4), any costs and expenses incurred in the administration of the **Domestic Building Contracts Act 1995** or the regulations under that Act, including, but not limited to, the costs and expenses of VCAT in relation to proceedings under that Act; and
 - (e) any other amounts authorised to be paid out of the Building account by or under this or any other Act.
- (2) Subsection (1) does not apply to any purpose for which amounts are required to be paid out of the Plumbing account under section 205D.
- (3) Amounts paid out of the Building account may be paid—
- (a) out of the building general account or the building permit levy account as the Authority considers appropriate; or
 - (b) out of the domestic building account in accordance with subsection (4), if authorised by the Minister and the Minister

administering the **Domestic Building Contracts Act 1995**; or

- (c) out of the domestic building dispute account in accordance with subsection (5).
- (4) Amounts may be paid out of the domestic building account towards—
 - (a) the costs and expenses referred to in subsection (1)(c) or (ca) to the extent that they relate to the registration or discipline of a builder engaged in domestic building work; and
 - (b) the costs and expenses referred to in subsection (1)(d).
- (5) Amounts may be paid out of the domestic building dispute account to the Domestic Builders Fund established under the **Domestic Building Contracts Act 1995** and to the building permit levy account in the proportions determined from time to time by the Minister administering the **Domestic Building Contracts Act 1995**.

S. 205B(4)(a)
amended by
No. 21/2017
s. 82(2).

205C Payments into the Plumbing account

There must be paid into the Plumbing account—

- (a) all money received or recovered by or on behalf of, or paid, to the Authority under Part 12A or the regulations under that Part or in the enforcement of that Part or those regulations; and
- (b) income from the investment of the Plumbing account; and
- (c) money appropriated by Parliament for the purposes of the Plumbing account.

S. 205C
inserted by
No. 34/2013
s. 4.

S. 205D
inserted by
No. 34/2013
s. 4.

205D Payments out of the Plumbing account

There must be paid out of the Plumbing account—

- (a) any amounts required to enable the Authority to carry out its functions in administering and enforcing Part 12A and the regulations under that Part; and
- (b) any money required to refund any licence, registration or endorsement fee paid in relation to—
 - (i) a plumbing licence or plumbing registration that was not granted or renewed; or
 - (ii) an endorsement under section 221N or 221OA that was not given; and
- (c) the remuneration and allowances of members of the Plumbing Advisory Council.

S. 205E
inserted by
No. 34/2013
s. 4.

205E Authority may invest funds

The Authority may invest any part of the Victorian Building Authority Fund not immediately required for the purposes of the Fund in any manner approved by the Treasurer.

S. 205F
inserted by
No. 34/2013
s. 4.

205F Authority may engage agent in administering Victorian Building Authority Fund

The Authority may enter into arrangements or agreements with any person or body to act as its agent in the carrying out of its functions in relation to the administration of the Victorian Building Authority Fund.

Subdivision 4—Building permit levy

205G Building permit levy must be paid

S. 205G
inserted by
No. 34/2013
s. 4.

- (1) A building permit levy must be paid in the amount of 0.064 cents in every dollar of the cost of building work for which a building permit is required.

S. 205G(1)
amended by
No. 21/2017
s. 66(1).

Note

A levy paid under this subsection is paid into the Building account of the Victorian Building Authority Fund and credited to the building permit levy account (see section 205A(2)).

- (2) In addition to the levy imposed by subsection (1), a building permit levy must be paid in the amount of 0.064 cents in every dollar of the cost of building work for which a building permit is required.

S. 205G(2)
amended by
No. 21/2017
s. 66(1).

Note

A levy paid under this subsection is paid into the Building account of the Victorian Building Authority Fund and credited to the domestic building dispute account (see section 205A(4)).

- (3) The building permit levy—
- (a) is payable by the applicant for the building permit; and
 - (b) must be paid before the building permit can be issued.
- (4) Subsection (3) does not prevent the application from being considered pending payment of the levy.
- (5) A building permit levy is not payable if the cost of the building work (including the cost of labour and materials) is \$10 000 or less.

S. 205H
inserted by
No. 34/2013
s. 4.

205H Building permit levy in building permit process

- (1) An application for a building permit must—
 - (a) specify the contract price for the building work (including the cost of labour and materials), if there is a contract for the work; or
 - (b) in any other case, include sufficient information to enable the relevant building surveyor to estimate the cost of the building work (including the cost of labour and materials).
- (2) The relevant building surveyor to whom an application for a building permit is made may consider the application pending payment of the levy.
- (3) Without limiting the circumstances in which a relevant building surveyor can refuse to issue a building permit, the relevant building surveyor must refuse an application for a building permit if—
 - (a) the building permit levy is not paid within 90 days after the building surveyor gives the applicant written notice of the levy under section 205I; or
 - (b) the building surveyor is satisfied that the contract price for the building work specified in the application is substantially lower than the price normally payable under contracts for work of that kind; or
 - (c) the building surveyor is satisfied that the application—
 - (i) does not comply with subsection (1)(b); or

- (ii) contains a statement about the cost of the building work that is false or misleading in a material particular.
- (4) The requirements of subsection (1) are in addition to any other requirements under this Act or the regulations in relation to applications for building permits.

205I Determination and notification of levy

S. 205I
inserted by
No. 34/2013
s. 4.

The relevant building surveyor must—

- (a) estimate the cost of the building work (including the cost of labour and materials) for which a building permit is sought, having regard to the information given under section 205H(1)(a) or (b); and
- (b) without delay give the applicant written notice of—
 - (i) the estimate; and
 - (ii) the amount of levy payable.

205J Other duties of relevant building surveyor

S. 205J
inserted by
No. 34/2013
s. 4.

- (1) A relevant building surveyor must in accordance with the regulations—
 - (a) keep records of—
 - (i) amounts received by the building surveyor on account of the building permit levy; and
 - (ii) amounts of levy the building surveyor has forwarded to the Authority for payment into the Victorian Building Authority Fund; and
 - (b) make those records available to be inspected by or on behalf of the Authority; and

- (c) forward the amounts received to the Authority for payment into the Victorian Building Authority Fund; and
- (d) give to the Authority periodic returns setting out—
 - (i) whether or not the building surveyor has received any amount of levy in the return period; and
 - (ii) if any levy has been received, the amount received and the amount forwarded to the Authority; and
 - (iii) any other prescribed information.
- (2) On the application by a relevant building surveyor, the Authority may exempt the building surveyor from the requirements of subsection (1)(d) for a specified period if the Authority is satisfied that, due to illness or other reasonable cause, the building surveyor will not receive any levy during that period.
- (3) An application and an exemption under subsection (2) must be in writing.

S. 205K
inserted by
No. 34/2013
s. 4.

205K Authority may recover unpaid levy

The Authority may recover money payable to the Victorian Building Authority Fund under section 205J(1)(c) in a court of competent jurisdiction as a debt due to the Authority.

Subdivision 5—Specific powers of Authority relating to building surveyors

* * * * *

S. 205L
inserted by
No. 34/2013
s. 4,
repealed by
No. 15/2016
s. 18(10).

205M Directions and recommendations in relation to building surveyors

S. 205M
inserted by
No. 34/2013
s. 4.

- (1) If it considers it necessary for the purposes of this Act or the regulations, the Authority may direct a municipal building surveyor or private building surveyor to carry out his or her functions under this Act or the regulations—
 - (a) in accordance with this Act or the regulations; or
 - (b) within a period specified in the direction.
- (2) The Authority, in giving a direction under subsection (1)(b), must not vary a time limit prescribed by this Act or the regulations.
- (3) If it considers it necessary for the purposes of this Act or the regulations, the Authority may recommend to the person who appointed a municipal building surveyor or private building surveyor that the person take action specified by the Authority.
- (4) Subject to subsection (4B), before giving a direction or making a recommendation under this section, the Authority must give the municipal building surveyor or private building surveyor concerned a written notice stating—
 - (a) the Authority's intention; and
 - (b) the period (being not less than 7 days after the giving of the notice) within which the building surveyor may make submissions to the Authority about the matter.
- (4A) The Authority may specify a period shorter than the 7 day period referred to in subsection (4)(b) in an emergency.

S. 205M(4)
substituted by
No. 15/2016
s. 42,
amended by
No. 46/2018
s. 58(1)(a).

S. 205M(4)(b)
amended by
No. 46/2018
s. 58(1)(b).

S. 205M(4A)
inserted by
No. 15/2016
s. 42,
amended by
No. 46/2018
s. 58(2).

S. 205M(4B)
inserted by
No. 46/2018
s. 58(3).

- (4B) If the Authority believes on reasonable grounds that a high risk external wall cladding product has been used in connection with any building work relating to a function of a municipal building surveyor or private building surveyor, the Authority does not have to give the building surveyor a notice under subsection (4).
- (5) The Authority must give a copy of any direction or recommendation under this section to the municipal building surveyor or private building surveyor concerned.

S. 205N
inserted by
No. 34/2013
s. 4.

**205N Authority may act as municipal building surveyor—
general**

- (1) The Authority may carry out the functions of a municipal building surveyor under this Act and the regulations in relation to—
- (a) any application for a building permit made to the Authority under Part 3; and
 - (b) any matter referred to the Authority by a private building surveyor under Part 8; and
 - (c) a place of public entertainment (other than a prescribed temporary structure) for which the Authority has issued an occupancy permit.
- (2) The Authority's functions under subsection (1) are in addition to any function of a municipal building surveyor conferred on the Authority under Division 1.

S. 205O
inserted by
No. 34/2013
s. 4.

**205O Effect of Authority acting as municipal building
surveyor**

- (1) In carrying out a function of a municipal building surveyor under Division 1 or section 205N, the Authority has the same powers that the municipal building surveyor would have to carry out the function.

- (2) A determination of the Authority in carrying out a function of a municipal building surveyor under Division 1 or section 205N must be given effect to as if it were the determination of a municipal building surveyor.
- (3) If, in carrying out any function of a municipal building surveyor, the Authority carries out any work or takes any action under Part 8, the Authority may—
 - (a) recover the costs of carrying out the work or taking the action from the owner in a court of competent jurisdiction as a debt due to the Authority; and
 - (b) apply any amount or part of any amount for which a bond or undertaking is deposited with the Authority under a condition imposed on a permit under section 22 towards the costs of carrying out the work or taking the action.

205P Authority as relevant building surveyor for certain occupancy permits

S. 205P
inserted by
No. 34/2013
s. 4.

The Authority is, and may carry out the functions of, the relevant building surveyor under Part 5 in relation to—

- (a) an application to the Authority for an occupancy permit under section 53(2); and
- (b) the issue of that permit; and
- (c) the amendment or cancellation of that permit.

205Q Building surveyor not to carry out function

S. 205Q
inserted by
No. 34/2013
s. 4.

- (1) This section applies if the Authority carries out any of the following functions in relation to building work or a building or land—

- (a) a function as a municipal building surveyor under Division 1;
 - (b) a function under section 205N or 205P.
- (2) A municipal building surveyor or private building surveyor must not carry out a function to which this section applies in relation to the same building work, building or land.

S. 205R
inserted by
No. 34/2013
s. 4.

205R Minister's guidelines apply to applications to Authority

If an application is made to the Authority under this Act for a permit or a temporary approval or an amendment to a permit or approval, section 66 or clause 1 of Schedule 2 (as the case requires) applies as if a reference in that section or clause to the **Local Government Act 1989** were a reference to guidelines under section 188 of this Act.

Division 3—The Building Advisory Council

206 Establishment of Council

There is established by this Act a Council to be called the Building Advisory Council.

207 Membership and procedure

- (1) The members of the Building Advisory Council are to be appointed by the Minister.
- (2) Of those members—

S. 207(2)(a)
substituted by
No. 18/1998
s. 7(1).

- (a) one is to be a person appointed as chairperson of the Council; and

S. 207(2)(aa)
inserted by
No. 18/1998
s. 7(1),
repealed by
No. 34/2013
s. 5(1)(a).

* * * * *

Building Act 1993
No. 126 of 1993
Part 12—Building administration

- | | |
|--|---|
| (ab) one is to be the Chief Commissioner or a Commissioner nominated by the Chief Commissioner; and | S. 207(2)(ab) inserted by No. 75/1998 s. 4(1), substituted by No. 34/2013 s. 5(1)(a). |
| (b) one is to be nominated by the Royal Australian Institute of Architects, Victorian Chapter; and | |
| (ba) one is to be nominated by the Building Designers Association of Victoria Inc.; and | S. 207(2)(ba) inserted by No. 34/2013 s. 5(1)(b). |
| (c) one is to be nominated by the Master Builders Association of Victoria; and | |
| (d) one is to be nominated by the Housing Industry Association, Victorian/Tasmanian Division; and | |
| (e) one is to be nominated by the Property Council of Australia, Victoria Division; and | S. 207(2)(e) amended by No. 34/1997 s. 18. |
| (f) one is to be nominated by the Australian Institute of Building Surveyors, Victorian Chapter; and | S. 207(2)(f) amended by No. 71/1995 s. 18(1). |
| (g) one is to be a person who in the Minister's opinion, has experience in the building industry or in matters related to that industry; and | S. 207(2)(g) inserted by No. 71/1995 s. 18(1), amended by No. 68/2001 s. 8(3)(a). |

S. 207(2)(h)
inserted by
No. 68/2001
s. 8(3)(b),
substituted by
No. 18/2005
s. 18(Sch. 1
item 10.3),
amended by
No. 17/2014
s. 160(Sch. 2
item 11).

(h) at least one is to be an Australian lawyer of at least 5 years' standing; and

S. 207(2)(i)
inserted by
No. 68/2001
s. 8(3)(b).

(i) at least one is to be a person who, in the Minister's opinion, is able to represent the interests of users of the services of building practitioners.

S. 207(2A)
inserted by
No. 34/2013
s. 5(2).

(2A) For the purposes of subsection (2)(ab), the Chief Commissioner may nominate a Commissioner to act in the place of the Chief Commissioner in his or her absence.

(3) If there is to be a vacancy in the membership of the Building Advisory Council, the Minister may request the relevant organisation to make a nomination for appointment within a period specified in the request.

(4) The Minister may appoint an otherwise eligible person to be a member of the Building Advisory Council without a nomination, if that request is not complied with.

(5) Parts 1 and 2 (except for clause 8) of Schedule 3 apply to the membership and procedure of the Building Advisory Council in the same way as they apply to a Board.

S. 207(6)
inserted by
No. 18/1998
s. 7(2).

(6) The Building Advisory Council is deemed to be the same body despite the change in its membership arising from the amendment of this section by section 7 of the **Building (Amendment) Act 1998**.

208 Function of the Council

The function of the Building Advisory Council is to advise the Minister on any of the following—

- (a) the administration of this Act and the regulations, other than Part 12A and the regulations made under that Part;
- (b) the impact on the building regulations system established by this Act of regulations made under any other Act;
- (c) issues relating to the building permit levy;
- (d) any matter referred to it by the Minister.

S. 208(a)
substituted by
No. 75/1998
s. 4(2).

Division 4—The Building Regulations Advisory Committee

209 Establishment of Committee

There is established by this Act a Committee to be called the Building Regulations Advisory Committee.

210 Membership and procedure

- (1) The members of the Building Regulations Advisory Committee are to be appointed by the Minister.
- (2) Of those members—
 - (a) one is to be the Chief Commissioner or a Commissioner nominated by the Chief Commissioner, who is to be chairperson of the Committee;
 - (b) one is to be nominated by the Minister administering Part 4 of the **Project Development and Construction Management Act 1994**;

S. 210(2)(a)
substituted by
No. 34/2013
s. 22(3).

S. 210(2)(b)
amended by
No. 101/1994
s. 64.

S. 210(2)(h)
amended by
No. 34/1997
s. 30(a).

S. 210(2)(i)
amended by
No. 34/1997
s. 18.

S. 210(2)(l)
inserted by
No. 71/1995
s. 19(1),
amended by
No. 68/2001
s. 8(4)(a).

- (c) one is to be nominated by the Minister administering the **Country Fire Authority Act 1958** and the Minister administering the **Metropolitan Fire Brigades Act 1958**;
- (d) one is to be nominated by the Melbourne City Council and is to be a person who, in the Minister's opinion, has experience in matters provided for by this Act or the regulations;
- (e) one is to be chosen from a list of 3 names submitted by the Royal Australian Institute of Architects, Victorian Chapter;
- (f) one is to be chosen from a list of 3 names submitted by the Institution of Engineers, Australia, Victoria Division;
- (g) one is to be chosen from a list of 3 names submitted by the Master Builders Association of Victoria;
- (h) one is to be chosen from a list of 3 names submitted by the Housing Industry Association, Victoria/Tasmania Division;
- (i) one is to be chosen from a list of 3 names submitted by the Property Council of Australia, Victoria Division;
- (j) one is to be chosen from a list of 3 names submitted by the Municipal Association of Victoria;
- (k) two are to be chosen from a list of 6 names submitted by the Australian Institute of Building Surveyors, Victorian Chapter;
- (l) one is to be a person who in the Minister's opinion, has experience in the building industry or in matters related to that industry;

- (m) at least one is to be an Australian lawyer of at least 5 years' standing;
- (n) at least one is to be a person who, in the Minister's opinion, is able to represent the interests of users of the services of building practitioners.
- (2A) For the purposes of subsection (2)(a), the Chief Commissioner may nominate a Commissioner to act in the place of the Chief Commissioner in his or her absence.
- (3) If there is or there is to be a vacancy in the membership of the Building Regulations Advisory Committee under subsection (2)(b) to (k), the Minister may, as appropriate, request the relevant Minister to make a nomination for appointment or the relevant organisation to submit a list of names within a period specified in the request.
- (4) The Minister may appoint an otherwise eligible person to be a member of the Committee without a nomination or list of names, if that request is not complied with.
- (5) Parts 1 and 2 (except for clause 8) of Schedule 3 apply to the membership and procedure of the Building Regulations Advisory Committee in the same way as they apply to a Board.

S. 210(2)(m) inserted by No. 68/2001 s. 8(4)(b), substituted by No. 18/2005 s. 18(Sch. 1 item 10.4), amended by No. 17/2014 s. 160(Sch. 2 item 11).

S. 210(2)(n) inserted by No. 68/2001 s. 8(4)(b).

S. 210(2A) inserted by No. 34/2013 s. 22(4).

211 Functions of Committee

The following are the functions of the Building Regulations Advisory Committee—

S. 211(a)
amended by
No. 54/2007
s. 11(2).

- (a) to advise the Minister on draft regulations prepared under this Act, and in particular the extent to which they promote the objectives of this Act, are cost effective and are necessary;
- (b) to accredit building products, construction methods or designs, components or systems connected with building work for the purposes of this Act and the building regulations;
- (c) to advise the Minister on any matter referred to it by the Minister;
- (d) any other functions conferred by or under this or any other Act.

Pt 12 Div. 4A
(Heading
and ss
211A–211C)
inserted by
No. 34/2013
s. 6.

Division 4A—Plumbing Advisory Council

S. 211A
inserted by
No. 34/2013
s. 6.

211A Establishment of Council

There continues to be a Plumbing Advisory Council.

S. 211B
inserted by
No. 34/2013
s. 6.

211B Membership and procedure

- (1) The members of the Plumbing Advisory Council are to be appointed by the Minister.
- (2) Of those members—
 - (a) one is to be a person with substantial knowledge and experience in relation to the plumbing industry, appointed as chairperson by the Minister; and

- (b) one is to be the Chief Commissioner or a Commissioner nominated by the Chief Commissioner; and
- (c) one is to be a person nominated by the Minister administering the **Water Act 1989**; and
- (d) one is to be a person nominated by the Minister administering the **Gas Safety Act 1997**; and
- (e) one is to be a person nominated by the Minister administering Part 3.1 of Chapter 3 and Part 5.5 of Chapter 5 of the **Education and Training Reform Act 2006**; and
- (f) one is to be a person chosen by the Minister; and
- (g) one is to be a person nominated by a body that, in the opinion of the Minister, represents Victorian employers in relation to all classes of plumbing work; and
- (h) one is to be a person nominated by a body that, in the opinion of the Minister, represents air-conditioning contractors in Victoria; and
- (i) one is to be a person nominated by a body that, in the opinion of the Minister, represents fire protection contractors in Victoria; and
- (j) up to three are to be persons nominated by a body or bodies that, in the opinion of the Minister, represent the industrial interests of employee plumbers; and
- (k) one is a person chosen by the Minister to represent the interests of consumers.

- (3) For the purposes of subsection (2)(b), the Chief Commissioner may nominate a Commissioner to act in the place of the Chief Commissioner in his or her absence.
- (4) If a body referred to in subsection (2)(g), (h), (i) or (j) does not nominate a person within 30 days of being asked to do so in writing, the Minister may appoint a member of that body chosen by the Minister to be a member of the Council.
- (5) Parts 1 and 2 (except for clause 8) of Schedule 3 apply to the membership and procedure of the Council in the same way as they apply to a Board.

S. 211C
inserted by
No. 34/2013
s. 6.

211C Functions

The functions of the Plumbing Advisory Council are—

- (a) to advise the Minister, either at the request of the Minister or on its own initiative, in relation to Part 12A and the plumbing industry; and
- (b) to advise the Authority, either at the request of the Authority or on its own initiative, in relation to Part 12A and the plumbing industry.

Division 5—Role of councils

212 Council to administer building provisions in its municipal district

- (1) Except where otherwise expressly provided in this Act or the building regulations, a council is responsible for the administration and enforcement of Parts 3, 4, 5, 7 and 8 and the building regulations in its municipal district.
- (1A) Subsection (1) is not limited if a private building surveyor is appointed to carry out any functions specified in section 76 or 77 in relation to a

S. 212(1A)
inserted by
No. 21/2017
s. 83.

building or building work in the municipal district of that council.

- (1B) A council is not responsible for enforcing an indictable offence against this Act.

S. 212(1B)
inserted by
No. 47/2017
s. 12.

- (2) Nothing in this section limits a council's powers to act outside its municipal district.

213 Appointment of municipal building surveyor

A municipal council must not appoint, employ or nominate a person as its municipal building surveyor unless the person—

S. 213
repealed by
No. 76/1997
s. 23,
new s. 213
inserted by
No. 36/2008
s. 12,
amended by
No. 21/2017
s. 84.

- (a) is a natural person; and

S. 213(a)
inserted by
No. 21/2017
s. 84.

- (b) is registered as a building surveyor under Part 11 and whose registration authorises the carrying out of work required for performing all the functions of a municipal building surveyor.

S. 213(b)
inserted by
No. 21/2017
s. 84.

214 Agreements with councils or the Authority

S. 214
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 30).

- (1) Despite anything to the contrary in the **Local Government Act 1989**, a council may enter into an agreement with any other council or with the Authority in respect of the carrying out by the Authority or the municipal building surveyor of the second council of any of the functions under

S. 214(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 31).

this Act or the regulations of the municipal building surveyor of the first council.

S. 214(2)
amended by
No. 21/2017
s. 99.

- (2) If a council enters into an agreement with another council under subsection (1) in respect of the carrying out of the functions of a municipal building surveyor, the municipal building surveyor of the second council is taken, while the agreement is in force, to be the municipal building surveyor of the first council for the purpose of carrying out the functions set out in the agreement.

S. 214(3)
amended by
Nos 34/2013
s. 34(Sch. 1
item 31),
21/2017 s. 99.

- (3) If the Authority enters into an agreement with a council under subsection (1) in respect of the carrying out of the functions of a municipal building surveyor, the Authority is taken, while the agreement is in force, to be the municipal building surveyor of that council for the purpose of carrying out the functions set out in the agreement.

S. 214(4)
amended by
No. 34/2013
s. 34(Sch. 1
item 31).

- (4) Nothing in this section prevents the Authority or a council from entering into agreements in respect of the carrying out of the functions of the municipal building surveyor of more than one council.

215 Agreement with private building surveyor

- (1) Despite anything to the contrary in the **Local Government Act 1989**, a council may enter into an agreement with a private building surveyor to carry out the functions under this Act and the regulations of the municipal building surveyor of the council.

- (2) A private building surveyor who enters into an agreement with a council under subsection (1)—
- (a) is taken to be the municipal building surveyor of that council for the purpose of carrying out the functions set out in the agreement; and
 - (b) despite anything to the contrary in the **Local Government Act 1989**, is not a member of staff of the council.

S. 215(2)(a)
amended by
No. 21/2017
s. 99.

216 Council to charge commercial rates for work outside municipal district

- (1) If a council or its municipal building surveyor carries out any function under this Act or the building regulations in respect of a building or land outside the council's municipal district, then despite anything to the contrary in the **Local Government Act 1989**, the fees or charges payable to the council or municipal building surveyor in respect of the carrying out of that function must be not less than the total cost of carrying out that function.
- (2) Subsection (1) does not apply to a function carried out by a council or municipal building surveyor on behalf of another council or municipal building surveyor.

216A Exemption from functions in relation to certain permits

S. 216A
inserted by
No. 18/1998
s. 8.

- (1) A council may apply to the Minister to exempt its municipal building surveyor from any requirement to consider applications for building permits for building work other than prescribed domestic building work.
- (2) The Minister may grant the exemption if the Minister is satisfied that sufficient private building surveyors are available to consider

those applications for building permits in relation to land in the council's municipal district.

- (3) If the Minister grants an exemption in respect of a municipal building surveyor, then, despite anything to the contrary in this Act and while the exemption is in force, an application cannot be made to the municipal building surveyor under Part 3 for a building permit for building work other than prescribed domestic building work.
- (4) The Minister may at any time revoke an exemption given under this section.
- (5) The Minister must cause notice of any exemption or revocation under this section to be published in the Government Gazette.

S. 216B
inserted by
No. 68/2001
s. 11,
amended by
No. 36/2008
s. 13,
substituted by
No. 21/2017
s. 85.

216B Delegation by municipal building surveyor

The municipal building surveyor of a council may, by instrument, delegate any of the municipal building surveyor's functions under this Act or the regulations to any person employed or engaged by the council who is registered as a building surveyor or a building inspector under Part 11 and whose registration authorises the carrying out of the work required for performing the functions to be delegated by the municipal building surveyor.

S. 216C
inserted by
No. 36/2008
s. 14.

216C Role of municipal building surveyor outside municipal district

- (1) A municipal building surveyor of a council, with the consent of that council, may be appointed to carry out all or any of the following functions under this Act in respect of land outside the municipal district of that council—
 - (a) the issuing of building permits;
 - (b) the carrying out of inspections of buildings and building work under Part 4;

- (c) the issuing of occupancy permits and temporary approvals under Part 5.
- (2) In addition to subsection (1), a municipal building surveyor of a council who is appointed pursuant to subsection (1) may carry out outside the municipal district of that council any other functions conferred on a private building surveyor by this Act or the regulations.
- (3) A municipal building surveyor may use the title of municipal building surveyor in carrying out functions referred to in this section.
- (4) Sections 78 to 83 apply to a municipal building surveyor who is appointed to carry out functions pursuant to subsection (1) as if—
- (a) a reference in sections 78(1), 78(1A), 78(3) and 78(4), 78A, 78B, 79(1), 79(1A), 79(2), 80, 80C(1), 81(1) to 81(3) and 83 to a private building surveyor were a reference to the municipal building surveyor; and
 - (b) a reference in sections 78(2), 79(3), 81(4), 82(1)(b) and 82(3) to a private building surveyor (where first occurring) were a reference to the municipal building surveyor; and
 - (c) a reference in section 82(2) to a private building surveyor (where first and thirdly occurring) were a reference to the municipal building surveyor; and
 - (d) a reference in sections 81(4) and 82 to a private building surveyor's functions were a reference to the municipal building surveyor's functions; and
 - (e) a reference to a function set out in section 76 of the Act were a reference to a function set out in subsection (1).

S. 216C(4)(a)
amended by
Nos 15/2016
s. 43, 21/2017
s. 86,
substituted by
No. 21/2017
s. 41.

- (5) Nothing in this section limits or affects the operation of sections 191, 192, 214, 215, 216 or 221.
- (6) The enactment of this section does not affect the validity of any permit issued by a municipal building surveyor of a council outside the municipal district of that council before that enactment.

Division 6—The Crown and public authorities

217 Application of Act to the Crown and public authorities

S. 217(1)
amended by
Nos 39/1996
s. 7, 34/1997
s. 19(1),
85/2000 s. 8,
46/2008
s. 248(6),
34/2013
s. 19(5).

- (1) Subject to subsection (2), Parts 2, 3, 4, 5, 7, 9, 10, 11, and 12A, Subdivision 4 of Division 2 of Part 12 and this Division—
 - (a) bind the Crown in right of the State of Victoria and, so far as the legislative power of Parliament permits, the Crown in all its other capacities; and
 - (b) apply to a public authority.
- (2) Section 134 does not apply to the Crown or a public authority unless an occupancy permit or certificate of final inspection is obtained by the Crown or the public authority in respect of the building work concerned.

S. 217(2A)
inserted by
No. 71/1995
s. 20,
substituted by
No. 34/1997
s. 19(2).

- (2A) Despite anything to the contrary in this Act, a provision of this Act applies to a lessee or licensee of Crown land even if the provision does not bind the Crown.

S. 217(2B)
inserted by
No. 68/2001
s. 12.

- (2B) Despite anything to the contrary in this Act, Part 8 applies to a lessee or licensee of Crown land as if a reference in that Part to the "owner" were a reference to the lessee or licensee.

- (3) If the Crown in any of its capacities or a public authority chooses to proceed under a provision of this Act that would otherwise not be binding on the Crown or public authority, it is bound by—
- (a) that provision; and
 - (b) any provision of this Act conferring jurisdiction on the Building Appeals Board in respect of that provision; and
 - (c) any other provision of this Act or regulations having effect for the purposes of a provision referred to in paragraph (a) or (b).
- (4) Nothing in subsections (1) to (3) makes the Crown or a public authority liable for any offence under this Act or the regulations.
- (5) Nothing in subsections (1) to (3) makes the Crown liable to pay any fee or charge except the building permit levy and the fees payable under Part 10.

* * * * *

S. 217(5)
substituted by
No. 34/1997
s. 19(3).

S. 218
repealed by
No. 34/1997
s. 20.

219 Municipal building surveyor not required to inspect building work

Despite anything in this Act or the building regulations, a municipal building surveyor is not required to inspect building work carried out by or on behalf of the Crown or a public authority.

220 Guidelines for Crown and public authority buildings

- (1) The Minister administering section 8 of the **Financial Management Act 1994**, after consulting the Minister administering this Act, may prepare and publish guidelines to promote better building standards for buildings owned by

S. 220(1)
amended by
No. 28/2007
s. 3(Sch.
item 3).

the Crown or a public authority other than a Council.

- (2) The guidelines may apply to existing or new buildings.
- (3) If a Minister is required to table before Parliament an annual report with respect to the operations of a department or public authority, the Minister must ensure that the report includes a statement about the department's or authority's progress in implementing the guidelines during the period to which the report relates.

221 Authorised building surveyor

- (1) The functions of a municipal building surveyor under any provision of this Act or the regulations which, by virtue of this Division, binds the Crown or a public authority—
 - (a) in relation to building work carried out or to be carried out by or on behalf of the Crown or that public authority; or
 - (b) in relation to any building owned or occupied by or proposed to be occupied by the Crown or that public authority—

shall be carried out by a building surveyor registered under Part 11 and authorised by the Crown or that public authority.

- (2) The Crown or a public authority may in writing authorise a building surveyor registered under Part 11 to carry out the functions referred to in subsection (1).

Part 12A—Plumbing work

Division 1—Preliminary matters

Pt 12A
(Headings
and ss 221A–
221ZZW)
inserted by
No. 39/1996
s. 5.

221A Purpose of this Part

The purpose of this Part is to regulate plumbing work with the aim of ensuring that it is carried out safely and competently.

S. 221A
inserted by
No. 39/1996
s. 5,
amended by
No. 34/2013
s. 26(1).

221B Definitions applying to this Part

(1) In this Part—

S. 221B
inserted by
No. 39/1996
s. 5.

* * * * *

S. 221B(1)
def. of
Board
repealed by
No. 75/1998
s. 5(a)(i).

class of plumbing work means a class of plumbing work specified by the regulations;

class of specialised plumbing work means a class of specialised plumbing work specified by the regulations or in a declaration under section 221ZZZU;

* * * * *

S. 221B(1)
def. of
Commission
inserted by
No. 75/1998
s. 5(a)(ii),
repealed by
No. 34/2013
s. 26(2).

compliance auditor means a person appointed as a compliance auditor under section 221ZZY;

compliance certificate means a certificate referred to in section 221ZH;

emergency plumbing order means an order issued under section 221ZZF;

S. 221B(1)
def. of
*insolvent
under
administration*
repealed by
No. 4/2008
s. 32(Sch.
item 2).

* * * * *

S. 221B(1)
def. of
*licensed
plumber*
amended by
Nos 75/1998
s. 5(a)(iii),
34/2013
s. 34(Sch. 1
item 32(a)).

licensed plumber means a person who is licensed by the Authority under section 221M or 221Q to carry out a particular class or type of plumbing work and includes a person who is temporarily licensed to carry out that work under section 221W, but does not include a person whose licence is suspended;

S. 221B(1)
def. of
*plumbing
apprentice*
amended by
Nos 80/1997
s. 55(Sch. 1
item 1),
24/2006
s. 6.1.2(Sch. 7
item 2.1).

plumbing apprentice means an apprentice within the meaning of the **Education and Training Reform Act 2006** in a plumbing trade;

S. 221B(1)
def. of
*Plumbing
Code of
Australia*
inserted by
No. 31/2007
s. 3,
substituted by
No. 5/2011
s. 6.

Plumbing Code of Australia means the Plumbing Code of Australia set out in Volume Three of the National Construction Code Series including any variations or additions in the Appendix Victoria set out in Appendix A of that Volume;

plumbing inspector means a person appointed as a plumbing inspector under section 221ZZY;

plumbing laws means any provision in any of the following that regulates the carrying out of plumbing work—

- (a) this Part; and
- (b) the **Gas Safety Act 1997**; and
- (c) the **Water Act 1989**; and
- (d) any regulations made under this Part or any Act listed in paragraph (b) or (c);

S. 221B(1)
def. of
plumbing laws
amended by
Nos 99/1997
s. 121(1),
17/2012
s. 83(a).

plumbing notice means a notice issued under section 221ZY;

plumbing order means an order issued under section 221ZZB;

rectification notice means a notice issued under section 221ZW;

registered plumber means a person who is registered by the Authority under section 221O, 221P or 221R to carry out a particular class or type of plumbing work and includes a person who is temporarily registered to carry out that work under section 221W, but does not include a person whose registration is suspended;

S. 221B(1)
def. of
registered plumber
amended by
Nos 75/1998
s. 5(a)(iii),
34/2013
s. 34(Sch. 1
item 32(b)).

Registrar means the Registrar of the Victorian Building Authority appointed or engaged under section 204(1)(a);

S. 221B(1)
def. of
Registrar
substituted by
Nos 75/1998
s. 5(a)(iv),
34/2013
s. 27(1).

required insurance means the insurance required by an order made under section 221ZQ;

specialised plumbing work means any plumbing work—

- (a) that the regulations state is specialised plumbing work; or

- (b) that is declared by the Minister to be specialised plumbing work under section 221ZZZU;

S. 221B(1)
def. of *water authority*
substituted by
No. 17/2012
s. 83(b).

water authority means an Authority within the meaning of the **Water Act 1989** that has a water district or a sewerage district under that Act.

- (2) A reference in this Part (other than in section 221O or 221R) to registration includes a reference to provisional registration, unless a contrary intention appears or the context otherwise requires.

S. 221B(3)
substituted by
No. 75/1998
s. 7(1).

- (3) For the purposes of this Part, a person supervises the carrying out of work only—
- (a) if the work is carried out in his or her presence, at his or her direction and on his or her behalf; or
 - (b) if the following conditions are met—
 - (i) the work is carried out on his or her behalf; and
 - (ii) he or she specifies the method and manner in which the work is to be carried out; and
 - (iii) he or she inspects the carrying out of the work as often as is necessary to ensure that the work is carried out safely and competently, having regard to the nature of the work, the risks involved in the work and the knowledge and experience of the person carrying out the work.
- (4) A reference in Division 7 to "he or she" or "him or her" is to be read as including a reference to "it", if the context permits.

221C Meaning of *plumbing work*

S. 221C
inserted by
No. 39/1996
s. 5.

- (1) In this Part, *plumbing work* means any plumbing work that the regulations state is work to which this Part applies.
- (2) Any reference to plumbing work in this Part is to be read as if it included a reference to gasfitting and draining work, unless a contrary intention appears or the context otherwise requires.
- (3) In all Divisions other than Divisions 2 and 3, a reference to plumbing work includes a reference to specialised plumbing work, unless a contrary intention appears or the context otherwise requires.

S. 221C(1)
amended by
No. 36/2008
s. 15(a).

S. 221C(2)
amended by
No. 36/2008
s. 15(b).

Division 2—Restrictions concerning the carrying out of plumbing work

221D Plumbing work only to be carried out by licensed or registered plumbers

S. 221D
inserted by
No. 39/1996
s. 5.

- (1) A person must not carry out any plumbing work of a particular class or type unless he or she is licensed or registered by the Authority to carry out work of that class or type.
Penalty: 500 penalty units.
- (2) Despite subsection (1), a person who is not licensed or registered by the Authority may—
 - (a) repair a tap in any dwelling that the person owns and occupies; and
 - (b) carry out any other plumbing work that the regulations state is plumbing work that may be carried out by a person who is not licensed or registered.

S. 221D(1)
amended by
Nos 75/1998
s. 5(b),
33/2010 s. 32,
34/2013
s. 34(Sch. 1
item 33).

S. 221D(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 33).

S. 221D(4)
amended by
Nos 75/1998
ss 5(b), 7(2),
34/2013
s. 34(Sch. 1
item 33).

- (3) Subsection (2)(a) does not permit a person to repair any thermostatic mixing valve, tempering valve or backflow prevention device.
- (4) Despite subsection (1), a person who is being trained to carry out work that may be carried out by the holder of a restricted licence may carry out that work without being licensed or registered by the Authority if the work is carried out under the supervision of a person who is licensed to carry out that type of work.

S. 221D(5)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 33).

- (5) Despite subsection (1)—
- (a) a sheetmetal worker, first class may carry out sheetmetal work in connection with the manufacture, installation, maintenance or repair of ventilation or air conditioning plant or equipment;
- (b) a metal worker may carry out pipework in connection with the fabrication, installation, maintenance or repair of industrial pipework;

S. 221D(5)(c)
repealed by
No. 75/1998
s. 8(a).

* * * * *

S. 221D(5)(d)
substituted by
No. 75/1998
s. 8(b).

- (d) an apprentice may carry out any work referred to in paragraph (a) or (b) under the supervision of a person referred to in that paragraph;

S. 221D(5)(e)
amended by
No. 36/2008
s. 16.

- (e) a plumbing apprentice acting under the supervision of a licensed plumber may carry out plumbing work—

without being licensed or registered by the Authority.

221E Restrictions concerning work for which compliance certificate required

S. 221E
(Heading)
inserted by
No. 31/2007
s. 4(1).

S. 221E
inserted by
No. 39/1996
s. 5.

- (1) Unless a person is licensed to carry out a particular class or type of plumbing work or specialised plumbing work, he or she must not carry out any work of that class or type for which a compliance certificate is required.

S. 221E(1)
amended by
No. 33/2010
s. 33.

Penalty: 500 penalty units.

- (2) Despite subsection (1), a person who is registered to carry out a particular class or type of plumbing work or specialised plumbing work may carry out any work of that class or type for which a compliance certificate is required under the supervision of a licensed plumber who is authorised to carry out that class or type of work.

S. 221E(2)
amended by
No. 75/1998
s. 7(2),
substituted by
No. 31/2007
s. 4(2),
amended by
No. 36/2008
s. 15(c).

- (2A) Despite subsection (1), a plumbing apprentice may carry out a particular class or type of plumbing work for which a compliance certificate is required under the supervision of a licensed plumber who is authorised to carry out that class or type of work.

S. 221E(2A)
inserted by
No. 31/2007
s. 4(2).

- (3) Despite subsection (1) a person who is authorised under an accepted safety case under the **Gas Safety Act 1997** and registered under section 221R to carry out a particular class or type of gasfitting work for which a compliance certificate is required may carry out that work without being licensed by the Authority.

S. 221E(3)
inserted by
No. 99/1997
s. 121(2),
amended by
No. 21/2017
s. 97.

S. 221F
inserted by
No. 39/1996
s. 5,
amended by
Nos 75/1998
s. 5(b),
99/1997
s. 121(3) (ILA
s. 39B(1)).

221F Restriction concerning specialised plumbing work

S. 221F(1)
amended by
Nos 31/2007
s. 5, 33/2010
s. 34, 34/2013
s. 34(Sch. 1
item 34).

- (1) A person must not carry out any class or type of specialised plumbing work unless he or she is licensed or registered by the Authority to carry out that class or type of work.

Penalty: 500 penalty units.

S. 221F(2)
inserted by
No. 99/1997
s. 121(3),
amended by
No. 21/2017
s. 97.

- (2) Despite subsection (1) a person who is authorised under an accepted safety case under the **Gas Safety Act 1997** and registered under section 221R to carry out a particular class or type of gasfitting work which is specialised plumbing work may carry out that work without being licensed by the Authority to carry out that class or type of work.

S. 221FA
inserted by
No. 31/2007
s. 6,
amended by
No. 33/2010
s. 35.

221FA Plumbing work must comply with this Part and regulations

A licensed plumber or a registered plumber must not carry out any plumbing work or specialised plumbing work that does not comply with this Part or the regulations made under this Part.

Penalty: 500 penalty units.

221G Obligations on licensed plumbers concerning their agents

S. 221G
inserted by
No. 39/1996
s. 5.

- (1) A licensed plumber must not permit a person to carry out on his or her behalf, or direct a person to carry out, any plumbing work or specialised plumbing work—
- (a) that is of a class or type in respect of which the person is not licensed or registered under this Part; or
 - (b) that is defective in workmanship or that involves the use of materials that the licensed plumber knows, or reasonably ought to know, are defective or that does not comply with the plumbing laws.

Penalty: 50 penalty units.

- (2) However, subsection (1)(a) does not apply to plumbing work of a particular class or type carried out by a plumbing apprentice under the supervision of a licensed plumber who is licensed or registered to carry out that class or type of work.

S. 221G(2)
amended by
No. 75/1998
s. 7(2).

221H People involved in a plumbing business need not be licensed or registered

S. 221H
inserted by
No. 39/1996
s. 5.

- (1) A person does not carry out any plumbing work or specialised plumbing work for the purposes of this Part merely because he, she or it owns, operates, manages or otherwise participates in, is employed by, or shares in the profits of, any business that carries out plumbing work or specialised plumbing work.

S. 221H(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 35).

- (2) A person may employ, or supply the services of, licensed and registered plumbers without being licensed or registered by the Authority.

S. 221H(3)
amended by
No. 21/2017
s. 87.

- (3) A person who owns, operates, manages or otherwise participates in, is employed by, or shares in the profits of, any business that carries out plumbing work or specialised plumbing work must not cause or permit any plumbing work or specialised plumbing work to be carried out on behalf of the business by a person who is not permitted by this Part to carry out that work.

Penalty: 50 penalty units.

S. 221HA
inserted by
No. 21/2017
s. 42.

221HA No entitlement to consideration under contract

- (1) This section applies if a person—
- (a) enters into a contract to carry out plumbing work or specialised plumbing work; and
 - (b) the person—
 - (i) carries out that class or type of work despite not being permitted under this Part to do so in contravention of section 221D; or
 - (ii) causes or permits a person who is not permitted under this Part to carry out that class or type of work in contravention of section 221H(3).
- (2) The person is not entitled to consideration under the contract unless the amount claimed—
- (a) is not more than the amount of the costs reasonably incurred by the person in supplying materials and labour for carrying out work under the contract; and

- (b) does not include—
 - (i) an amount for the supply of the person's own labour; or
 - (ii) an amount of profit by the person for carrying out work under the contract; and
 - (c) is not more than the person would have been entitled to recover for carrying out work under the contract; and
 - (d) does not include any amount paid by the person that is for the person's own direct or indirect benefit.
- (3) A person may recover from another person in a court of competent jurisdiction, as a debt due to the person, any amount the person paid to the other person in respect of anything the other person—
- (a) did in contravention of section 221D; or
 - (b) caused or permitted another person to do in contravention of section 221H(3).

221I Person must not use the title "plumber" or "plumbing practitioner" unless licensed or registered

S. 221I
(Heading)
inserted by
No. 36/2008
s. 17(1).

S. 221I
inserted by
No. 39/1996
s. 5.

- (1) A person must not use or take the title "plumber" or "plumbing practitioner" in any context relating to the plumbing industry unless the person is registered or licensed to carry out at least one class or type of plumbing work under this Part.

S. 221I(1)
amended by
Nos 36/2008
s. 17(2),
33/2010 s. 36.

Penalty: 120 penalty units.

Building Act 1993
No. 126 of 1993
Part 12A—Plumbing work

S. 221I(2)
amended by
No. 33/2010
s. 36.

(2) A person must not—

S. 221I(2)(a)
amended by
No. 36/2008
s. 17(3).

(a) use or take the title "licensed plumber" or
"licensed plumbing practitioner"; or

(b) hold himself or herself out as being licensed
under this Part—

unless he or she is licensed to carry out at least
one class or type of plumbing work under this
Part.

Penalty: 120 penalty units.

S. 221I(3)
amended by
No. 33/2010
s. 36.

(3) A person must not—

S. 221I(3)(a)
amended by
No. 36/2008
s. 17(4).

(a) use or take the title "registered plumber" or
"registered plumbing practitioner"; or

(b) hold himself or herself out as being
registered under this Part—

unless he or she is registered to carry out at least
one class or type of plumbing work under this
Part.

Penalty: 120 penalty units.

221J Person must not use the title "drainer" unless licensed or registered

S. 221J
inserted by
No. 39/1996
s. 5.

- (1) A person must not use or take the title "drainer" in any context relating to the plumbing industry unless the person is authorised to carry out draining work under this Part.

S. 221J(1)
amended by
No. 33/2010
s. 37.

Penalty: 120 penalty units.

- (2) A person must not use or take the title "licensed drainer" unless he or she is licensed to carry out draining work under this Part.

S. 221J(2)
amended by
No. 33/2010
s. 37.

Penalty: 120 penalty units.

- (3) A person must not use or take the title "registered drainer" unless he or she is registered to carry out draining work under this Part.

S. 221J(3)
amended by
No. 33/2010
s. 37.

Penalty: 120 penalty units.

221K Person must not use the title "gasfitter" unless licensed or registered

S. 221K
inserted by
No. 39/1996
s. 5.

- (1) A person must not use or take the title "gasfitter" in any context relating to the plumbing industry unless the person is authorised to carry out gasfitting work under this Part.

S. 221K(1)
amended by
No. 33/2010
s. 38.

Penalty: 120 penalty units.

- (2) A person must not use or take the title "licensed gasfitter" unless he or she is licensed to carry out gasfitting work under this Part.

S. 221K(2)
amended by
No. 33/2010
s. 38.

Penalty: 120 penalty units.

- (3) A person must not use or take the title "registered gasfitter" unless he or she is registered to carry out gasfitting work under this Part.

S. 221K(3)
amended by
No. 33/2010
s. 38.

Penalty: 120 penalty units.

S. 221L
inserted by
No. 39/1996
s. 5.

221L Exceptions to sections 221I–221K

(1) Sections 221I, 221J and 221K do not apply to—

S. 221L(1)(a)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 36).

- (a) an organisation or member of staff of an organisation for the time being exempted from this section by the Authority; or
- (b) the use of a title by a person who is authorised to use that title outside Victoria by a person or body regulating plumbing work if it is made clear in the use of the title that it does not relate to Victoria.

(2) Sections 221I, 221J and 221K do not apply to the use of a title referred to in those sections by any business that carries out plumbing work or specialised plumbing work so long as—

- (a) at least one partner, director or employee of the business is entitled to use that title; or
- (b) any plumbing work that the business undertakes to have carried out, and that must be carried out by a person who is entitled to use that title, is carried out by such a person.

Division 3—The licensing and registration of plumbers

S. 221M
inserted by
No. 39/1996
s. 5.

221M Licensing as a plumber

(1) To be able to be licensed to carry out a particular class of plumbing work, a person must—

- (a) be eligible to be registered as a plumber with respect to that class of plumbing work; and

- (b) either—
- (i) have the relevant qualifications and experience required by the regulations; or
 - (ii) satisfy the Authority that he or she has knowledge and competence at least equal to that that a person who has the qualifications and experience required by the regulations would have; and
- (c) be covered by the required insurance.
- (2) The Authority must license a person to carry out a particular class of plumbing work if—
- (a) the person applies to be licensed in accordance with section 221T; and
 - (b) it is satisfied that the person meets the requirements listed in subsection (1); and
 - (c) the person pays the licence fee set out in the regulations.
- (3) The Authority may license an eligible person to carry out 2 or more particular classes of plumbing work.
- (4) The Registrar must give each person who is licensed by the Authority a licence as evidence that the person is licensed to carry out a particular class, or particular classes, of plumbing work.

S. 221M(1)
(b)(ii)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 37).

S. 221M(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 37).

S. 221M(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 37).

S. 221M(4)
amended by
Nos 75/1998
s. 5(b),
36/2008
s. 18(1),
34/2013
s. 34(Sch. 1
item 37).

S. 221N
inserted by
No. 39/1996
s. 5.

221N Endorsement to carry out specialised plumbing work

(1) To be able to be licensed to carry out a particular class of specialised plumbing work, a person must—

S. 221N(1)(a)
amended by
No. 36/2008
s. 15(d),
substituted by
No. 33/2010
s. 39.

(a) be a licensed plumber in respect of a class or classes of plumbing work or specialised plumbing work required by the regulations (or a declaration under section 221ZZZU); and

(b) either—

S. 221N(1)
(b)(i)
amended by
No. 34/1997
s. 30(b).

(i) have the relevant qualifications and experience required by the regulations (or a declaration under section 221ZZZU); or

S. 221N(1)
(b)(ii)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 38).

(ii) satisfy the Authority that he or she has knowledge and competence at least equal to that that a person who has the qualifications and experience required by subparagraph (i) would have; and

(c) be covered by the required insurance.

S. 221N(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 38).

(2) The Authority must license a person to carry out a particular class of specialised plumbing work if—

(a) the person applies to be licensed in accordance with section 221T; and

(b) it is satisfied that the person meets the requirements listed in subsection (1); and

(c) the person pays the endorsement fee set out in the regulations.

(3) The Authority may license an eligible person to carry out 2 or more particular classes of specialised plumbing work.

S. 221N(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 38).

(4) If the Authority licenses a person to carry out a particular class of specialised plumbing work, the Registrar must endorse the licence issued to the person in respect of his or her licensing under section 221M with a statement to the effect that the person is also licensed to carry out that class of specialised plumbing work.

S. 221N(4)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 38).

221O Registration as a plumber

S. 221O
inserted by
No. 39/1996
s. 5.

(1) To be able to be registered to carry out a particular class of plumbing work, a person must either—

- (a) have the relevant qualifications and experience required by the regulations; or
- (b) satisfy the Authority that he or she has knowledge and competence at least equal to that that a person who has the qualifications and experience required by the regulations would have.

S. 221O(1)(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 39).

(2) The Authority must register a person to carry out a particular class of plumbing work if—

- (a) the person applies for registration in accordance with section 221T; and
- (b) it is satisfied that the person meets one or other of the requirements listed in subsection (1); and
- (c) the person pays the registration fee set out in the regulations.

S. 221O(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 39).

S. 221O(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 39).

(3) The Authority may register an eligible person with respect to 2 or more particular classes of plumbing work.

S. 221O(4)
amended by
Nos 75/1998
s. 5(b),
36/2008
s. 18(2),
34/2013
s. 34(Sch. 1
item 39).

(4) The Registrar must give each person who is registered by the Authority a registration document as evidence that the person is registered to carry out a particular class, or particular classes, of plumbing work.

S. 221OA
inserted by
No. 31/2007
s. 7.

221OA Endorsement to carry out specialised plumbing work—registered plumbers

(1) To be able to be registered to carry out a particular class of specialised plumbing work, a person must—

S. 221OA(1)(a)
amended by
No. 36/2008
s. 15(d),
substituted by
No. 33/2010
s. 40.

(a) be a registered plumber in respect of a class or classes of plumbing work or specialised plumbing work required by the regulations (or a declaration under section 221ZZZU); and

(b) either—

(i) have the relevant qualifications and experience required by the regulations (or a declaration under section 221ZZZU); or

S. 221OA
(1)(b)(ii)
amended by
No. 34/2013
s. 34(Sch. 1
item 40).

(ii) satisfy the Authority that he or she has knowledge and competence at least equal to that that a person who has the qualifications and experience required by subparagraph (i) would have.

- (2) The Authority must register a person to carry out a particular class of specialised plumbing work if—
- (a) the person applies to be registered in accordance with section 221T; and
 - (b) it is satisfied that the person meets the requirements listed in subsection (1); and
 - (c) the person pays the endorsement fee set out in the regulations.
- (3) The Authority may register an eligible person with respect to 2 or more particular classes of specialised plumbing work.
- (4) If the Authority registers a person to carry out a particular class of specialised plumbing work, the Registrar must endorse the registration document given to the person in respect of his or her registration under section 221O with a statement to the effect that the person is also registered to carry out that class of specialised plumbing work.
- (5) A person who is registered to carry out a particular class of specialised plumbing work under this section must not, unless otherwise exempted by the Authority, do any specialised plumbing work of that class unless that work is carried out under the supervision of a person who is licensed to carry out work of that class.

S. 221OA(2)
amended by
No. 34/2013
s. 34(Sch. 1
item 40).

S. 221OA(3)
amended by
No. 34/2013
s. 34(Sch. 1
item 40).

S. 221OA(4)
amended by
Nos 36/2008
s. 18(3),
34/2013
s. 34(Sch. 1
item 40).

S. 221OA(5)
amended by
Nos 36/2008
s. 16, 34/2013
s. 34(Sch. 1
item 40).

Penalty: 20 penalty units.

221P Provisional registration

S. 221P
inserted by
No. 39/1996
s. 5.

S. 221P(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 41).

(1) The Authority may provisionally register a person to carry out a particular class of plumbing work or specialised plumbing work if—

(a) the person applies for provisional registration in accordance with section 221T and he or she—

(i) is training to be qualified to carry out that class of work; and

(ii) is a licensed or registered plumber with respect to another class of plumbing work; or

(b) the Authority is satisfied that the person—

(i) has sufficient knowledge and experience to carry out that class of work competently and safely; or

S. 221P(1)(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 41).

S. 221P(1)
(b)(ii)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 41).

(ii) will be able to carry out that work competently and safely if the person complies with the conditions that the Authority imposes on the registration.

S. 221P(2)
amended by
Nos 75/1998
s. 5(b),
36/2008 s. 16,
34/2013
s. 34(Sch. 1
item 41).

(2) A person who is provisionally registered must not, unless otherwise exempted by the Authority, do any plumbing work or specialised plumbing work of the class to which the provisional registration applies unless that work is carried out under the supervision of a person who is licensed to carry out work of that class.

Penalty: 20 penalty units.

- (3) The Authority may provisionally register an eligible person with respect to 2 or more particular classes of plumbing work or specialised plumbing work.
- (4) On receiving any provisional registration fee required by the regulations, the Registrar must give each person who is provisionally registered by the Authority a provisional registration document as evidence that the person is provisionally registered to carry out a particular class, or particular classes, of plumbing work or specialised plumbing work.
- (5) A provisional registration expires 1 year after it is granted, but may be renewed.

S. 221P(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 41).

S. 221P(4)
amended by
Nos 75/1998
s. 5(b),
36/2008
s. 18(4),
34/2013
s. 34(Sch. 1
item 41).

221Q Restricted licences

S. 221Q
inserted by
No. 39/1996
s. 5.

- (1) The Authority may license a person to carry out particular types of work that fall within a class of plumbing work or specialised plumbing work if—
- (a) the person applies for the licence in accordance with section 221T; and
- (b) it is satisfied that the person—
- (i) has sufficient knowledge and experience to carry out that work competently and safely; and
- (ii) is covered by the required insurance in respect of that work.

S. 221Q(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 42).

S. 221Q(2)
amended by
Nos 75/1998
s. 5(b),
36/2008
s. 18(1),
34/2013
s. 34(Sch. 1
item 42).

- (2) On receiving any restricted licence fee required by the regulations, the Registrar must give each person who is licensed by the Authority under this section a licence as evidence that the person is licensed to carry out a particular type of work and must ensure that the word "restricted" is prominently displayed on the licence and that the licence states what work the holder of the licence may carry out.

S. 221R
inserted by
No. 39/1996
s. 5.

221R Restricted registration

S. 221R(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 43).

- (1) The Authority may register a person to carry out particular types of work that fall within a class of plumbing work or specialised plumbing work if—
- (a) the person applies for restricted registration in accordance with section 221T; and

S. 221R(1)(b)
substituted by
No. 99/1997
s. 121(4).

- (b) it is satisfied that the person—
- (i) has sufficient knowledge and experience to carry out that work competently and safely; or
- (ii) is authorised under an accepted safety case under the **Gas Safety Act 1997** to carry out that work.

S. 221R(2)
amended by
Nos 75/1998
s. 5(b),
36/2008
s. 18(5),
34/2013
s. 34(Sch. 1
item 43).

- (2) On receiving any restricted registration fee required by the regulations, the Registrar must give each person who is registered by the Authority under this section a registration document as evidence that the person is registered to carry out a particular type of work and must ensure that the word "restricted" is prominently displayed on the registration document and that the registration document states what work the holder of the registration document may carry out.

221S Authority may refuse to license or register certain persons

S. 221S
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 44).

S. 221S
inserted by
No. 39/1996
s. 5.

- (1) Despite sections 221M(2), 221N(2), 221O(2) and 221OA(2), the Authority may refuse to license or register a person who—
- (a) has been convicted of any offence involving fraud, dishonesty, drug trafficking or violence that was punishable by imprisonment for 6 months or more; or
 - (b) has been convicted of an offence under any law regulating plumbing work or specialised plumbing work; or
 - (c) has had his or her authorisation to carry out plumbing work or specialised plumbing work suspended or cancelled for any reason other than his or her failure to renew that authorisation; or
 - (d) is an insolvent under administration; or
 - (e) has been convicted of an offence against—
 - (i) section 12, 16, 17, 18, 20 or 22 of the **Fair Trading Act 1985**; or
 - (ii) section 10, 11, 12, 17, 19 or 21 of the **Fair Trading Act 1999**; or
 - (iii) section 53, 55, 55A, 56, 58 or 60 of the Trade Practices Act 1974 of the Commonwealth; or

S. 221S(1)
amended by
Nos 75/1998
s. 5(b),
31/2007 s. 8,
34/2013
s. 34(Sch. 1
item 45).

S. 221S(1)(e)
amended by
No. 17/1999
s. 22(5),
substituted by
No. 72/2010
s. 48(Sch.
item 2(3)).

S. 221S(1)
(e)(iv)
amended by
No. 21/2012
s. 239(Sch. 6
item 5.2).

(iv) section 29, 33, 34, 35, 36, 50, 151, 157,
158 or 168 of the Australian Consumer
Law (Victoria);

S. 221S(1)
(e)(v)
inserted by
No. 21/2012
s. 239(Sch. 6
item 5.3).

(v) section 29, 33, 34, 35, 36, 50, 151, 157,
158 or 168 of Schedule 2 to the
Competition and Consumer Act 2010
of the Commonwealth.

S. 221S(2)
amended by
Nos 75/1998
s. 5(b),
31/2007 s. 8,
34/2013
s. 34(Sch. 1
item 45).

(2) Despite sections 221M(2), 221N(2), 221O(2)
and 221OA(2), the Authority must refuse to
licence or register a person who is for the time
being disqualified by an order of any regulatory
body from acting as a licensed or registered
plumber (or an equivalent occupation under the
jurisdiction of the regulatory body).

(3) This section applies regardless of where the
conviction, suspension, cancellation, insolvency
or disqualification occurred.

S. 221T
inserted by
No. 39/1996
s. 5.

221T Application for licensing or registration as a plumber

S. 221T(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 46).

(1) A natural person may apply to the Authority to be
licensed or registered under this Part.

(2) The application must—

S. 221T(2)(a)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 46).

(a) be in the form required by the Authority; and

(b) contain the information required by the Authority to enable it to decide whether to grant the application; and

S. 221T(2)(b) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 46).

* * * * *

S. 221T(2)(ba) inserted by No. 34/2013 s. 12(1), repealed by No. 21/2017 s. 13.

(c) be accompanied by the relevant application fee set out in the regulations.

(3) In the case of an application for a licence, the person applying must also include proof that he or she is (or will be if he or she is granted a licence) covered by the required insurance.

(4) If required by the Authority, an application must also be accompanied by a photograph of the applicant that is of the size and in the form specified by the Authority.

S. 221T(4) inserted by No. 75/1998 s. 9(1), amended by No. 34/2013 s. 34(Sch. 1 item 46).

(5) The Authority may use the photograph provided for the purposes of identification of the plumber and for inclusion in the plumber's licence or registration document.

S. 221T(5) inserted by No. 36/2008 s. 19(1), amended by No. 34/2013 s. 34(Sch. 1 item 46).

221U Authority may conduct inquiries and require further information

(1) In considering an application for a licence or registration, the Authority may—

(a) conduct any inquiries in relation to the application that it thinks fit; and

S. 221U inserted by No. 39/1996 s. 5, amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 items 47, 48), substituted by No. 21/2017 s. 14.

(b) require an applicant to provide further information in relation to the application.

- (2) The Authority may refuse an application for a licence or registration if the applicant fails to comply with a requirement under subsection (1)(b) within a reasonable time after the requirement is made.

S. 221UA
inserted by
No. 21/2017
s. 14.

221UA Consent to disclosure of information

- (1) In considering an application for a licence or registration, the Authority may ask the applicant to provide any consent to disclosure of information that the Authority requires to perform, or to have performed, a check on the applicant or on any information included with the applicant's application.
- (2) The Authority may refuse to consider an application for a licence or registration if the applicant fails to comply with a request under subsection (1) within 14 days after the request is made.

S. 221V
inserted by
No. 39/1996
s. 5,
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 49).

221V Offence to give false information

A person must not make any written or oral statement to the Authority in relation to an application for a licence or registration, or for the renewal of a licence or registration, that the person knows, or ought reasonably to know, is false.

Penalty: 50 penalty units.

S. 221VA
inserted by
No. 34/2013
s. 12(2).

221VA Police record check on applicant

In considering an application for licensing or registration, the Authority may arrange for the conduct of a police record check on the applicant.

221W Temporary licence or registration

- | | |
|--|--|
| (1) The Registrar may temporarily license or register a person under this Part if— | S. 221W inserted by No. 39/1996 s. 5. |
| (a) the person applies to be licensed or registered; and | |
| (b) the Registrar is satisfied that the person is likely to be licensed or registered by the Authority; and | S. 221W(1)(b) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 50). |
| (c) the person pays any temporary licence fee or registration fee required by the regulations. | S. 221W(1)(c) amended by No. 31/2007 s. 9. |
| (2) In exercising his or her powers under this section, the Registrar must comply with any directions of the Authority concerning the exercise of the powers. | S. 221W(2) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 50). |
| (3) The Registrar or the Authority may cancel a person's temporary licence or registration at any time, regardless of whether the Authority has considered the person's application. | S. 221W(3) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 50). |
| (4) A person's temporary licence or registration ends— | |
| (a) 3 months after it is issued; or | |
| (b) on the Authority approving or rejecting the person's application for licensing or registration; or | S. 221W(4)(b) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 50). |

S. 221W(4)(c)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 50).

(c) on the Registrar or Authority cancelling the
licence or registration under subsection (3)—

whichever happens first.

S. 221X
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 51).

**221X Authority may impose conditions on licensing or
registering person**

S. 221X
inserted by
No. 39/1996
s. 5.

S. 221X(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 52).

(1) The Authority may impose any conditions it
thinks appropriate on licensing or registering a
person, including a condition restricting the type
of work a person may carry out within a class of
work in respect of which the person is to be
licensed or registered.

(2) A person must comply with any conditions
imposed on his or her licence or registration.

Penalty: 50 penalty units.

S. 221X(3)
amended by
Nos 75/1998
s. 5(b),
36/2008
s. 18(2),
34/2013
s. 34(Sch. 1
item 52).

(3) The Registrar must ensure that a licence or
registration document states any conditions that
the Authority has imposed with respect to the
licence or registration document.

221Y Duplicate licences and registration documents

The Registrar may issue a duplicate licence or registration document if—

S. 221Y
inserted by
No. 39/1996
s. 5,
amended by
No. 36/2008
s. 18(2).

- (a) he or she is satisfied that the original licence or registration document has been lost, mutilated or destroyed; and
- (b) the person asking for the duplicate has paid the fee required by the regulations.

S. 221Y(a)
amended by
No. 36/2008
s. 18(2).

221Z How long licensing and registration last

S. 221Z
inserted by
No. 39/1996
s. 5.

- (1) A person who is licensed to carry out a particular class of plumbing work or specialised plumbing work remains licensed to carry out that work for one year (or any lesser period specified by the Authority).
- (2) A person who is registered to carry out a particular class of plumbing work or specialised plumbing work remains registered to carry out that work for 3 years (or any lesser period specified by the Authority).
- (3) However, if a licensed or registered plumber is licensed or registered to carry out a second or subsequent class of plumbing work or specialised plumbing work, he or she only remains licensed or registered to carry out that latter form of plumbing work until his or her original licence or registration expires.

S. 221Z(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 53).

S. 221Z(2)
amended by
Nos 31/2007
s. 10, 36/2008
s. 20, 34/2013
s. 34(Sch. 1
item 53).

(4) The Registrar must ensure that the fee payable in respect of—

- (a) a licence that is to remain in force for less than one year; or
- (b) registration that is to remain in force for less than 3 years—

is reduced to take account of the shorter period for which that licensing or registration is to remain in force.

(5) Subsections (1), (2) and (3) do not apply if the Authority suspends or cancels a person's licence or registration under this Part.

S. 221Z(5)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 53).

S. 221ZA
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 54).

221ZA Plumbers must notify Authority of change of contact details

A licensed or registered plumber must notify the Authority in writing if he or she changes his or her residential or business address or has his or her business telephone number changed, and must do so within 14 days of the change.

Penalty: 5 penalty units.

S. 221ZA
inserted by
No. 39/1996
s. 5,
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 55).

S. 221ZB
inserted by
No. 39/1996
s. 5.

221ZB Application for renewal of licence or registration as a plumber

(1) A plumber wishing to renew his or her licence or registration must apply to the Authority for the renewal at least 2 months before the licence or registration expires.

S. 221ZB(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 56).

- (2) The application for renewal must—
- (a) be in the form required by the Authority; and S. 221ZB(2)(a)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 56).
 - (b) contain the information required by the Authority to enable it to decide whether to grant the renewal. S. 221ZB(2)(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 56).
- (3) In the case of an application for the renewal of a licence, the person applying must also include written proof to the Authority that he or she will be covered by the required insurance until the next anniversary of his or her licensing or, subject to such conditions as the Authority may impose, any lesser period approved by the Authority. S. 221ZB(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 56).
- (4) If required by the Authority, an application for renewal must also be accompanied by a photograph of the plumber that is of the size and in the form specified by the Authority. S. 221ZB(4)
inserted by
No. 75/1998
s. 9(2),
amended by
No. 34/2013
s. 34(Sch. 1
item 56).
- (5) The Authority may use the photograph provided for the purposes of identification of the plumber and for inclusion in the plumber's renewed licence or registration document. S. 221ZB(5)
inserted by
No. 36/2008
s. 19(2),
amended by
No. 34/2013
s. 34(Sch. 1
item 56).

S. 221ZC
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 57).

221ZC Authority may require further information

S. 221ZC
inserted by
No. 39/1996
s. 5.

S. 221ZC(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 58).

- (1) The Authority may ask a person applying to have his or her licence or registration renewed for more information concerning the application if it is reasonably necessary to help it to decide whether to grant the application.

S. 221ZC(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 58).

- (2) The Authority may refuse to renew a person's licence or registration if he or she does not give it the extra information asked for before the licence or registration expires.

S. 221ZD
inserted by
No. 39/1996
s. 5.

221ZD Renewal of licence or registration

S. 221ZD(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 59).

- (1) The Authority must renew the licence or registration of a person to carry out a particular class of plumbing work or specialised plumbing work or to carry out a particular type of plumbing work if the person applies for the renewal in accordance with section 221ZB.

S. 221ZD(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 59).

- (2) However, the Authority may refuse to renew the licence or registration of a person who has, since he or she was last licensed or registered by the Authority—
 - (a) been convicted of any offence involving fraud, dishonesty, drug trafficking or violence that was punishable by imprisonment for 6 months or more; or

- (b) been convicted of an offence under any law regulating plumbing work or specialised plumbing work; or
- (c) had his or her authorisation to carry out plumbing work or specialised plumbing work suspended or cancelled for any reason other than his or her failure to renew that authorisation; or
- (d) become an insolvent under administration; or
- (e) has been convicted of an offence against—
- (i) section 12, 16, 17, 18, 20 or 22 of the **Fair Trading Act 1985**; or
 - (ii) section 10, 11, 12, 17, 19 or 21 of the **Fair Trading Act 1999**; or
 - (iii) section 53, 55, 55A, 56, 58 or 60 of the Trade Practices Act 1974 of the Commonwealth; or
 - (iv) section 29, 33, 34, 35, 36, 50, 151, 157, 158 or 168 of the Australian Consumer Law (Victoria);
 - (v) section 29, 33, 34, 35, 36, 50, 151, 157, 158 or 168 of Schedule 2 to the Competition and Consumer Act 2010 of the Commonwealth.
- (3) Despite subsection (1), the Authority must refuse to renew the licence or registration of a person who is for the time being disqualified by an order of any regulatory body from acting as a licensed or registered plumber (or an equivalent occupation under the jurisdiction of the regulatory body).
- (4) Subsections (2) and (3) apply regardless of where the conviction, suspension, cancellation, insolvency or disqualification occurred.

S. 221ZD(2)(e) amended by No. 17/1999 s. 22(6), substituted by No. 72/2010 s. 48(Sch. 6 item 2(4)).

S. 221ZD(2)(e)(iv) amended by No. 21/2012 s. 239(Sch. 6 item 5.4).

S. 221ZD(2)(e)(v) inserted by No. 21/2012 s. 239(Sch. 6 item 5.5).

S. 221ZD(3) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 59).

S. 221ZD(5)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 59).

(5) Despite subsection (1), before renewing the licence or registration of a person, the Authority may require the person to pass to its satisfaction any examination specified by the Authority that relates to his or her competency to carry out the class of plumbing work or specialised plumbing work in respect of which he or she is licensed or registered.

S. 221ZD(6)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 59).

(6) However, the Authority may only require a person to pass such an examination if it imposes the same requirement on every member of a specified class of people applying for the renewal of their licences or registrations, and the person is a member of that class.

S. 221ZD(7)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 59).

(7) On receiving the relevant renewal fee set out in the regulations, the Registrar must give each person whose licence or registration has been renewed by the Authority proof in writing of that fact.

S. 221ZE
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 60).

221ZE Authority may permit late renewals

S. 221ZE
inserted by
No. 39/1996
s. 5.

S. 221ZE(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 61).

(1) The Authority may renew the licence or registration of a person even though the person did not apply for the renewal within the time required by section 221ZB(1).

S. 221ZE(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 61).

(2) However, the Authority may only do this if—
(a) the person pays the late renewal fee required by the regulations; and

- (b) in a case where the licence or registration has expired, it is satisfied that the person did not carry out any plumbing work or specialised plumbing work after the expiry of the person's licence or registration.

221ZF Information to be given to unsuccessful applicants

S. 221ZF
inserted by
No. 39/1996
s. 5.

- (1) If the Authority refuses to license or register a person or to renew a person's licence or registration, the Authority must notify the person in writing of the refusal as soon as possible after the refusal.
- (2) The notice of refusal must set out the Authority's reasons for refusing the application and must contain a copy of section 221ZZZP.

S. 221ZF(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 62).

S. 221ZF(2)
amended by
Nos 28/2000
s. 20(a),
34/2013
s. 34(Sch. 1
item 63).

221ZFA Licence and registration document to be returned to Registrar

S. 221ZFA
(Heading)
amended by
No. 36/2008
s. 18(6)(a).

S. 221ZFA
inserted by
No. 31/2007
s. 11.

- (1) The Registrar may ask a person who holds a licence or registration document for the return of that licence or registration document—
- (a) for the purpose of altering the details on the licence or registration document; or
- (b) for any purpose permitted by this Act.

S. 221ZFA(1)
amended by
No. 36/2008
s. 18(6)(b).

S. 221ZFA
(1)(a)
amended by
No. 36/2008
s. 18(6)(c).

S. 221ZFA(2)
amended by
No. 36/2008
s. 18(6)(b).

- (2) A person who holds a licence or registration document must return it to the Registrar as soon as is practicable after being asked to do so by the Registrar under subsection (1).

Penalty: 10 penalty units.

S. 221ZFB
inserted by
No. 31/2007
s. 11.

221ZFB Licensed plumber to produce licence for inspection

A licensed plumber must produce his or her licence for inspection if asked to do so by—

- (a) any person—
- (i) with whom the licensed plumber has entered into a contract to carry out plumbing work or specialised plumbing work; or
 - (ii) to whom the licensed plumber has made a statement indicating that the licensed plumber is willing or prepared to carry out plumbing work or specialised plumbing work or to enter into a contract to carry out that work; or
- (b) the owner or occupier of any land, building, vehicle, caravan or vessel—
- (i) on or in which the licensed plumber is carrying out plumbing work or specialised plumbing work; or
 - (ii) in respect of which the licensed plumber has entered into a contract to carry out plumbing work or specialised plumbing work; or
 - (iii) in respect of which the licensed plumber has made a statement indicating that he or she is willing or prepared to carry out plumbing work or specialised plumbing work or to enter into a contract to carry out that work; or

(c) any person authorised in writing for the purpose of this section by—

(i) the Authority; or

S. 221ZFB
(c)(i)
amended by
No. 34/2013
s. 34(Sch. 1
item 64).

(ii) any other body that is responsible for the control of the class or type of plumbing work or specialised plumbing work that the licensed plumber is carrying out.

Penalty: 10 penalty units.

221ZFC Registered plumber to produce registration document for inspection

S. 221ZFC
(Heading)
amended by
No. 36/2008
s. 18(2).

A registered plumber must produce his or her registration document for inspection if asked to do so by—

S. 221ZFC
inserted by
No. 31/2007
s. 11,
amended by
No. 36/2008
s. 18(2).

(a) the owner or occupier of any land, building, vehicle, caravan or vessel on or in which the registered plumber is carrying out plumbing work or specialised plumbing work; or

(b) any person authorised in writing for the purpose of this section by—

(i) the Authority; or

S. 221ZFC
(b)(i)
amended by
No. 34/2013
s. 34(Sch. 1
item 65).

(ii) any other body that is responsible for the control of the class or type of plumbing work or specialised plumbing work that the registered plumber is carrying out.

Penalty: 10 penalty units.

Division 4—Compliance certificates

- S. 221ZG
inserted by
No. 39/1996
s. 5,
amended by
Nos 99/1997
s. 121(5),
91/1998 s. 35.
- 221ZG This Division does not apply to complex gasfitting work**
- Nothing in this Division applies to gasfitting work on a complex gas installation (as defined in the **Gas Safety Act 1997**). References to "plumbing work" in this Division are to be read as references to all plumbing work other than that work.
- S. 221ZH
inserted by
No. 39/1996
s. 5.
- 221ZH Compliance certificate must be given for most plumbing work**
- (1) This section only applies to the following plumbing work—
- (a) any plumbing work that has a total value of \$500 or more (or any higher amount fixed by the regulations); and
 - (b) the installation, relocation or replacement of any gas-using appliance; and
 - (ba) the conversion of a gas-using appliance for use with a different gaseous fuel; and
 - (bb) the installation, modification or relocation of consumer gas piping (other than work that is carried out on consumer gas piping by, or on behalf of, a gas company and that is incidental to the modification of the gas company's assets under the provisions of an accepted safety case under the **Gas Safety Act 1997**); and
 - (c) the construction, installation or alteration of any below ground sanitary drain or associated gullies; and
- S. 221ZH(1)(b)
substituted by
No. 75/1998
s. 10(1).
- S. 221ZH(1)
(ba)
inserted by
No. 75/1998
s. 10(1).
- S. 221ZH(1)
(bb)
inserted by
No. 75/1998
s. 10(1).
- S. 221ZH(1)(c)
amended by
No. 85/2000
s. 9.

Building Act 1993
No. 126 of 1993
Part 12A—Plumbing work

- (d) the construction, installation, alteration, relocation or replacement of a cooling tower or of any other part of a cooling tower system (including the installation or replacement of any associated device or equipment). **S. 221ZH(1)(d) inserted by No. 85/2000 s. 9.**
- (2) Within 5 days of the completion of any plumbing work to which this section applies that he or she has carried out or supervised, a licensed plumber must—
- (a) give the person for whom the work was carried out a signed compliance certificate in respect of the work; and
- (b) notify the Authority, in the manner specified by the Authority, that the compliance certificate has been given. **S. 221ZH(2)(b) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 66).**
- Penalty: 60 penalty units.
- (2A) A person for whom plumbing work to which this section applies has been carried out may, by notice served on the licensed plumber, request the licensed plumber to give the person a signed compliance certificate for the work carried out or supervised by the plumber—
- (a) if the plumber has not completed the work that the plumber was engaged to carry out; and
- (b) the person believes on reasonable grounds that the plumber will not complete the plumbing work. **S. 221ZH(2A) inserted by No. 36/2008 s. 21(1).**

S. 221ZH(2B)
inserted by
No. 36/2008
s. 21(1),
amended by
No. 33/2010
s. 41.

- (2B) Within 5 days of service of a notice under subsection (2A), a licensed plumber must—
- (a) give the person for whom the work was carried out a signed compliance certificate in respect of the work; and
 - (b) notify the Authority, in the manner specified by the Authority, that the compliance certificate has been given.

S. 221ZH
(2B)(b)
amended by
No. 34/2013
s. 34(Sch. 1
item 66).

Penalty: 60 penalty units.

S. 221ZH(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 66).

- (3) A document is not a compliance certificate unless the certificate form used is a form that has been supplied by the Authority or a person authorised by the Authority.

S. 221ZH(4)
inserted by
No. 75/1998
s. 10(2),
substituted by
No. 36/2008
s. 21(2).

- (4) For the purposes of this section plumbing work is completed by a licensed plumber when whichever of the following first occurs—
- (a) the plumber completes the whole of the plumbing work that he or she was engaged to carry out in accordance with the relevant plumbing laws;
 - (b) the whole of the plumbing work that the plumber was engaged to carry out is capable of being used in accordance with the relevant plumbing laws.

S. 221ZH(5)
inserted by
No. 75/1998
s. 10(2),
amended by
No. 36/2008
s. 21(3).

- (5) If a plumber carries out or supervises any plumbing work to which subsection (1)(b), (ba) or (bb) applies, for the purposes of subsection (2) or (2B) he or she must give a separate compliance certificate in respect of the work for each separately metered premises on or at which the work is carried out, even if all of the work was carried out or supervised by the plumber for the same person under a contract.

(6) If a licensed plumber gives a person a signed compliance certificate, but fails to do so within 5 days after the completion of the relevant work, or fails to comply with subsection (2)(b), the failure to comply with subsection (2) does not affect the validity of the certificate.

S. 221ZH(6)
inserted by
No. 96/2004
s. 15.

(6A) If a licensed plumber gives a person a signed compliance certificate, but fails to do so within 5 days after the service of a notice under subsection (2A), or fails to comply with subsection (2B)(b), the failure to comply with subsection (2B) does not affect the validity of the certificate.

S. 221ZH(6A)
inserted by
No. 36/2008
s. 21(4).

(7) Subsection (6) applies regardless of whether the compliance certificate was given before, on or after the day subsection (6) took effect.

S. 221ZH(7)
inserted by
No. 96/2004
s. 15.

221ZI Details that must appear on a compliance certificate

S. 221ZI
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 11(2) (ILA
s. 39B(1)).

(1) A licensed plumber must not sign a compliance certificate in relation to any plumbing work unless the certificate—

S. 221ZI(1)
amended by
No. 33/2010
s. 42.

(a) describes the work; and

(b) states—

S. 221ZI(1)(b)
substituted by
No. 75/1998
s. 11(1).

(i) that he or she carried out the work, or that the work was carried out under his or her supervision; or

(ii) if he or she completed work that had been started by another licensed plumber and in respect of which a compliance certificate has not been given to the person for whom that work was carried out, that he or she—

S. 221ZI
(1)(b)(ii)
amended by
No. 36/2008
s. 22.

- (A) has inspected or tested the work that was carried out before he or she carried out any work; and
- (B) carried out any work that was required to complete the plumbing work or that that completion work was carried out under his or her supervision; and
- (c) states that the work complies with any particular requirements specified in the certificate; and
- (d) states that the work complies with the plumbing laws; and
- (e) contains any other details in relation to the work required by the certificate form.

Penalty: 120 penalty units.

S. 221Z(2)
inserted by
No. 75/1998
s. 11(2),
amended by
No. 33/2010
s. 42.

- (2) A licensed plumber must not state under subsection (1)(b) that work was carried out under his or her supervision unless the person who carried out the work was authorised to carry out the work under this Part.

Penalty: 120 penalty units.

S. 221ZJ
inserted by
No. 39/1996
s. 5.

221ZJ Details on certificates must be accurate

A licensed plumber must not sign a compliance certificate in relation to any plumbing work if the plumber knows, or ought reasonably to know, that the certificate contains any misstatement of fact.

Penalty: 60 penalty units.

221ZK Only licensed plumbers may sign certificates

A person must not—

(a) sign a compliance certificate form issued by, or on behalf of, the Authority unless he or she is a licensed plumber; or

(b) sign a document that has not been issued by, or on behalf of, the Authority and that purports to be a compliance certificate.

Penalty: 60 penalty units.

S. 221ZK
inserted by
No. 39/1996
s. 5.

S. 221ZK(a)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 67).

S. 221ZK(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 67).

221ZKA Issue of certificates by the Authority

(1) The Authority may authorise a person to issue and sign a compliance certificate on its behalf if plumbing work in respect of which a compliance certificate must be issued under section 221ZH is completed and the licensed plumber who carried out the work—

(a) did not issue a certificate in respect of the work, and is dead or cannot be located after reasonable enquiries have been made; or

(b) is under a physical or legal disability that prevents him or her from issuing a certificate in respect of the work.

S. 221ZKA
(Heading)
amended by
No. 34/2013
s. 34(Sch. 1
item 68).

S. 221ZKA
inserted by
No. 96/2004
s. 16.

S. 221ZKA(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 69).

(2) A person who requests a compliance certificate under this section is liable to pay—

- (a) any fee or fees specified by the regulations for the purposes of this section; and
- (b) any costs incurred by or on behalf of the Authority to enable the certificate to be issued and signed.

S. 221ZKA
(2)(b)
amended by
No. 34/2013
s. 34(Sch. 1
item 69).

(3) Subsection (2) applies even if a certificate is not ultimately issued and signed under this section.

(4) For the purposes of this section, section 221ZI(1) applies as if—

- (a) a reference to a licensed plumber was a reference to the person authorised by the Authority to sign the certificate; and

S. 221ZKA
(4)(a)
amended by
No. 34/2013
s. 34(Sch. 1
item 69).

- (b) there were substituted for paragraph (b) the following paragraph—

"(b) states that he or she has inspected or tested the work as far as is practicable and that he or she is authorised by the Authority to issue compliance certificates under section 221ZKA; and".

S. 221ZKA
(4)(b)
amended by
No. 34/2013
s. 34(Sch. 1
item 69).

(5) Section 221ZK(a) does not apply to the signing of a compliance certificate by a person who has been authorised to sign the certificate under this section.

(6) A certificate that is issued under this section is to be treated as if it had been issued in accordance with section 221ZH.

221ZL Meaning of the total value of plumbing work

S. 221ZL
inserted by
No. 39/1996
s. 5.

For the purposes of this Division, the total value of plumbing work is the sum of—

- (a) the cost of any materials used in the work (even if the materials were not supplied by the person carrying out the work); and
- (b) if the work involves the installation of any thing, the cost of the thing (even if the thing was not supplied by the person carrying out the work); and
- (c) the cost of the labour involved in the work.

221ZLA Building practitioner must transfer compliance certificate to owner

S. 221ZLA
inserted by
No. 75/1998
s. 12.

- (1) This section applies if—
 - (a) a licensed plumber carries out any plumbing work to which section 221ZH applies for a building practitioner in or on any premises that the building practitioner does not own; and
 - (b) the plumber gives the building practitioner (or an agent of the building practitioner) the compliance certificate in respect of the work.
- (2) The building practitioner must give the compliance certificate to the owner of the premises (or to the owner's agent) within 5 days after the day the building practitioner (or the building practitioner's agent) is given the compliance certificate.

S. 221ZLA(2)
amended by
No. 96/2004
s. 18,
substituted by
No. 31/2007
s. 12.

Penalty: 3 penalty units.

S. 221ZLB
inserted by
No. 96/2004
s. 17.

221ZLB Other people must also transfer compliance certificate to owner

- (1) This section applies if—
 - (a) a licensed plumber carries out any plumbing work to which section 221ZH applies for a person other than a building practitioner in or on any premises that the person does not own; and
 - (b) the plumber gives the person (or an agent of the person) the compliance certificate in respect of the work.
- (2) The person must give the compliance certificate to the owner of the premises (or to the owner's agent) within 5 days after the day the person (or the person's agent) is given the compliance certificate.

Penalty: 3 penalty units.

S. 221ZM
inserted by
No. 39/1996
s. 5.

221ZM Copies of certificates must be kept for 10 years

A person must keep for at least 10 years a copy of every compliance certificate signed by him or her.

Penalty: 10 penalty units.

S. 221ZN
inserted by
No. 39/1996
s. 5.

221ZN Provisions concerning the supply of certificate forms

S. 221ZN(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 70).

- (1) The Authority may sell compliance certificate forms to licensed plumbers.

S. 221ZN(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 70).

- (2) The Authority may authorise a person to sell compliance certificate forms to licensed plumbers.

- (3) In authorising a person, the Authority may impose any conditions on its authorisation that it thinks appropriate, and may change any such condition at any time. **S. 221ZN(3) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 70).**
- (4) A person authorised by the Authority to sell compliance certificate forms—
- (a) must not sell or give a compliance certificate form to a person who is not a licensed plumber; and
 - (b) must not sell a compliance certificate form to a licensed plumber at a price greater than \$20 (or any other amount specified by the regulations); and
 - (c) must comply with any condition imposed by the Authority in granting its authorisation. **S. 221ZN(4)(c) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 70).**
- Penalty: 20 penalty units.
- (5) The Authority must not sell a compliance certificate form to a licensed plumber at a price greater than \$20 (or any other amount specified by the regulations). **S. 221ZN(5) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 70).**
- (6) A licensed plumber may authorise a person in writing to buy compliance certificate forms on the plumber's behalf.
- (7) A licensed plumber must ensure that only one person has such an authority at any one time.
- Penalty: 5 penalty units.

- (8) A reference to a licensed plumber in subsections (1) to (5) includes a reference to any person duly authorised by a licensed plumber under subsection (6).

S. 221ZO
inserted by
No. 39/1996
s. 5,
amended by
No. 96/2004
s. 19(1)(b).

221ZO Further obligation for compliance certificates for sanitary drains

- (1) This section applies if a licensed plumber constructs, installs or alters any sanitary drain.
- (2) If required by a water authority to give the authority a plan of the sanitary drain as it appears after the work is completed, the licensed plumber must—

S. 221ZO(2)
amended by
No. 33/2010
s. 43.

S. 221ZO(2)(a)
amended by
No. 96/2004
s. 19(1)(a).

- (a) give the plan to the authority before the compliance certificate is signed; and
- (b) indicate on the compliance certificate that the plan has been given to the authority.

Penalty: 120 penalty units.

Division 5—Provisions applying to particular plumbing work

S. 221ZP
inserted by
No. 39/1996
s. 5.

221ZP Sanitary drainage and other work must be made available for inspection before being covered

- (1) This section applies if a licensed plumber—
- (a) constructs, installs or alters any below ground sanitary drain or associated gullies, or supervises any such work; or
- (b) carries out any other plumbing work that the regulations state is work to which this section applies.

(2) The plumber must not cover any pipes or pipework involved in the work unless—

(a) he or she has advised the Authority in the manner specified by the Authority of the time at which the work will be ready for inspection; and

S. 221ZP(2)(a)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 71).

(b) either—

(i) a person authorised by the Authority has inspected the work and authorised the plumber to cover the work; or

S. 221ZP(2)
(b)(i)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 71).

(ii) no person authorised by the Authority arrives to inspect the work and at least half an hour has elapsed since the time referred to in paragraph (a).

S. 221ZP(2)
(b)(ii)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 71).

Penalty: 10 penalty units.

(3) Unless he or she has a reasonable excuse for not doing so, the plumber—

S. 221ZP(3)
amended by
No. 75/1998
s. 5(b),
substituted by
No. 75/1998
s. 13.

(a) must ensure that the work is ready to be inspected at the time given to the Authority under subsection (2)(a); and

S. 221ZP(3)(a)
amended by
No. 34/2013
s. 34(Sch. 1
item 71).

(b) must be present at that time at the place where the work was carried out.

Penalty: 10 penalty units.

S. 221ZPA
inserted by
No. 75/1998
s. 14.

221ZPA Information to be provided before work starts

- (1) Before a licensed or registered plumber starts any plumbing work at a premises, he or she must give the person who commissioned the work a document that sets out the plumber's name, licence or registration number, and business address.

Penalty: 10 penalty units.

- (2) If the plumbing work is work for which section 221ZH requires the issue of a compliance certificate, the plumber must at the same time also give the person a document that contains a brief description of the required insurance that applies to the work.

Penalty: 10 penalty units.

- (3) The description required by subsection (2) must be in a form approved by the Authority.

S. 221ZPA(3)
amended by
No. 34/2013
s. 34(Sch. 1
item 72).

Division 6—Insurance orders

S. 221ZQ
inserted by
No. 39/1996
s. 5.

221ZQ Order requiring insurance

- (1) The Minister may, by order published in the Government Gazette—
 - (a) require licensed plumbers to be covered by insurance; and
 - (b) specify the kinds and amount of insurance by which licensed plumbers are required to be covered.
- (2) An order—
 - (a) must state the date on which it is to take effect, which must be a date that is not earlier than 21 days after the date it is published in the Government Gazette;

- (b) may impose different requirements for different classes of licensed plumbers.
- (3) The Minister may, in a particular case, vary any excess specified in an order if the Minister is satisfied that it is appropriate to do so.
- (4) The Minister may, by order published in the Government Gazette, amend or revoke an order made under subsection (1). **S. 221ZQ(4) substituted by No. 66/2004 s. 14.**
- (5) For the purposes of this Part, a person is covered by the required insurance if—
- (a) the person holds the required insurance; or
 - (b) the work carried out by or on behalf of the person is covered by the required insurance; or
 - (c) the person is not a party to the required insurance but is specified or referred to in the insurance, whether by name or otherwise, as a person to whom the insurance cover extends.
- (5A) The order of the Minister under this section published in the Government Gazette on 28 February 1997 is revoked and is deemed never to have been made. **S. 221ZQ(5A) inserted by No. 34/1997 s. 21.**
- (5B) The order of the Minister under this section published in the Government Gazette on 6 May 1997 is deemed to have been made under this section on 28 February 1997 and to have taken effect on 24 March 1997, despite anything to the contrary in this section or in the order. **S. 221ZQ(5B) inserted by No. 34/1997 s. 21.**
- (5C) Any reference in any document (other than this Act) to the order of the Minister under this section published in the Government Gazette on 28 February 1997 is deemed to be a reference to the order referred to in subsection (5B), unless a contrary intention expressly appears. **S. 221ZQ(5C) inserted by No. 34/1997 s. 21.**

- (6) In this section *insurance* includes—
- (a) professional indemnity insurance;
 - (b) a performance bond;
 - (c) a guarantee;
 - (d) an indemnity;
 - (e) public liability insurance;
 - (f) insurance relating to a particular project;
 - (g) insurance taken out by any body or person that relates to the work of a licensed plumber;
 - (h) any agreement or instrument in the nature of an item set out in paragraphs (a) to (g).

S. 221ZR
inserted by
No. 39/1996
s. 5,
amended by
No. 33/2010
s. 44.

221ZR Offence to work as plumber without required insurance

A licensed plumber must not carry out any plumbing work unless he or she is covered by the required insurance.

Penalty: 500 penalty units.

S. 221ZS
inserted by
No. 39/1996
s. 5,
amended by
No. 33/2010
s. 45.

221ZS Offence to claim to be insured when uninsured

A person who carries out, or offers to carry out, any plumbing work and who is not covered by the required insurance must not hold himself or herself out as being covered by that insurance.

Penalty: 500 penalty units.

S. 221ZT
inserted by
No. 39/1996
s. 5,
amended by
No. 17/1999
s. 22(8) (ILA
s. 39B(1)).

221ZT Further provisions concerning required insurance

- (1) Without limiting section 221ZQ, if an order under that section requires a licensed plumber to be covered by insurance relating to the carrying out of plumbing work, the insurance required by the order may, subject to any exemptions or exclusions set out in the order, relate to losses resulting from—

- (a) non-completion of the work;
- (b) defective work;
- (c) conduct by the plumber in connection with the contract for that work that contravenes section 18, 29, 34 or 151, or Subdivision B of Division 1 of Part 3-2, of the Australian Consumer Law (Victoria).
- (2) A reference—
- (a) in any order made under section 221ZQ; or
- (b) in any instrument or agreement which is required insurance (within the meaning of section 221B(1))—

S. 221ZT(1)(c)
amended by
Nos 17/1999
s. 22(7),
72/2010
s. 48(Sch.
item 2(5)).

S. 221ZT(2)
inserted by
No. 17/1999
s. 22(8),
substituted by
No. 72/2010
s. 48(Sch.
item 2(6)).

to "section 9, 11 or 12 of the **Fair Trading Act 1999**" is, to the extent that it relates to any period on or after the commencement of section 8 of the **Fair Trading Amendment (Australian Consumer Law) Act 2010**, taken to include a reference to "section 18, 29, 34 or 151 of the Australian Consumer Law (Victoria)".

221ZU Suspension of licence if insurance ceases

S. 221ZU
inserted by
No. 39/1996
s. 5.

- (1) The Authority must suspend the licence of a licensed plumber if it becomes aware that he or she has ceased to be covered by the required insurance.
- (2) If the Authority suspends a person's licence under subsection (1), it must give him or her written notice of the suspension.

S. 221ZU(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 73).

S. 221ZU(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 73).

S. 221ZU(3)
amended by
Nos 75/1998
s. 5(b),
36/2008 s. 23,
34/2013
s. 34(Sch. 1
item 73).

- (3) A suspension imposed under this section lasts until the person suspended gives the Authority written proof that he or she is covered by the required insurance for the remaining period of the licence. When that proof is given, the Authority must revoke the suspension.

S. 221ZV
inserted by
No. 39/1996
s. 5.

221ZV Suspension of licence where failure to comply with insurer's direction

S. 221ZV(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 74).

- (1) An insurer may apply to the Authority for the suspension of the licence of a licensed plumber on the ground of a failure by the plumber to comply with a reasonable direction of the insurer in respect of the completion or rectification of defective plumbing work or any payment to be made to the insurer in respect of the completion or rectification of defective plumbing work in accordance with the required insurance.

- (2) An application must—

- (a) be in writing; and
- (b) set out the terms of the direction to be complied with.

S. 221ZV(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 74).

- (3) The Authority must notify a plumber in respect of whom an application is made without delay of the application and advise the plumber—

- (a) that his or her licence may be suspended at the end of 28 days after the date of the notice unless the plumber complies with the direction; and
- (b) that he or she has a right to be heard by the Authority in respect of the application.

S. 221ZV(3)(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 74).

- (4) If a plumber has not complied with the direction within 28 days after the date of the notice, the Authority, after giving the plumber an opportunity to be heard, may suspend the plumber's licence. **S. 221ZV(4) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 74).**
- (5) Clauses 12, 15, 16, 17 and 18(1) of Schedule 3 apply to a proceeding under subsection (4) as if a reference in those clauses to the Building Appeals Board was a reference to the Authority. **S. 221ZV(5) amended by Nos 75/1998 s. 5(b), 28/2000 s. 20(b), 34/2013 s. 34(Sch. 1 item 74), 21/2017 s. 98.**
- (6) If the Authority suspends a plumber's licence under this section, the suspension lasts until the Authority is satisfied that the plumber has complied with the direction. On being so satisfied, the Authority must revoke the suspension. **S. 221ZV(6) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 74).**

Division 7—Rectification of defective plumbing work

221ZW Inspector or auditor may require plumber to rectify faulty work

S. 221ZW inserted by No. 39/1996 s. 5.

- (1) This section applies if a plumbing inspector or compliance auditor is of the opinion that particular plumbing work is in breach of any plumbing laws that apply to the work.
- (2) The inspector or auditor may give the person who carried out the work, or who supervised the carrying out of the work, a written rectification notice requiring the person to rectify the work to make it comply with the plumbing law that the work does not comply with within the time specified by the inspector or auditor.

- (3) If a certificate of compliance was given with respect to the work, the inspector or auditor may also require the licensed plumber who signed the certificate to produce a new certificate of compliance in respect of the rectified work and to give the inspector or auditor a copy of that new certificate within the time specified by the inspector or auditor.
 - (4) In requiring a copy of a new compliance certificate under subsection (3), the inspector or auditor must allow the licensed plumber a period of at least 10 days after the date of the notice to comply with the requirement.
 - (5) A person—
 - (a) must comply with any requirement made by an inspector or auditor in a rectification notice; and
 - (b) must not ask for, or receive, from the person for whom the work was originally carried out (or any agent of that person) any money in respect of any cost arising from anything the person does in complying with a rectification notice.
- Penalty: 50 penalty units.
- (6) The inspector or auditor must make it clear in a rectification notice in what way the work that needs rectification is defective.
 - (7) If a person applies to VCAT under section 221ZX to have a rectification notice cancelled, he or she need not comply with the notice until he or she abandons the application or receives written notice that VCAT has affirmed the rectification notice or dismissed the application.

S. 221ZW(7)
amended by
Nos 28/2000
s. 20(c),
21/2017
s. 96(3)(4).

- (8) For the purposes of subsection (7), if the time specified to comply with a rectification notice is expressed as a date, the time within which the notice must be complied with is the number of days between that date and the date the notice was given to the person.
- (9) If an inspector or auditor gives a rectification notice to a person before the person produces any compliance certificate that the person is required to produce in respect of particular plumbing work, the person must still produce the compliance certificate once the rectification work has been completed.
- (10) The inspector or auditor must give a copy of the rectification notice to the person on whose behalf the plumbing work was carried out.
- (11) If the rectification notice relates to gasfitting work, the inspector or auditor must give a copy of the rectification notice to the relevant gas distribution company.

S. 221ZW(11)
inserted by
No. 99/1997
s. 121(7).

221ZX Right to apply to VCAT to have a rectification notice cancelled

S. 221ZX
inserted by
No. 39/1996
s. 5.

- (1) A person who has been given a rectification notice may apply to VCAT to have the decision to issue the notice reviewed.
- (2) Such an application must be made within 5 business days of the date the person receives the notice.

S. 221ZX(1)
amended by
Nos 28/2000
s. 20(c),
21/2017
s. 96(4).

221ZY Plumbing notice to owner/occupier to rectify defective plumbing work

S. 221ZY
inserted by
No. 39/1996
s. 5.

- (1) This section applies if a plumbing inspector is of the opinion that any plumbing work that has been carried out on any land or in any building—

- (a) contravenes any plumbing laws; or
 - (b) would contravene any plumbing laws if it were to be used; or
 - (c) may be a danger to the life, safety or health of any person or may pose a risk of damage to any property.
- (2) The plumbing inspector may give the owner or occupier of the land or building a written notice that requires the owner or occupier to show cause within a specified period why he or she should not ensure that the plumbing work is rectified.
- (3) The notice must be in the form specified by the Authority.

S. 221ZY(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 75).

S. 221ZZ
inserted by
No. 39/1996
s. 5.

221ZZ Owner/occupier may dispute a plumbing notice

An owner or occupier who has been given a plumbing notice may make representations about any matter set out in the notice to the inspector who signed it in the manner set out in the notice.

S. 221ZZA
inserted by
No. 39/1996
s. 5.

221ZZA Inspector may cancel plumbing notice

The plumbing inspector who gave a plumbing notice may cancel it at any time.

S. 221ZZB
inserted by
No. 39/1996
s. 5.

221ZZB Plumbing order to rectify defective plumbing work

- (1) A plumbing inspector may issue a written order requiring that the owner or occupier of any land or building—
- (a) rectify any plumbing work that has been carried out on the land or in the building so that it complies with the plumbing laws; or
 - (b) modify any plumbing work that has been carried out on the land or in the building.

- (2) A plumbing inspector may only issue such an order after—
- (a) he or she has given the owner or occupier a plumbing notice in respect of the plumbing work; and
 - (b) he or she has considered any representations made by the owner or occupier in response to the plumbing notice within the period permitted by the plumbing notice; and
 - (c) the time permitted by the plumbing notice for the making of representations has passed.
- (3) The order—
- (a) must specify the time or times within which it must be complied with (which must be a period of at least 15 business days after it is given to the owner or occupier); and
 - (b) must contain a copy of sections 221ZZC, 221ZZE and 221ZZJ; and
 - (c) must contain any other details required by the Authority.
- (4) If the order relates to gasfitting work, the plumbing inspector must give a copy of the order to the relevant gas distribution company.

**S. 221ZZB
(3)(c)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 76).**

**S. 221ZZB(4)
inserted by
No. 99/1997
s. 121(8).**

S. 221ZZC
inserted by
No. 39/1996
s. 5.

221ZZC Owner/occupier must comply with plumbing order

S. 221ZZC(1)
amended by
No. 21/2017
s. 95(10).

- (1) An owner or occupier of any land or building must comply with any requirement set out in a plumbing order that has been given to him or her within the time set out in the order.

Penalty: 60 penalty units, in the case of a natural person;

120 penalty units, in the case of a body corporate.

- (2) Subsection (1) does not apply if the owner or occupier has a reasonable excuse for failing to comply with the order.

S. 221ZZD
inserted by
No. 39/1996
s. 5.

221ZZD Inspector may cancel plumbing order

The plumbing inspector who gave a plumbing order may cancel it at any time.

S. 221ZZE
inserted by
No. 39/1996
s. 5.

221ZZE Right to apply to the VCAT to have a plumbing order cancelled

S. 221ZZE(1)
amended by
Nos 28/2000
s. 20(c),
21/2017
s. 96(4).

- (1) A person who has been given a plumbing order may apply to VCAT to have the decision to issue the order reviewed.

- (2) Such an application must be made within 15 business days of the date the person receives the order.

S. 221ZZE(3)
amended by
No. 21/2017
s. 96(5).

- (3) If an owner or occupier applies to VCAT within the time allowed, he or she need not comply with section 221ZZC until the expiry of—

(a) 15 business days after he or she receives written notice that the Authority has affirmed the plumbing order; or

S. 221ZZE
(3)(a)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 77).

(b) 5 business days after he or she abandons the application or he or she receives written notice that the Authority has dismissed the application—

S. 221ZZE
(3)(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 77).

(whichever happens first).

(4) In considering an application, VCAT may consider matters not raised before the plumbing order was made.

S. 221ZZE(4)
amended by
No. 21/2017
s. 96(5).

221ZZF Emergency plumbing order to rectify dangerous plumbing work

S. 221ZZF
inserted by
No. 39/1996
s. 5.

(1) This section applies if a plumbing inspector is of the opinion that any plumbing work that has been carried out on any land or in any building—

(a) contravenes any plumbing laws or would contravene any plumbing laws if it were to be used; and

(b) is an immediate danger to the life, safety or health of any person or poses an immediate risk of significant damage to any property.

(2) The plumbing inspector may issue a written order requiring that the owner or occupier of the land or building, within a specified time or times—

(a) rectify the plumbing work so that the danger or risk is removed; or

(b) modify the plumbing work so that the danger or risk is removed; or

- (c) ensure that everyone on the land or in the building is evacuated from the land or building; or
 - (d) ensure that specified people or classes of people on the land or in the building are evacuated from the land or building.
- (3) The plumbing inspector may also, in an emergency plumbing order, prohibit the occupation or use of the land or building for a specified period of up to 48 hours.
- (4) The order must contain a copy of sections 221ZZG and 221ZZJ.
- (5) The Authority has no power to cancel an order made under this section.
- (6) If the order relates to gasfitting work, the plumbing inspector must give a copy of the order to the relevant gas distribution company.

S. 221ZZF(5)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 78).

S. 221ZZF(6)
inserted by
No. 99/1997
s. 121(9).

S. 221ZZG
inserted by
No. 39/1996
s. 5.

221ZZG Offence to not comply with emergency plumbing order

S. 221ZZG(1)
amended by
No. 33/2010
s. 46.

- (1) An owner or occupier of any land or building must comply with any emergency plumbing order that has been given to him or her.

Penalty: 240 penalty units, in the case of a natural person.

1500 penalty units, in the case of a body corporate.

- (2) A person must not occupy or use any land or building in contravention of an emergency plumbing order.

S. 221ZZG(2)
amended by
No. 33/2010
s. 46.

Penalty: 240 penalty units, in the case of a natural person.

1500 penalty units, in the case of a body corporate.

- (3) This section does not apply if the owner, occupier or person has a reasonable excuse for failing to comply with the order.

221ZZH Inspector may cancel emergency plumbing order

S. 221ZZH
inserted by
No. 39/1996
s. 5.

The plumbing inspector who gave an emergency plumbing order to an owner or occupier may cancel it by written notice given to the owner or occupier if the order was made in error or if the circumstances giving rise to the making of the order have changed.

221ZZI Plumbing notices and orders to be last resort

S. 221ZZI
inserted by
No. 39/1996
s. 5.

- (1) A plumbing inspector must not give an owner or occupier of any land or building a plumbing notice or a plumbing order in relation to any plumbing work unless either—
- (a) the inspector served a rectification notice in relation to the work on the plumber responsible for the work, and it is clear that that notice will not be complied with; or
 - (b) the inspector is satisfied that it is either not possible or not appropriate to serve a rectification notice in relation to the work on the plumber responsible for the work.
- (2) A plumbing inspector must not give an owner or occupier of any land or building an emergency plumbing order in relation to any plumbing work that makes a requirement under section 221ZZF(2)(a) unless the inspector is

satisfied that the emergency plumbing order is likely to be complied with more quickly than a rectification notice in relation to the work would be complied with.

S. 221ZZJ
inserted by
No. 39/1996
s. 5.

221ZZJ Owner/occupier must report the completion of required work

- (1) An owner or occupier who is required by a plumbing order or emergency plumbing order to ensure that plumbing work is carried out must advise the plumbing inspector who issued the order that the work has been carried out as soon as is practicable after the work is finished.

Penalty: 10 penalty units.

- (2) On receiving the advice, the plumbing inspector must inspect the work.

S. 221ZZK
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 79).

221ZZK Work may be carried out by Authority or plumbing inspector

S. 221ZZK
inserted by
No. 39/1996
s. 5.

S. 221ZZK(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 80).

- (1) If an owner or occupier fails to comply with a plumbing order or emergency plumbing order, the Authority or the plumbing inspector who issued the order may cause the work required by the order to be carried out.

S. 221ZZK(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 80).

- (2) The Authority may recover any costs incurred in carrying out the work from the owner or occupier (as the case may be) in a court of competent jurisdiction as a debt due to the Authority.

221ZZL Police assistance

S. 221ZZL
inserted by
No. 39/1996
s. 5.

(1) A plumbing inspector may ask for the help of a police officer, and a police officer may help—

S. 221ZZL(1)
amended by
No. 37/2014
s. 10(Sch.
item 9.2).

(a) in evacuating land or a building in accordance with an emergency plumbing order; or

(b) in removing people from land or a building on or in which the work is being carried out in accordance with a plumbing order or an emergency plumbing order by the inspector or a person asked to carry out the work by the inspector or the Authority.

S. 221ZZL
(1)(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 81).

(2) A police officer may use reasonable force in carrying out a function under subsection (1).

S. 221ZZL(2)
amended by
No. 37/2014
s. 10(Sch.
item 9.2).

Division 8—Interpretation and modification of plumbing regulations

221ZZM Meaning of *plumbing regulations*

In this Division, *plumbing regulations* means—

S. 221ZZM
inserted by
No. 39/1996
s. 5.

(a) any regulations made under section 221ZZZV(1)(a) or (g)(i); or

(b) any regulation (other than any regulation made under the **Gas Safety Act 1997**), local law or by-law that applies, or that applied at a material time, to plumbing work.

S. 221ZZM(b)
amended by
No. 99/1997
s. 121(6).

S. 221ZZN
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 82).

S. 221ZZN
inserted by
No. 39/1996
s. 5.

221ZZN Authority may resolve disputes concerning interpretation of plumbing regulations

- (1) This section applies if there is a dispute about the application or effect of any provision of the plumbing regulations, or whether any provision of the plumbing regulations is, or has been, complied with, and the dispute is between all or any of the following—
 - (a) the owner or occupier of a premises on which plumbing work is being, has been or is about to be, carried out;
 - (b) the licensed or registered plumber who is carrying out, carried out, or is about to carry out, that work;
 - (c) any person who acts on behalf of the owner or occupier of the premises;
 - (d) a plumbing inspector or compliance auditor.
- (2) One or more of the parties to the dispute may apply to the Authority for a declaration as to the application or effect of the provision of the plumbing regulations or whether the provision of the plumbing regulations is, or has been, complied with.
- (3) The application may be made in any manner approved by the Authority.
- (4) After conducting a hearing on the application, the Authority must declare its opinion on the matter in dispute.

S. 221ZZN(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 83).

S. 221ZZN(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 83).

S. 221ZZN(4)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 83).

- (5) Each party to the dispute is bound by the declaration of the Authority and must give effect to the declaration once the declaration takes effect. S. 221ZZN(5) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 83).
- (6) Each person who was given an opportunity to be heard by the Authority is a party to the dispute for the purposes of subsection (5). S. 221ZZN(6) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 83).
- (7) An application to VCAT for the review of a declaration of the Authority must be made by the end of the 5th business day after each party to the dispute has received a copy of the declaration. S. 221ZZN(7) amended by Nos 52/1998 s. 311(Sch. 1 item 10.11), 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 83), 21/2017 s. 96(6).
- (8) A declaration takes effect—
- (a) at the start of the 6th business day after each party to the dispute has received a copy of it; or
- (b) if an application to review it has been lodged, on the application being abandoned or on VCAT dismissing the application or affirming the declaration. S. 221ZZN(8) amended by No. 28/2000 s. 20(c). S. 221ZZN(8)(b) amended by No. 21/2017 s. 96(6).
- (9) If a person applies to VCAT for the review of a declaration, the Authority must give the person its written reasons for the declaration as soon as possible after the application is lodged. S. 221ZZN(9) amended by Nos 75/1998 s. 5(b), 28/2000 s. 20(c), 34/2013 s. 34(Sch. 1 item 83), 21/2017 s. 96(6).

221ZZO Modification of plumbing regulations

S. 221ZZO
inserted by
No. 39/1996
s. 5.

S. 221ZZO(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 84).

- (1) The Authority may declare that a provision of the plumbing regulations does not apply, or applies with specified variations, to specified plumbing work.
- (2) A declaration under this section overrides the plumbing regulations and must be given effect to with respect to the specified plumbing work as if those regulations had been amended to accord with the declaration.
- (3) An application for a declaration may be made by—
 - (a) the owner or occupier of a building or land;
 - (b) a licensed or registered plumber;
 - (c) a plumbing inspector or compliance auditor;
 - (d) a Department Head within the meaning of the **Public Administration Act 2004**;
 - (e) a public authority.
- (4) The person applying for the declaration must—
 - (a) identify the plumbing work for which the application is being made; and
 - (b) specify in what way the person would like the plumbing regulations modified with respect to that work.

S. 221ZZO
(3)(d)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 21.3).

- (5) An application for a declaration must be accompanied by the fee set out in the regulations.
- (6) For the purposes of this Part, any plumbing work that is the subject of a declaration complies with the plumbing regulations if it complies with those regulations as modified by the declaration.

221ZZP Matters Authority must consider before making a modification declaration

S. 221ZZP
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 85).

S. 221ZZP
inserted by
No. 39/1996
s. 5.

- (1) The Authority may only declare that a provision of the plumbing regulations does not apply to specified plumbing work if it is satisfied that the provision is inappropriate in the particular circumstances.
- (2) The Authority may only declare that a provision of the plumbing regulations applies with the variations specified by the Authority to specified plumbing work if it is satisfied that it is reasonable to do so and is not detrimental to the public interest.
- (3) In making a declaration under section 221ZZO, the Authority may impose any conditions that it thinks appropriate in relation to how the declaration is to be given effect to.

S. 221ZZP(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 86).

S. 221ZZP(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 86).

S. 221ZZP(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 86).

S. 221ZZQ
inserted by
No. 39/1996
s. 5.

221ZZQ Procedure applying to hearings under this Part

(1) Subject to anything to the contrary in this Part, clauses 12, 15, 16, 17, 18(1) and 19 of Schedule 3 apply to the hearing of a dispute under section 221ZZN or of an application under section 221ZZO as if a reference in those clauses to—

S. 221ZZQ
(1)(a)
amended by
Nos 75/1998
s. 5(c),
34/2013
s. 34(Sch. 1
item 87).

(a) the Building Appeals Board was a reference to the Victorian Building Authority; and

(b) a determination was a reference to a declaration.

(2) For the purposes of this Division, section 221ZZZO applies as if a reference in that section to a disciplinary hearing was a reference to the hearing of a dispute under section 221ZZN or of an application under section 221ZZO.

Pt 12A Div. 9
(Heading and
ss 221ZZR–
221ZZX)
inserted by
No. 39/1996
s. 5,
substituted by
No. 75/1998
s. 3,
amended by
Nos 32/2001
s. 25(1),
96/2004
ss 20, 21,
54/2007
ss 8–10,
repealed by
No. 34/2013
s. 28.

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Pt 12A Div. 9A
(Heading and
ss 221ZZXA–
221ZZXD)
inserted by
No. 75/1998
s. 3,
amended by
Nos 32/2001
s. 25(2),
68/2001
s. 3(4),
24/2006
s. 6.1.2(Sch. 7
item 2.2),
repealed by
No. 34/2013
s. 28.

Division 10—Enforcement

221ZZY Enforcement staff

S. 221ZZY
inserted by
No. 39/1996
s. 5.

(1) The Authority may appoint for the purposes of this Part, from staff appointed or engaged under section 204—

S. 221ZZY(1)
amended by
No. 75/1998
s. 5(b),
substituted by
No. 34/2013
s. 26(3)(a).

(a) plumbing inspectors; and

(b) compliance auditors.

(2) The Authority must not appoint a person as a plumbing inspector or a compliance auditor under subsection (1) unless the Authority is satisfied that the person to be authorised is appropriately qualified or has successfully completed appropriate training.

S. 221ZZY(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 26(3)(b),
substituted by
No. 21/2017
s. 43.

(3) The Authority must issue identification to each person appointed as a plumbing inspector which must—

S. 221ZZY(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 26(3)(c),
substituted by
No. 21/2017
s. 43.

(a) contain a photograph of the person; and

(b) state the name of that person; and

S. 221ZZY(4)
inserted by
No. 21/2017
s. 43.

- (c) state the fact that the person is a plumbing inspector appointed by the Authority.
- (4) The Authority must issue identification to each person appointed as a compliance auditor which must—
- (a) contain a photograph of the person; and
 - (b) state the name of that person; and
 - (c) state the fact that the person is a compliance auditor appointed by the Authority.

S. 221ZZY(5)
inserted by
No. 21/2017
s. 43.

- (5) A plumbing inspector or a compliance auditor must produce the identification issued under this section for inspection—
- (a) before exercising a power under this Act or the regulations; and
 - (b) at any time during the exercise of a power under this Act or the regulations if asked to do so.

Penalty: 1 penalty unit.

S. 221ZZY(6)
inserted by
No. 21/2017
s. 43.

- (6) Subsection (5) does not apply to—
- (a) a requirement made by post; or
 - (b) the exercise of a power of entry under section 228I(1).

S. 221ZZZ
inserted by
No. 39/1996
s. 5, amended
by Nos
75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 88),
repealed by
No. 21/2017
s. 44(1).

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Building Act 1993
No. 126 of 1993
Part 12A—Plumbing work

*	*	*	*	*	S. 221ZZZA inserted by No. 39/1996 s. 5, amended by Nos 34/1997 s. 22, 75/1998 ss 5(b), 15(1), 31/2007 s. 13, 34/2013 s. 34(Sch. 1 item 89), repealed by No. 21/2017 s. 44(1).
*	*	*	*	*	S. 221ZZB inserted by No. 39/1996 s. 5, amended by No. 75/1998 s. 15(2)–(4), repealed by No. 21/2017 s. 44(1).
*	*	*	*	*	S. 221ZZBA inserted by No. 75/1998 s. 16, repealed by No. 21/2017 s. 44(1).

221ZZZC Additional powers of plumbing inspectors

- (1) Part 13 applies to caravans and vessels as if a caravan or vessel was a building and the occupant of the caravan or vessel was its occupier.
- (2) After entering any land or building under Part 13, a plumbing inspector or compliance auditor may—
- (a) inspect and test any plumbing work on or in that land or building;

S. 221ZZZC inserted by No. 39/1996 s. 5.

- (b) if it is reasonable or necessary for the purpose of such an inspection or test—
- (i) isolate that land or building from any water or gas supply;
 - (ii) connect or reconnect that land or building to a water or gas supply;
 - (iii) dismantle and re-assemble the work.

(3) In this section—

caravan includes any form of movable dwelling other than a boat or houseboat;

vessel means any boat or houseboat that has a gas appliance or toilet as a fixture.

S. 221ZZZD
inserted by
No. 39/1996
s. 5.

221ZZZD Compulsory inspections

S. 221ZZZD(1)
amended by
No. 21/2017
s. 95(11)(a).

- (1) This section applies if a gas company or a water authority has evidence to suggest—
- (a) that particular plumbing work does not comply with the plumbing laws; or
 - (b) that a real threat to health and safety exists as a result of the improper installation or maintenance of a sanitary drain or an appliance or fixture that uses water or gas; or
 - (c) that there is infiltration of groundwater or stormwater into private sanitary drains—
 - (i) from surface areas; or
 - (ii) from downpipes; or
 - (iii) due to gullies being fitted at an inappropriate level; or
 - (iv) due to defective plumbing work.

- | | |
|---|--|
| (2) The gas company or the water authority may ask the Authority in writing to inspect the work or drain, appliance or fixture. | S. 221ZZZD(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 90),
21/2017
s. 95(11)(b). |
| (3) On receiving such a request and a copy of the evidence, the Authority must cause an inspection to be made of the work or drain, appliance or fixture. | S. 221ZZZD(3)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 90). |
| (4) In this section <i>gas company</i> has the same meaning as it has in section 3(1) of the Gas Safety Act 1997 . | S. 221ZZZD(4)
inserted by
No. 21/2017
s. 95(11)(c). |

Division 10A—Plumbing infringements

Pt 12A
Div. 10A
(Heading and
ss 221ZZZDA
–221ZZZEB)
inserted by
No. 31/2007
s. 14.

221ZZZDA Definitions

S. 221ZZZDA
inserted by
No. 31/2007
s. 14.

In this Division—

authorised officer means—

S. 221ZZZDA
def. of
*authorised
officer*
amended by
No. 21/2017
s. 95(12).

- (a) the chief executive officer of the Authority;
- (b) a plumbing inspector;
- (c) a compliance auditor;
- (d) any other person authorised by the regulations made under this Part to issue plumbing infringement notices under this Division;

infringement penalty in relation to an offence,
means—

- (a) the penalty specified in column 2 of Schedule 5 in respect of the corresponding offence listed in column 1 of that Schedule; or
- (b) a penalty prescribed for the purposes of this Division in respect of a prescribed offence;

prescribed offence means—

- (a) an offence against a section listed in column 1 of Schedule 5; or
- (b) an offence—
 - (i) against this Part or the regulations made under this Part; and
 - (ii) which is prescribed for the purposes of this Division.

S. 221ZZZE
inserted by
No. 39/1996
s. 5,
substituted by
No. 75/1998
s. 17 (as
amended by
No. 74/2000
s. 3(Sch. 1
item 14)),
amended by
No. 32/2006
s. 94(Sch.
item 4(1)-(3)),
substituted by
No. 31/2007
s. 14.

221ZZZE Plumbing infringement notices

- (1) An authorised officer may serve a plumbing infringement notice on any person that the authorised officer has reason to believe has committed a prescribed offence.
- (2) An offence referred to in subsection (1) for which a plumbing infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) For the purposes of subsection (1), a plumbing infringement notice must—
 - (a) be in the form required by the **Infringements Act 2006** and state the infringement penalty in respect of the offence; and

- (b) include details of the additional steps (if any) required to expiate the offence.
- (4) An infringement penalty prescribed for the purposes of this Division must not exceed 10 penalty units.

221ZZZEA Additional steps required by infringement notice

S. 221ZZZEA
inserted by
No. 31/2007
s. 14.

- (1) Additional steps required to expiate a prescribed offence may include, but are not limited to, the following—
 - (a) the carrying out of any plumbing work if failure to carry out that work constitutes the offence;
 - (b) stopping any plumbing work that constitutes the offence;
 - (c) doing or omitting to do anything in order to remedy a contravention of this Part or the regulations made under this Part.
- (2) If a plumbing infringement notice requires additional steps to be taken to expiate a prescribed offence, and, before the end of the remedy period set out in the notice, or if the authorised officer allows, at any time before the service of a summons in respect of the offence, the person served with the notice informs the authorised officer that those steps have been taken—
 - (a) the authorised officer must, without delay, find out whether or not those steps have been taken; and
 - (b) serve on the person a notice stating whether or not those steps have been taken.

- (3) A statement in a notice under subsection (2) that additional steps have been taken is for all purposes conclusive proof of that fact.

S. 221ZZZEB
inserted by
No. 31/2007
s. 14.

221ZZZEB Proceedings where plumbing infringement notice requiring additional steps is served

Nothing in this section prejudices the institution or the prosecution of proceedings for an offence for which a plumbing infringement notice has been served if the notice states that a penalty must be paid and additional steps must be taken to expiate the offence, and—

- (a) the amount of the penalty is not paid before the end of the period for payment shown in the notice or of any further period allowed by the authorised officer; or
- (b) the person served with the notice does not, before the end of the remedy period shown in the notice or of any further period allowed by the authorised officer, take those additional steps.

Division 11—Inquiries and disciplinary action

S. 221ZZZF
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 91).

221ZZZF Inquiry by Authority

S. 221ZZZF
inserted by
No. 39/1996
s. 5.

S. 221ZZZF(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 92).

- (1) The Authority may conduct an inquiry as to whether there is proper cause for taking disciplinary action against a person who is, or has been, licensed or registered under this Part.

- (2) The Authority may conduct such an inquiry on its own motion or after receiving a complaint concerning the conduct or competence of any person who is licensed or registered under this Part.

S. 221ZZZF(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 92).

221ZZZG Grounds on which disciplinary action may be taken

S. 221ZZZG
inserted by
No. 39/1996
s. 5.

- (1) There is proper cause for taking disciplinary action against a person who is, or has been, licensed or registered under this Part if—
- (a) he or she obtained the licence or registration by fraud or misrepresentation or the concealment of facts;
 - (b) he or she has been convicted of an offence against the plumbing laws;
 - (c) he or she has been convicted of any offence involving fraud, dishonesty, drug trafficking or violence that was punishable by imprisonment for 6 months or more;
 - (d) he or she has breached any requirement of this Act or the regulations made under this Part;
 - (e) he or she has had his or her licence or registration or other authorisation to engage in plumbing work outside Victoria cancelled or suspended for any reason other than his or her failure to renew that licence, registration or other authorisation;

S. 221ZZZG(1)(d)
amended by
No. 31/2007
s. 15.

- (f) he or she has been guilty of, or was a party to, any negligence or incompetence in connection with the carrying out of any plumbing work;
- (g) he or she has carried out, or was a party to, the carrying out of plumbing work otherwise than in a good and workmanlike manner;
- (h) he or she directed or permitted the carrying out of plumbing work otherwise than in a good and workmanlike manner;
- (i) he or she has been guilty of any fraudulent conduct in regard to the carrying out of any plumbing work;
- (j) he or she, in the course of carrying out any plumbing work—
 - (i) used materials that he or she knew, or reasonably ought to have known, were defective; or
 - (ii) was a party to the carrying out of any plumbing work using materials that he or she knew, or reasonably ought to have known, were defective;
- (k) he or she has failed to comply with a reasonable direction of an insurer in respect of the completion or rectification of defective plumbing work or any payment to be made to the insurer in respect of the completion or rectification of defective plumbing work in accordance with required insurance.

221ZZZH Procedure concerning inquiries

S. 221ZZZH
inserted by
No. 39/1996
s. 5.

(1) To start an inquiry, the Authority must give the following details in writing to the person who is to be the subject of the inquiry—

S. 221ZZZH(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 93).

- (a) the grounds on which the inquiry is to be conducted; and
- (b) if the inquiry is based on a complaint, the substance of that complaint; and
- (c) the time and place at which the inquiry will be held; and
- (d) the fact that the person may make oral and written submissions to the Authority in relation to the inquiry; and

S. 221ZZZH
(1)(d)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 93).

(e) a copy of section 221ZZZJ.

(2) The Authority may conduct an inquiry in the absence of the person whose conduct or competence is being inquired into if it is satisfied that the person received the details listed in subsection (1).

S. 221ZZZH(2)
amended by
Nos 75/1998
s. 5(b),
70/2013
s. 3(Sch. 1
item 3).

221ZZZI How inquiry to be conducted

Clauses 12, 15, 16, 17, 18(1) and 19 of Schedule 3 apply to an inquiry under this Division as if a reference in those clauses to the Building Appeals Board was a reference to the Victorian Building Authority.

S. 221ZZZI
inserted by
No. 39/1996
s. 5,
amended by
Nos 75/1998
s. 5(c),
34/2013
s. 34(Sch. 1
item 94).

221ZZZJ Disciplinary powers of Authority

S. 221ZZZJ
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 95).

S. 221ZZZJ
inserted by
No. 39/1996
s. 5.

S. 221ZZZJ(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 96).

- (1) At the end of an inquiry, if the Authority is satisfied that proper cause for taking disciplinary action against a person exists, the Authority may do one or more of the following—
 - (a) reprimand the person;
 - (b) if the person is licensed or registered under this Part—
 - (i) impose new conditions on, or vary the existing conditions of, the licence or registration;
 - (ii) suspend the licence or registration for a period of up to 12 months;
 - (iii) cancel the licence or registration immediately or with effect from a specified later date;
 - (c) if the person is licensed or registered under this Part, require the person to pass a specified examination or complete a specified period of training or attend a specified course of instruction;
 - (d) disqualify the person from being licensed or registered for a specified period of up to 3 years;
 - (e) order the person to pay the costs of the inquiry (including incidental costs);

- | | |
|--|---|
| <p>(f) order the person to pay the Authority a penalty of not more than 100 penalty units unless—</p> <ul style="list-style-type: none">(i) a charge has been filed in the Magistrates' Court in respect of the matter; or(ii) the matter has been dealt with by a court exercising its criminal jurisdiction; or(iii) the matter has been dealt with by the issue of an infringement notice; | <p>S. 221ZZZJ (1)(f) amended by No. 75/1998 s. 5(b), substituted by No. 36/2008 s. 24(1), amended by No. 34/2013 s. 34(Sch. 1 item 96).</p> |
| <p>(1A) If the Authority determines under subsection (1) to suspend or cancel a licence or registration of a person because the person has breached a requirement of this Part, the Authority may suspend the operation of that suspension or cancellation on condition that the person complies with specified conditions.</p> | <p>S. 221ZZZJ (1A) inserted by No. 36/2008 s. 24(2), amended by No. 34/2013 s. 34(Sch. 1 item 96).</p> |
| <p>(1B) In making a decision under subsection (1A), the Authority may take into account—</p> <ul style="list-style-type: none">(a) whether the person has any previous conviction for breaching the requirements of this Part; and(b) whether the conduct of the person in breaching the requirements leading to the determination to suspend or cancel the licence or registration was out of character and unlikely to reoccur; and(c) whether there are mitigating circumstances that warrant the decision. | <p>S. 221ZZZJ (1B) inserted by No. 36/2008 s. 24(2), amended by No. 34/2013 s. 34(Sch. 1 item 96).</p> |

S. 221ZZZJ
(1C)
inserted by
No. 36/2008
s. 24(2),
amended by
No. 34/2013
s. 34(Sch. 1
item 96).

- (1C) The Authority may revoke the suspension of the suspension or cancellation of a licence or registration and reinstate the original suspension or cancellation if the Authority is satisfied that the person has during the suspension period—
- (a) breached a requirement of this Part; or
 - (b) breached a condition of the suspension.

S. 221ZZZJ
(1D)
inserted by
No. 36/2008
s. 24(2).

- (1D) If the original suspension or cancellation of a licence or registration is reinstated, the period of suspension begins, or the cancellation takes effect, on the day following the day that the decision to reinstate the suspension or cancellation is made.

S. 221ZZZJ(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 96).

- (2) If the Authority makes an order under this section, the Registrar may give a copy of the order to any person or body who the Registrar thinks should be told of the order.

S. 221ZZZK
inserted by
No. 39/1996
s. 5.

221ZZZK Presumption of suspension for repeated offences concerning compliance notices

S. 221ZZZK(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 97).

- (1) This section applies if the Authority is satisfied, at the end of an inquiry—
- (a) that a person has contravened section 221ZH; and
 - (b) that the person has contravened that section on at least 2 separate occasions within the past 3 years.

S. 221ZZZK(2)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 97).

- (2) The Authority must suspend the person's licence for a period of up to 3 months unless it is satisfied that there is a good reason for not doing so.

221ZZZL Authority may revoke cancellation or suspension

The Authority may at any time revoke any order it has made under section 221ZZZJ cancelling or suspending a person's licence or registration.

S. 221ZZZL
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 98).

S. 221ZZZL
inserted by
No. 39/1996
s. 5,
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 99).

221ZZZM Authority may compensate persons suffering loss from unsatisfactory plumbing work

If the Authority makes an order under section 221ZZZJ(1)(f), the Authority may pay an amount up to the amount referred to in the order to any person who, in the opinion of the Authority, has suffered loss as a result of any unsatisfactory work that was a reason for the making of the order.

S. 221ZZZM
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 100).

S. 221ZZZM
inserted by
No. 39/1996
s. 5,
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 101).

221ZZZN Procedures of Authority sub-committee conducting inquiry or taking disciplinary action

- (1) Clauses 8(3), (5) and (8) of Schedule 3 apply to any sub-committee of the Authority that is conducting an inquiry under this Division as if—
- (a) a reference to a panel was a reference to the sub-committee; and

S. 221ZZZN
(Heading)
inserted by
No. 34/2013
s. 34(Sch. 1
item 102).

S. 221ZZZN
inserted by
No. 39/1996
s. 5.

S. 221ZZZN(1)
amended by
Nos 28/2000
s. 20(d),
34/2013
s. 34(Sch. 1
item 103).

S. 221ZZZN
(1)(b)
amended by
Nos 75/1998
s. 5(c),
34/2013
s. 34(Sch. 1
item 104).

(b) a reference to the Building Appeals Board
was a reference to the Victorian Building
Authority.

S. 221ZZZO
inserted by
No. 39/1996
s. 5,
repealed by
No. 75/1998
s. 5(d).

* * * * *

Division 12—Review of decisions

221ZZZP Review by VCAT

S. 221ZZZP
inserted by
No. 39/1996
s. 5,
amended by
No. 52/1998
s. 311(Sch. 1
items 10.12(a),
10.13) (ILA
s. 39B(1)).

S. 221ZZZP(1)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 105),
21/2017
s. 96(6).

(1) A person may apply to VCAT for the review of a
decision by the Authority in relation to—

S. 221ZZZP
(1)(a)
amended by
No. 34/1997
s. 30(c).

(a) a refusal to license or register him or her or
to renew his or her licence or registration;

S. 221ZZZP
(1)(b)
amended by
No. 34/1997
s. 30(c).

(b) any conditions imposed on his or her licence
or registration;

Building Act 1993
No. 126 of 1993
Part 12A—Plumbing work

(c) any disciplinary action taken against the person by the Authority (including any action taken under section 221ZV(4));	S. 221ZZP(1)(c) amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 105).
* * * * *	S. 221ZZP(1)(d) repealed by No. 52/1998 s. 311(Sch. 1 item 10.12(b)).
(2) A party to a dispute under section 221ZZN may apply to VCAT for review of a declaration of the Authority under that section.	S. 221ZZP(2) inserted by No. 52/1998 s. 311(Sch. 1 item 10.13), amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 105), 21/2017 s. 96(6).
(3) A person may apply to VCAT for review of a declaration of the Authority under section 221ZZO.	S. 221ZZP(3) inserted by No. 52/1998 s. 311(Sch. 1 item 10.13), amended by Nos 75/1998 s. 5(b), 34/2013 s. 34(Sch. 1 item 105), 21/2017 s. 96(6).
* * * * *	S. 221ZZQ inserted by No. 39/1996 s. 5, repealed by No. 52/1998 s. 311(Sch. 1 item 10.14).

Division 13—Administrative matters

S. 221ZZR
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 5(b)(e),
repealed by
No. 34/2013
s. 29.

* * * * *

S. 221ZZS
inserted by
No. 39/1996
s. 5,
repealed by
No. 75/1998
s. 5(d), new
s. 221ZZS
inserted by
No. 85/2000
s. 10,
amended by
Nos 68/2001
s. 3(3),
46/2008
s. 248(7),
29/2010
s. 48(2),
repealed by
No. 34/2013
s. 30.

* * * * *

S. 221ZZT
inserted by
No. 39/1996
s. 5.

221ZZT Register of Plumbers

(1) The Registrar must keep a register that contains the details required by subsection (2) in respect of all people who are—

(a) licensed by the Authority;

S. 221ZZT
(1)(a)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 106).

(b) registered by the Authority;

S. 221ZZZT
(1)(b)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 106).

(c) licensed or registered by the Registrar under section 221W.

(2) The Registrar must record in the register the following details in respect of a person—

(a) his or her name, residential and business address and business telephone number;

(b) the type of licence or registration he or she holds and the classes or types of plumbing work in respect of which he or she is licensed or registered;

(c) his or her licence or registration number;

(d) the day on which he or she was first, and last, licensed or registered;

(e) the day on which his or her licence or registration expires;

(f) the conditions (if any) to which the licence or registration is subject;

(g) if he or she is insured, details of the insurance he or she holds for the purposes of this Part;

(h) details of any disciplinary action taken by the Authority in respect of him or her;

S. 221ZZZT
(2)(h)
amended by
Nos 75/1998
s. 5(b),
34/2013
s. 34(Sch. 1
item 106).

(i) any other details required by the regulations.

- (3) The Registrar may keep the register in any form he or she considers to be appropriate (including in an electronic or mechanical form).
- (4) The Registrar must remove from the register the details of any person who has not held a current licence or registration within the last 2 years.
- (5) A certificate certifying as to any matter relating to the contents of the register and purporting to be signed by the Registrar is evidence of the facts stated in the certificate.

S. 221ZZZU
inserted by
No. 39/1996
s. 5.

221ZZZU Minister may specify work to be specialised plumbing work

- (1) The Minister may declare any form of work that requires specialised plumbing skill or knowledge to be carried out safely and competently to be specialised plumbing work for the purposes of this Part.
- (2) A declaration takes effect on the date it is published in the Government Gazette, or on any later date specified in the declaration.
- (3) In making a declaration the Minister must specify—

S. 221ZZZU(3)
amended by
Nos 75/1998
s. 5(b),
31/2007 s. 16,
substituted by
No. 33/2010
s. 47.

S. 221ZZZU
(3)(a)
amended by
No. 34/2013
s. 34(Sch. 1
item 107).

- (a) a class or classes of plumbing work or specialised plumbing work in respect of which a person must be licensed or registered to be able to be licensed or registered by the Authority to carry out the specialised plumbing work declared by the declaration; and

- (b) what qualifications, knowledge or experience a person must have to be able to be licensed or registered by the Authority to carry out the specialised plumbing work declared by the declaration. **S. 221ZZZU (3)(b) amended by No. 34/2013 s. 34(Sch. 1 item 107).**
- (4) A declaration ceases to have any effect 1 year after it first takes effect.
- (5) If all or part of any work that is declared to be specialised plumbing work falls within the description of an existing class of plumbing work, a reference to that class of plumbing work is to be read as if that class did not include the specialised plumbing work, unless the contrary intention appears.

221ZZZV Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing standards (expressed in terms of performance, energy efficiency, water efficiency, environmental efficiency, types of material, methods of construction, products or otherwise) in relation to plumbing work other than—
- (i) gasfitting work; and
- (ii) work on the water supply or sewerage distribution system of a water authority;
- (ab) the accreditation, certification or authorisation of materials or products in relation to plumbing work, including the labelling, marking or testing of those materials or products; **S. 221ZZZV (1)(ab) inserted by Nos 66/2004 s. 15, 31/2007 s. 17(1).**
- S. 221ZZZV inserted by No. 39/1996 s. 5.**
- S. 221ZZZV (1)(a) amended by Nos 66/2004 s. 15, 31/2007 s. 17(1).**
- S. 221ZZZV (1)(ab) inserted by No. 31/2007 s. 17(2).**

Building Act 1993
No. 126 of 1993
Part 12A—Plumbing work

S. 221ZZZV
(1)(b)
amended by
Nos 75/1998
s. 5(b),
36/2008
s. 25(a),
34/2013
s. 34(Sch. 1
item 108).

(b) fees for the purposes of this Part (including fees for examinations or assessments conducted by, or on behalf of, the Authority);

S. 221ZZZV
(1)(d)
substituted by
No. 36/2008
s. 25(b).

(c) prescribing what constitutes specialised plumbing work;

(d) classes of plumbing work, including, where those classes differ from any classes previously specified, transitional provisions setting out how—

(i) the new classes relate to the old classes; and

(ii) licences and registrations to carry out the old classes translate into licences and registrations to carry out the new classes;

(e) the qualifications or experience needed to be eligible to be licensed or registered with respect to a particular class of plumbing work;

S. 221ZZZV
(1)(ea)
inserted by
No. 33/2010
s. 48.

(ea) prescribing a class or classes of plumbing work or specialised plumbing work required to be eligible to be registered or licensed with respect to a particular class of specialised plumbing work;

S. 221ZZZV
(1)(f)
amended by
No. 36/2008
s. 25(a).

(f) examinations or assessments for the purposes of this Part;

- (g) generally regulating and controlling—
 - (i) the carrying out of plumbing work by licensed and registered plumbers;
 - (ii) advertising by licensed and registered plumbers in relation to plumbing work;
 - (ga) regulating the construction, installation, alteration, relocation or replacement of a cooling tower or of any part of a cooling tower system; S. 221ZZZV
(1)(ga)
inserted by
No. 85/2000
s. 11.
 - (gb) requiring the installation and use of specified devices or equipment in cooling towers or cooling tower systems, including in existing cooling towers and cooling tower systems; S. 221ZZZV
(1)(gb)
inserted by
No. 85/2000
s. 11.
 - (gc) prescribing offences against this Part and the regulations made under this Part for the purposes of Division 10A; S. 221ZZZV
(1)(gc)
inserted by
No. 31/2007
s. 17(3).
 - (gd) prescribing, for the purposes of Division 10A, penalties not exceeding 10 penalty units for the offences prescribed under paragraph (gc); S. 221ZZZV
(1)(gd)
inserted by
No. 31/2007
s. 17(3).
 - (h) generally providing for any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- * * * * *
- * * * * * S. 221ZZZV(2)
repealed by
No. 31/2007
s. 17(4).
- * * * * * S. 221ZZZV(3)
repealed by
No. 21/2017
s. 88.

S. 221ZZZW
inserted by
No. 39/1996
s. 5,
repealed by
No. 39/1996
s. 29, new
s. 221ZZZW
inserted by
No. 31/2007
s. 18.

221ZZZW Incorporation by reference of Plumbing Code of Australia or other document by regulations

Any regulation made under this Part may apply, adopt or incorporate, either wholly or in part and with or without any modification, any matter contained in the Plumbing Code of Australia or any other document—

- (a) as in force or as issued, published or made at a particular time; or
- (b) as in force or as issued, published or remade from time to time.

Part 13—General enforcement provisions

Division 1—Powers of Minister in relation to councils

222 Order of Minister

If, after due inquiry, the Minister considers that a council or municipal building surveyor has not satisfactorily carried out any function given to the council or building surveyor under this Act or the regulations, the Minister may, by order, direct the council—

- (a) to carry out the function within a specified time; or
- (b) to cause the building surveyor to carry out the function within a specified time, as the case requires.

223 Hearing of council

- (1) Before making an order under section 222, the Minister must give the council concerned an opportunity to be heard.
- (2) The Minister may, by instrument, designate any person or persons—
 - (a) to hear a council or any person representing the council; and
 - (b) to report on that hearing to the Minister; and
 - (c) to make any recommendation to the Minister.
- (3) A hearing under subsection (2) is taken to be the hearing of the council by the Minister for the purposes of subsection (1).

**S. 223(3)
amended by
No. 21/2017
s. 99.**

224 Effect of failure to comply with order

- (1) If a function is not carried out to the satisfaction of the Minister within the time specified in an order under section 222, the Minister may—
 - (a) make any further order that the Minister considers necessary to secure the satisfactory carrying out of the function; or
 - (b) authorise any person to carry out the function.
- (2) If the Minister, or any person on the Minister's behalf, carries out any function under subsection (1), the Minister may by further order direct the council to pay all costs, charges and expenses incurred in carrying out that function and specified in that order (including remuneration of any persons appointed, engaged or employed to carry out that function).
- (3) The Minister may recover the costs, charges and expenses specified in an order under subsection (2) in a court of competent jurisdiction as a debt due to the Crown.

225 Powers of Minister and authorised persons

For the purposes of section 224—

- (a) the Minister and any persons authorised by the Minister have and may exercise all or any of the powers of the council, the municipal building surveyor and the staff of the council in carrying out a function; and
- (b) the Minister may institute and carry on any legal or other proceeding as fully and completely as if the Minister were the council or municipal building surveyor concerned; and

- (c) the Minister may institute proceedings against the council or municipal building surveyor or a member of staff of the council without giving that council, building surveyor or member any notice of action required to be given by any Act relating to councils or local government; and
- (d) the council, the councillors, the municipal building surveyor and members of the staff of the council must assist the Minister and obey all directions given by the Minister in the exercise of any of the powers of the Minister under that section.

226 Minister may seek administrative order

If a council has failed to carry out or cause the carrying out of a function in accordance with an order under section 222 or 223, the Minister has sufficient standing to maintain proceedings for an order in the nature of mandamus or for an order for review under the **Administrative Law Act 1978** to enforce the carrying out of that function by the council or the municipal building surveyor (as the case requires).

227 Other powers not affected

This Division—

- (a) is in aid of and not in derogation from any other powers of the Minister or the Governor in Council; and
- (b) shall not prejudice any other proceeding or remedy against or liability of a council or municipal building surveyor.

Pt 13 Div. 1A
(Heading and
ss 227A–
227D)
inserted by
No. 34/1997
s. 23,
amended by
Nos 34/2013
ss 25, 34(Sch.
1 items 109,
110), 15/2016
ss 34–36,
repealed by
No. 21/2017
s. 45.

* * * * *

Pt 13 Div. 1B
(Heading and
s. 227E)
inserted by
No. 66/2004
s. 16.

Division 1B—Inspections of safety and emergency equipment

S. 227E
inserted by
No. 66/2004
s. 16.

227E Powers of inspection of chief officer and municipal building surveyor

- (1) The chief officer and the municipal building surveyor may either jointly or separately inspect—
 - (a) any safety or emergency installations, equipment or services in a building or place of public entertainment to determine whether they are performing and being maintained in accordance with the building regulations or any relevant occupancy permit; or
 - (b) any records or reports relating to the operation and maintenance of any safety or emergency installations, equipment or services in a building or place of public entertainment to determine whether they are being kept or displayed in accordance with the building regulations or any relevant occupancy permit.

- (2) The chief officer must provide the municipal building surveyor with a report of an inspection by the chief officer under subsection (1) within 5 business days of that inspection.
- (3) The municipal building surveyor must ensure that the owner of a building or place of public entertainment that has been inspected in accordance with subsection (1) is provided, within 10 business days of that inspection, with an inspection report signed by the municipal building surveyor.

Division 2—Information gathering and entry powers

Subdivision 1—General

227EA Definition of *municipal building surveyor* for the purposes of this Division

In this Division—

municipal building surveyor means a municipal building surveyor of a council when performing functions that relate to the administration and enforcement by that council of Parts 3, 4, 5, 7 and 8 and the

Pt 13 Div. 2
(Heading and
ss 228–234)
amended by
Nos 39/1996
s. 8(1)(2),
34/1997
ss 24–27,
18/1998 s. 9,
75/1998 s. 5(f),
66/2004 ss 17,
18, 31/2007
ss 19, 20,
34/2013 s. 31,
15/2016
s. 18(11),
substituted as
Pt 13 Div. 2
(Headings
and
ss 227EA–
234A) by
No. 21/2017
s. 46.

S. 227EA
inserted by
No. 21/2017
s. 46.

building regulations in the council's
municipal district.

S. 227EB
inserted by
No. 21/2017
s. 46.

**227EB Warning about giving information that may
incriminate a person**

If an authorised person requires a natural person to give any information under this Division, the authorised person must inform the person, before or at the time at which the person gives that information, that the person may refuse or fail to give that information if the giving of the information would tend to incriminate the person.

**Subdivision 2—Powers to require production
of information or documents**

S. 227F
inserted by
No. 21/2017
s. 46.

227F Meaning of *authorised person* in this Subdivision

In this Subdivision—

authorised person means any of the following
persons—

- (a) the Authority;
- (b) a municipal building surveyor;
- (c) Energy Safe Victoria when performing
functions under Part 12A or any
regulations made under that Part.

S. 227G
inserted by
No. 21/2017
s. 46.

227G Power to obtain information or documents

- (1) An authorised person may give a person a notice in writing requiring the person to provide information or documents in the custody or control of the person to the authorised person—
 - (a) if the authorised person has reasonable grounds to suspect that an offence has been committed under this Act or the regulations in relation to the carrying out of building work or plumbing work; or

- (b) to determine whether this Act or the regulations have been complied with; or
 - (c) to assist in the enforcement of safety of buildings and of building and plumbing standards under this Act and the regulations.
- (2) If any documents are produced to an authorised person under this section, the authorised person may make copies of or take extracts from the documents and retain possession of those copies and extracts.

227H Documents or information may be provided by post

S. 227H
inserted by
No. 21/2017
s. 46.

A person who provides a document or information in response to a requirement of an authorised person under this Subdivision may send that document or information to the authorised person by post.

Subdivision 3—Power to require production of information or documents under court order

227I Meaning of *authorised person* in this Subdivision

S. 227I
inserted by
No. 21/2017
s. 46.

In this Subdivision—

authorised person means any of the following persons—

- (a) a VBA inspector;
- (b) a municipal building surveyor;
- (c) a natural person authorised in accordance with section 228A by a municipal building surveyor to exercise a power under this Subdivision on behalf of the municipal building surveyor;

- (d) a natural person authorised in accordance with section 228A by Energy Safe Victoria to exercise a power under this Subdivision in relation to Part 12A or the regulations made under that Part on behalf of Energy Safe Victoria;
- (e) a compliance auditor appointed under Part 12A;
- (f) a plumbing inspector appointed under Part 12A.

S. 227J
inserted by
No. 21/2017
s. 46.

227J Authorised person may seek court order

- (1) If an authorised person believes on reasonable grounds that a person may have contravened this Act or the regulations, the authorised person may apply to the Magistrates' Court for an order requiring any person at a time and place specified by the authorised person—
 - (a) to answer orally or in writing any questions put by the authorised person in relation to the alleged contravention; or
 - (b) to supply orally or in writing information required by the authorised person in relation to the alleged contravention; or
 - (c) to produce to the authorised person specified documents or documents of a specified class of document relating to the alleged contravention.
- (2) The Magistrates' Court may make the order if the Court is satisfied that there are reasonable grounds to believe that a person may have contravened this Act or the regulations.
- (3) An order must state a day on which the order ceases to have effect.

- (4) If an order does not state a day on which the order ceases to have effect, the order ceases to have effect 28 days after the making of the order.

227K Inspection of documents under court order

S. 227K
inserted by
No. 21/2017
s. 46.

- (1) If any documents are produced to an authorised person under an order made under this Subdivision, the authorised person may do all or any of the following—
- (a) inspect the documents or authorise a person to inspect the documents;
 - (b) make copies of or take extracts of the documents;
 - (c) seize the documents;
 - (d) secure any seized documents against interference;
 - (e) retain possession of the documents in accordance with this Division.
- (2) An authorised person may only seize documents under subsection (1)(c) if the authorised person considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations.

227L Notification of execution of court order

S. 227L
inserted by
No. 21/2017
s. 46.

- (1) An authorised person who executes an order under this Subdivision must, as soon as practicable after the execution of the order, notify the Magistrates' Court in writing of—
- (a) the time and place of execution; and
 - (b) the documents or classes of document seized; and
 - (c) if documents were seized under section 227K(1)(c) in relation to an alleged

contravention other than a contravention for which the order was made, the alleged contravention in relation to which the documents were seized.

- (2) The Magistrates' Court may direct the authorised person to bring before the Court a document to which subsection (1)(c) applies so that the matter may be dealt with according to law.
- (3) The Magistrates' Court may direct that a document brought before it under subsection (2) be returned to its owner, if in the opinion of the Court the return of the document is consistent with the interests of justice.
- (4) A direction under subsection (3) may be subject to any condition the Magistrates' Court considers appropriate.

Subdivision 4—Authorised persons

228 Authorised persons under this Subdivision

S. 228
substituted by
No. 21/2017
s. 46.

- (1) For the purposes of the exercise of the power of entry under section 228D, including any powers relating to that power, an *authorised person* means any of the following persons—
 - (a) a relevant building surveyor or a natural person authorised in accordance with section 228A by a relevant building surveyor to exercise all or any of the powers referred to in this subsection on behalf of the relevant building surveyor;
 - (b) the chief officer or a natural person authorised by the chief officer to exercise all or any of the powers referred to in this subsection on behalf of the chief officer.

- (2) For the purposes of the exercise of the powers of entry under sections 228E, 228I, 228K and 228M, including any powers relating to those powers, an ***authorised person*** means any of the following persons—
- (a) a VBA inspector;
 - (b) a municipal building surveyor or a natural person authorised in accordance with section 228A by a municipal building surveyor to exercise all or any of the powers referred to in this subsection on behalf of the municipal building surveyor;
 - (c) a natural person authorised in accordance with section 228A by Energy Safe Victoria to exercise on behalf of Energy Safe Victoria all or any of the powers referred to in this subsection in relation to Part 12A or the regulations made under that Part;
 - (d) a compliance auditor appointed under Part 12A;
 - (e) a plumbing inspector appointed under Part 12A.
- (3) For the purposes of the exercise of the power of entry under section 228J, including any powers relating to that power, an ***authorised person*** means any of the following persons—
- (a) a VBA inspector;
 - (b) a municipal building surveyor or a natural person authorised in accordance with section 228A by a municipal building surveyor to exercise all or any of the powers referred to in this subsection on behalf of the municipal building surveyor;

- (c) the chief officer or a natural person authorised by the chief officer to exercise all or any of the powers referred to in this subsection on behalf of the chief officer;
 - (d) a natural person authorised in accordance with section 228A by Energy Safe Victoria to exercise on behalf of Energy Safe Victoria all or any of the powers referred to in this subsection in relation to Part 12A or the regulations made under that Part;
 - (e) a relevant building surveyor or a natural person authorised in accordance with section 228A by a relevant building surveyor to exercise all or any of the powers referred to in this subsection on behalf of the relevant building surveyor;
 - (f) a compliance auditor appointed under Part 12A;
 - (g) a plumbing inspector appointed under Part 12A.
- (4) The powers that may be exercised by the chief officer or Energy Safe Victoria under this Division do not limit or affect any powers of entry or related powers of the chief officer or Energy Safe Victoria under any other Act.
- (5) In this section—
- relevant building surveyor*** means—
- (a) a relevant building surveyor that is a natural person; or
 - (b) if the relevant building surveyor is a body corporate, the designated building surveyor.

228A Authorisation of persons as authorised persons

S. 228A
inserted by
No. 21/2017
s. 46.

- (1) A municipal building surveyor must not authorise a person to exercise all or any of the powers under this Division on behalf of the municipal building surveyor unless the municipal building surveyor is satisfied that the person to be authorised is appropriately qualified or has successfully completed appropriate training.
- (2) Energy Safe Victoria must not authorise a person to exercise all or any of the powers under this Division on its behalf unless it is satisfied that the person to be authorised is appropriately qualified or has successfully completed appropriate training.
- (3) A relevant building surveyor must not authorise a person to exercise all or any of the powers under this Subdivision on behalf of the relevant building surveyor unless the relevant building surveyor is satisfied that the person to be authorised is appropriately qualified or has successfully completed appropriate training.

228B Authorised person's identification

S. 228B
inserted by
No. 21/2017
s. 46.

- (1) A person referred to in section 228A who authorises another person to exercise all or any of the powers under this Division on behalf of the person must issue identification to that authorised person.
- (2) The chief officer within the meaning of the **Country Fire Authority Act 1958** who authorises another person to exercise all or any of the powers under this Subdivision on behalf of the chief officer must issue identification to that authorised person.

- (3) The chief officer within the meaning of the **Metropolitan Fire Brigades Act 1958** who authorises another person to exercise all or any of the powers under this Subdivision on behalf of the chief officer must issue identification to that authorised person.
- (4) An identification issued to a person under this section must—
 - (a) display a photograph of the person; and
 - (b) state the person's name; and
 - (c) state the fact that the person is an authorised person within the meaning of section 228.

S. 228C
inserted by
No. 21/2017
s. 46.

228C Production of identification

- (1) An authorised person must produce the authorised person's identification for inspection—
 - (a) before exercising a power under this Act or the regulations; and
 - (b) at any time during the exercise of a power under this Act or the regulations if asked to do so.

Penalty: 1 penalty unit.

- (2) Subsection (1) does not apply to—
 - (a) a requirement made by post; or
 - (b) the exercise of a power of entry under section 228I(1).
- (3) For the purposes of subsection (1), the identification of a relevant building surveyor is the certificate of registration issued to the relevant building surveyor under section 171G.

Subdivision 5—Entry powers

228D Power of entry—inspections required or authorised by this Act or regulations

S. 228D
inserted by
No. 21/2017
s. 46.

- (1) Subject to subsections (2) and (3), an authorised person may enter any building or land for the purpose of carrying out any inspection authorised or required by this Act or the regulations of—
 - (a) the building or land; or
 - (b) a place of public entertainment; or
 - (c) any equipment, installation, service, records or reports relating to the building or to the place of public entertainment; or
 - (d) building work or plumbing work.
- (2) An entry of a building or land under subsection (1) may be carried out at any reasonable time unless the entry relates to a building used for residential purposes.
- (3) Subject to subsection (4), an authorised person must not enter any part of a building used for residential purposes under subsection (1) unless the authorised person obtains the written consent of the occupier of the building to enter and inspect the building at a time agreed to by the occupier.
- (4) If the purpose of an inspection by a relevant building surveyor under subsection (1) is to inspect building work that is being carried out in or on a building or land used for residential purposes under a building permit, in order to determine if the work complies with this Act, the building regulations or the permit—
 - (a) the relevant building surveyor does not need to obtain consent under subsection (3) to enter and inspect the building; and

- (b) the entry and inspection of the building or land must be carried out at a reasonable time.
- (5) An authorised person must inform the occupier of the building or land (if any) of the purpose of the inspection to be carried out at the building or land—
 - (a) in the case of a building used for residential purposes, before obtaining written consent under subsection (3); and
 - (b) in any other case, before or at the time of entering the building or land.
- (6) An authorised person who exercises a power of entry of a building or land under this section may—
 - (a) inspect the building or land and any thing on the building or land; and
 - (ab) for the purposes of an inspection under paragraph (a), cause any building work (including any building product or material) to be demolished, opened or cut into or tested if reasonably required to facilitate the inspection; and
 - (b) take photographs (including video recordings) or make sketches of the building or land or the building work or plumbing work concerned; and
 - (c) to the extent that it is reasonably necessary to determine compliance with this Act or the regulations, require a person to produce documents to the authorised person relating to building work or plumbing work or the work of a building practitioner or a plumber.
- (7) If a person produces a document to an authorised person in accordance with subsection (6)(c), the authorised person may examine the document and

S. 228D(6)(ab)
inserted by
No. 46/2018
s. 64(1).

make copies of, or take extracts from, the document.

(7A) For the purposes of subsection (6)(ab)—

S. 228D(7A)
inserted by
No. 46/2018
s. 64(2).

(a) testing of building work may include the destructive testing of any building product or material used in the building work if the authorised person believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations; and

(b) the authorised person—

(i) may conduct testing, in accordance with the regulations (if any), of a building product or material used in the building work at the location of the building work being inspected; or

(ii) may take a sample of the building product or material and arrange for destructive testing of that sample to be conducted by a prescribed testing authority.

(8) If an authorised person exercises a power of entry under this section without the occupier being present the authorised person must, on leaving the building or land, leave a notice setting out—

(a) the time of entry; and

(b) the purpose of entry; and

(c) a description of things done while in or on the building or land; and

(d) the time of departure; and

(e) the procedure for contacting the authorised person for further details of the entry.

(9) A notice under subsection (8) may be in a form approved by the Authority.

S. 228E
inserted by
No. 21/2017
s. 46.

228E Entry for monitoring and other purposes

- (1) For the purposes of determining whether this Act or the regulations are being complied with or for assisting in the enforcement of the safety of buildings and of building and plumbing standards under this Act, an authorised person may enter and search any building or land at which the authorised person believes on reasonable grounds—
 - (a) a person is conducting a business relating to the building industry or plumbing industry; or
 - (b) a person is keeping a record or document that—
 - (i) is required to be kept by this Act or the regulations; or
 - (ii) may show whether or not this Act or the regulations are being complied with; or
 - (c) building work or plumbing work is being, or has been, carried out.
- (2) A power under subsection (1) must not be exercised in or on any part of a building that is used for residential purposes unless the authorised person obtains the consent of the occupier of the building.
- (3) An authorised person may enter and search a building or land under subsection (1) with the assistance of any person necessary to provide technical assistance to the authorised person.
- (4) An authorised person who enters and searches any building or land under this section may do all or any of the following—
 - (a) examine any thing found in or on the building or land;

- (b) examine any building work or plumbing work that has or is being carried out in or on the building or land;
- (c) seize any thing found in or on the building or land or secure any thing found in or on the building or land against interference, if the authorised person believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
- (d) take and keep samples of any thing found in or on the building or land, if the authorised person believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
- (da) conduct, in accordance with the regulations (if any), destructive testing on a building product or material examined in or on the building or land, if the authorised person believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations; **S. 228E(4)(da)**
inserted by
No. 46/2018
s. 65.
- (db) arrange, in accordance with the regulations (if any), for destructive testing to be conducted by a prescribed testing authority on any building product or material seized or sampled from the building or land; **S. 228E(4)(db)**
inserted by
No. 46/2018
s. 65.
- (e) require a person to produce any document in or on the building or land for examination and, if the authorised person believes on reasonable grounds that the document is connected with an alleged contravention of this Act or the regulations—

- (i) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts; and
 - (ii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
 - (f) make any still or moving image, audio recording or audiovisual recording;
 - (g) bring any equipment onto or into the building or land that the authorised person believes on reasonable grounds is necessary for the examination or processing of things found at the building or land in order to determine whether they are things that may be seized under this section;
 - (h) require by written notice any of the following persons to attend any inspection of plumbing work or building work under this section that was carried out or supervised by that person—
 - (i) a person who is or was a licensed or registered plumber;
 - (ii) a person who is or was a registered building practitioner;
 - (iii) a person to whom a certificate of consent was issued under Division 3A of Part 3.
- (5) An authorised person exercising the power under subsection (4)(h) may require a person to attend an inspection at a mutually agreed time or if a time is not mutually agreed to at a reasonable time.

- (6) A power under subsection (1) relating to a building or land (other than a building used for residential purposes) must be exercised—
- (a) between the hours of 8 a.m. to 6 p.m.; or
 - (b) when a business conducted at the building or land is open for business; or
 - (c) when building work or plumbing work is being carried out at the building or land; or
 - (d) at any other time with the written consent of the occupier of the building or land.
- (7) If an authorised person exercises a power of entry under this section without the owner or occupier being present the authorised person must, on leaving the building or land, leave a notice setting out—
- (a) the time of entry; and
 - (b) the purpose of entry; and
 - (c) a description of things done while in or on the building or land; and
 - (d) the time of departure; and
 - (e) the procedure for contacting the authorised person for further details of the entry.
- (8) A notice under subsection (7) may be in a form approved by the Authority.

228F Notice before entry and search under section 228E with consent

An authorised person must not enter and search any building under section 228E where consent is required to enter unless, before the occupier consents to the entry and search, the authorised person has informed the occupier—

- (a) of the purpose of the search; and

S. 228F
inserted by
No. 21/2017
s. 46.

- (b) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
- (c) that the occupier may refuse to give consent to the taking of any sample of a thing or any copy or extract from a document found in or on the building during the search; and
- (d) that the occupier may refuse to produce any document required to be produced for examination; and
- (e) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.

S. 228G
inserted by
No. 21/2017
s. 46.

228G Acknowledgement of consent to entry and search under section 228E

- (1) If an occupier of a building consents to the entry and search of the building by an authorised person under section 228E, the authorised person must, before entering the building, ask the occupier to sign an acknowledgment.
- (2) For the purpose of subsection (1), the acknowledgment must state—
 - (a) that the occupier has been informed—
 - (i) of the purpose of the search; and
 - (ii) that the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
 - (iii) that the occupier may refuse to give consent to the taking of any sample of a thing or any copy or extract from a document found in or on the building during the search; and

- (iv) that the occupier may refuse to produce any document required to be produced for examination; and
 - (v) that any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings; and
 - (b) that the occupier has consented to the entry and search; and
 - (c) the date and time that the occupier consented.
- (3) If an occupier of a building consents to the seizure or taking of any thing during a search of the building by an authorised person, the authorised person must, before seizing or taking the thing, ask the occupier to sign an acknowledgement.
- (4) For the purposes of subsection (3), the acknowledgment must state—
- (a) that the occupier has consented to the seizure or taking of the thing; and
 - (b) the date and time that the occupier consented.
- (5) An authorised person must give a copy of a signed acknowledgement to the occupier before leaving the building.
- (6) If, in any proceeding, a signed acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing.

S. 228H
inserted by
No. 21/2017
s. 46.

228H Use or seizure of electronic equipment during search under section 228E

- (1) If an authorised person, during a search under section 228E—
- (a) finds a thing in or on the building or land that is or includes a disc, tape or other device for the storage of information; and
 - (b) believes that there is in or on the building or land equipment that may be used with the disc, tape or other storage device; and
 - (c) believes on reasonable grounds that information stored in the disc, tape or other storage device—
 - (i) may be relevant to determine whether this Act or the regulations have been complied with; or
 - (ii) may assist in enforcement of safety of buildings and of building and plumbing standards under this Act—
- the authorised person may operate, or may require the occupier of the building or land or an employee of the occupier to operate, the equipment to access the information.
- (2) If the authorised person believes on reasonable grounds that a disc, tape or other storage device in or on the building or land contains, stores or is otherwise used in the transmission of information that—
- (a) may be relevant to determine whether this Act or the regulations have been complied with; or

(b) may assist in enforcement of safety of buildings and of building and plumbing standards under this Act—

the authorised person may—

- (c) put the information in a documentary form and seize the documents so produced; or
- (d) copy the information to another disc, tape or other storage device and remove that disc, tape or storage device from the building or land; or
- (e) if it is not practicable to put the information in a documentary form or to copy the information, seize the disc, tape or other storage device and the equipment that enables the information to be accessed.

(3) An authorised person must not operate or seize equipment for a purpose set out in this section unless the authorised person believes on reasonable grounds that the operation can be carried out without damage to the equipment.

228I Entry of building or land open to the public

- (1) An authorised person may enter and inspect any part of a building or land that is, at the time of the entry and inspection, open to the public.
- (2) An authorised person who exercises a power of entry of a building or land under subsection (1) may, to the extent that it is reasonably necessary to determine compliance with this Act or the regulations, require a person at the building or land to produce documents to the authorised person.
- (3) If a person produces a document to an authorised person in accordance with a requirement under this section, the authorised person may make copies of, or take extracts from, the document.

S. 228I
inserted by
No. 21/2017
s. 46.

S. 228J
inserted by
No. 21/2017
s. 46.

228J Entry in emergency

- (1) Despite any other power of entry under this Subdivision, an authorised person may enter a building or land without a search warrant at any time if—
 - (a) the safety of the public or the occupants of the building or land is at risk; or
 - (b) an emergency order under Part 8 applies to the building or land; or
 - (c) an emergency plumbing order under section 221ZZF applies to the building or land.
- (2) An authorised person may enter and search a building or land under subsection (1) with the assistance of any other person necessary to provide technical assistance to the authorised person.

Note

Under section 229H an authorised person may also request the assistance of a member of the police force.

- (3) If an authorised person, after entering a building or land under subsection (1), considers that a thing in or on the building or land presents a risk to the life, safety or health of any person or poses a risk of significant damage to any property the authorised person may do all or any of the following—
 - (a) seize the thing;
 - (b) secure the seized thing against interference;
 - (c) require the occupier to remove the thing;
 - (d) examine, take and keep samples of the thing;

S. 228J(3)(d)
amended by
No. 46/2018
s. 66(1).

- (e) conduct, in accordance with the regulations (if any), destructive testing on a building product or material examined in or on the building or land, if the authorised person believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations;
- (f) arrange, in accordance with the regulations (if any), for destructive testing to be conducted by a prescribed testing authority on a building product or material seized or sampled from the building or land.
- (4) In addition to the powers under subsection (3), if the authorised person believes on reasonable grounds that it is necessary to do so, the authorised person may do all or any of the following—
- (a) in the case of any document in or on the building or land—
- (i) require a person to produce the document for examination;
- (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts;
- (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
- (b) make any still or moving image, audio image or audiovisual recording.
- (5) If an authorised person exercises a power of entry under this section in the absence of the owner or occupier the authorised person must, if reasonably practicable, on leaving the building or land, leave a notice setting out—

S. 228J(3)(e)
inserted by
No. 46/2018
s. 66(2).

S. 228J(3)(f)
inserted by
No. 46/2018
s. 66(2).

- (a) the time of entry; and
- (b) the purpose of entry; and
- (c) a description of things done while at the building or land; and
- (d) the time of departure; and
- (e) the procedure for contacting the authorised person for further details of the entry.

S. 228K
inserted by
No. 21/2017
s. 46.

228K Entry with warrant for monitoring buildings or land used for residential purposes

- (1) An authorised person may apply to a magistrate for the issue of a warrant authorising the authorised person to enter a building or land used for residential purposes if the authorised person believes on reasonable grounds that entry to the building or land is necessary—
 - (a) to determine whether a building, building work or plumbing work complies with this Act or the regulations; or
 - (b) to assist in the enforcement of safety of buildings and of building and plumbing standards under this Act.
- (2) The magistrate may issue a warrant under subsection (1) if the magistrate is satisfied—
 - (a) by the evidence, on oath or by affidavit, of the matters set out in subsection (1); and
 - (b) that entry is warranted in all the circumstances.

S. 228L
inserted by
No. 21/2017
s. 46.

228L Form and content of warrant

- (1) A warrant issued under section 228K(2) may authorise an authorised person named in the warrant—
 - (a) to enter and inspect the building or land; or

- (b) to examine any thing found at the building or land; or
- (c) to take photographs (including video recordings) or make sketches of any thing at the building or land; or
- (d) to the extent that it is reasonably necessary to determine whether this Act or the regulations have been complied with or to assist in the enforcement of safety of buildings and of building and plumbing standards under this Act, to do any one or more of the following—
 - (i) take and keep samples of any thing, if the authorised person believes on reasonable grounds that the thing is connected with a contravention of this Act or the regulations;
 - (ii) require the occupier of the building or land to produce any document to the authorised person and if the authorised person believes on reasonable grounds that the document is connected with a contravention of this Act or the regulations—
 - (A) examine, copy or take extracts from the document, or arrange for the making of copies or the taking of extracts; and
 - (B) remove the document for so long as is reasonably necessary to make copies or take extracts from the document; or
- (e) to conduct, in accordance with the regulations (if any), destructive testing on a building product or material examined in or on the building or land, if the authorised

S. 228L
(1)(d)(ii)(B)
amended by
No. 46/2018
s. 67(1).

S. 228L(1)(e)
inserted by
No. 46/2018
s. 67(2).

S. 228L(1)(f)
inserted by
No. 46/2018
s. 67(2).

person believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations; or

- (f) to arrange, in accordance with the regulations (if any), for destructive testing to be conducted by a prescribed testing authority on a building product or material sampled from the building or land, if the authorised person believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations.

(2) A warrant issued under section 228K(2) must state—

- (a) the purpose for which the warrant is required; and
- (b) the building or land to be inspected; and
- (c) any conditions to which the warrant is subject; and
- (d) that the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (e) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

S. 228M
inserted by
No. 21/2017
s. 46.

228M Entry with search warrant to find evidence of contravention

- (1) An authorised person may apply to a magistrate for the issue of a search warrant in relation to a particular building or land if the authorised person suspects on reasonable grounds that—

- (a) there is, or may be within the next 72 hours, in the building or on the land evidence that a person may have contravened this Act or the regulations; or
 - (b) there is evidence in digital or electronic format that a person may have contravened this Act or the regulations that is accessible from the building or land.
- (2) If a magistrate is satisfied by the evidence, on oath or by affidavit, that there are reasonable grounds to suspect that—
- (a) there is, or may be within the next 72 hours, in the building or on the land a thing, or thing of a particular kind, connected with a contravention of this Act or the regulations; or
 - (b) there is information in digital or electronic format connected with a contravention of this Act or the regulations that is accessible from the building or land—

the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989**.

228N Form and content of search warrants

- (1) A search warrant issued under section 228M(2) may authorise an authorised person named in the warrant to enter a building or land specified in the warrant, if necessary by force, and to do any of the following—
- (a) if the authorised person believes on reasonable grounds that a thing, or thing of a particular kind, named or described in the warrant is connected with the alleged contravention—
 - (i) search for the thing; or

S. 228N
inserted by
No. 21/2017
s. 46.

S. 228N
(1)(a)(iv)
amended by
No. 46/2018
s. 68(1).

S. 228N
(1)(a)(v)
inserted by
No. 46/2018
s. 68(2).

S. 228N
(1)(a)(vi)
inserted by
No. 46/2018
s. 68(2).

- (ii) seize the thing; or
 - (iii) secure the thing against interference; or
 - (iv) examine, inspect and take and keep samples of the thing; or
 - (v) conduct, in accordance with the regulations (if any), destructive testing on a building product or material examined in or on the building or land; or
 - (vi) arrange, in accordance with the regulations (if any), for destructive testing to be conducted by a prescribed testing authority on a building product or material seized or sampled from the building or land;
- (b) in the case of any document, or a document of a particular kind, named or described in the warrant, if the authorised person believes on reasonable grounds that the document is connected with the alleged contravention—
- (i) require a person to produce the document for inspection; or
 - (ii) examine, make copies or take extracts from the document, or arrange for the making of copies or the taking of extracts; or
 - (iii) remove the document for so long as is reasonably necessary to make copies or take extracts from the document;
- (c) make an image of the hard drive of a computer, or a computer of a particular kind, named or described in the warrant, if the authorised person believes on reasonable grounds that information contained on the

- hard drive is connected with the alleged contravention;
- (d) in the case of information in electronic or digital format described in the warrant that is accessible from the premises, if the authorised person believes on reasonable grounds that the information is connected with the alleged contravention—
- (i) access the information via any computer or other electronic device located on the premises; or
 - (ii) download or make an electronic copy of that information; or
 - (iii) make or produce a physical copy of that information;
- (e) make any still or moving image, audio recording or audiovisual recording of any thing of a particular kind named or described in the warrant, if the authorised person believes on reasonable grounds that it is connected with the alleged contravention.
- (2) A search warrant issued under section 228M(2) may authorise, in addition to an authorised person, any other person named or otherwise identified in the warrant to execute the warrant.
- (3) A search warrant issued under section 228M(2) must state—
- (a) the purpose for which the search is required and the nature of the alleged contravention; and
 - (b) the building or land to be searched; and
 - (c) a description of the thing or document for which the search is to be made; and

- (d) any conditions to which the warrant is subject; and
 - (e) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (f) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants issued under section 228M(2).

S. 228O
inserted by
No. 21/2017
s. 46,
amended by
No. 46/2018
s. 69 (ILA
s. 39B(1)).

228O Seizure of things not mentioned in the warrant

- (1) A search warrant issued under section 228M(2) authorises an authorised person named in the warrant, in addition to the seizure of any thing of the kind described in the warrant, to seize or take a sample of any thing which is not of the kind described in the warrant if—
- (a) the authorised person believes on reasonable grounds that the thing—
 - (i) is of a kind which could have been included in a search warrant issued under section 228M(2); and
 - (ii) will afford evidence about a contravention of this Act or the regulations; and
 - (b) in the case of the seizure of a thing, the authorised person believes on reasonable grounds that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act.

- (2) If a thing seized or sampled by an authorised person under subsection (1) is a building product or material, the authorised person may—
- (a) conduct, in accordance with the regulations (if any), destructive testing on the building product or material; or
 - (b) arrange, in accordance with the regulations (if any), for destructive testing to be conducted on the building product or material by a prescribed testing authority.

S. 228O(2)
inserted by
No. 46/2018
s. 69.

228P Warrant may authorise the giving of a direction requiring assistance from person with knowledge of a computer or other electronic device

S. 228P
inserted by
No. 21/2017
s. 46.

- (1) This section applies if a magistrate is satisfied by evidence, on oath or by affidavit, that there are reasonable grounds to believe that there is information in digital or electronic format connected with a contravention of this Act or the regulations that is accessible from a particular building or land.
- (2) Subject to subsection (3), a warrant issued by the magistrate under section 228M(2) may authorise the authorised person named in the warrant to require a person to provide any information or assistance that is reasonable and necessary to allow the authorised person or another person to do one or more of the following things—
- (a) access information held in, or accessible from, any computer or other electronic device located on the premises;
 - (b) download or make an electronic copy of that information;
 - (c) make or produce a physical copy of that information.

- (3) The authorised person may require a person to provide the information or assistance referred to in subsection (2) if the person—
- (a) is one of the following—
 - (i) the person alleged to have contravened this Act or the regulations;
 - (ii) the owner or lessee of the computer or other electronic device;
 - (iii) an employee of the owner or lessee of the computer or other electronic device;
 - (iv) a person engaged under a contract for services by the owner or lessee of the computer or other electronic device;and
 - (b) has relevant knowledge of—
 - (i) the computer or other electronic device or a computer network of which the computer or device forms or formed part; or
 - (ii) measures applied to protect information held in, or accessible from, the computer or other electronic device.

S. 228Q
inserted by
No. 21/2017
s. 46.

228Q Announcement before entry

- (1) Before executing a warrant issued under section 228K(2) or 228M(2), the authorised person named in the warrant or a person assisting the authorised person—
- (a) must announce that the person is authorised by the warrant to enter the building or land; and
 - (b) give any person at the building or land an opportunity to allow entry to the building or land.

- (2) The authorised person or a person assisting the authorised person is not required to comply with subsection (1) if the person believes on reasonable grounds that immediate entry to the building or land is required to ensure—
- (a) the safety of any person; or
 - (b) that the effective execution of the warrant is not frustrated.

228R Copy of warrant to be given to occupier

S. 228R
inserted by
No. 21/2017
s. 46.

If the occupier or another person who apparently represents the occupier is present at a building or land when a warrant issued under section 228K(2) or 228M(2) is being executed, the authorised person must—

- (a) produce the authorised person's identity card for inspection by that person; and
- (b) give to that person a copy of the execution copy of the warrant.

Subdivision 6—Provisions relating to powers under this Division

229 Powers of authorised person to require information when exercising power of entry

S. 229
substituted by
No. 21/2017
s. 46.

An authorised person who exercises a power of entry of a building or land under Subdivision 5 may, to the extent that it is reasonably necessary to determine compliance with this Act or the regulations, require a person at the building or land—

- (a) to give information to the authorised person, orally or in writing; and
- (b) to give reasonable assistance to the authorised person.

S. 229A
inserted by
No. 21/2017
s. 46.

229A Receipt must be given for any thing seized

- (1) An authorised person must not seize a thing under this Division apparently in the possession or custody of a person unless the authorised person makes out and tenders to the person a receipt for the thing seized that—
 - (a) identifies the thing; and
 - (b) states the name of the authorised person and the reason why the thing is being seized.
- (2) If an authorised person is unable to discover the identity of—
 - (a) the lawful owner of a thing seized; or
 - (b) the person from whose custody a thing is seized—

the authorised person must leave the receipt with, or post it to, the owner of the building or land from which the thing was seized.

S. 229B
inserted by
No. 21/2017
s. 46.

229B Certified copies of seized documents

- (1) If an authorised person retains possession of a document seized from a person under this Division, the authorised person must give the person, as soon as practicable after the seizure, a copy of the document certified as correct by the authorised person.
- (2) A copy of a document certified under subsection (1) is to be received in all courts and tribunals to be evidence of equal validity to the original.

S. 229C
inserted by
No. 21/2017
s. 46.

229C Retention and return of seized documents or things

- (1) If an authorised person seizes a document or other thing under this Division, the authorised person must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.

- (2) If the document or thing seized has not been returned within 3 months after it was seized, the authorised person must take reasonable steps to return it unless—
- (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or
 - (b) the Magistrates' Court makes an order under section 229D extending the period during which the document or thing may be retained.
- (3) This section does not apply to—
- (a) a sample taken by an authorised person in the exercise of a power under this Division; or
 - (b) a thing seized by an authorised person, and subjected to destructive testing, in the exercise of a power under this Division.

S. 229C(3)
substituted by
No. 46/2018
s. 70.

229D Magistrates' Court may extend 3 month period for retention of document or thing

S. 229D
inserted by
No. 21/2017
s. 46.

- (1) If an authorised person seizes a document or other thing under this Division, the authorised person may apply to the Magistrates' Court for an order for an extension, not exceeding 3 months, of the period for which the authorised person may retain the document or thing.
- (2) An application under subsection (1) must be made—
- (a) within 3 months after seizing a document or other thing under this Division; or
 - (b) if an extension has been granted under this section, before the end of the period of the extension.

- (3) The Magistrates' Court may make the order if it is satisfied that—
- (a) it is in the interests of justice; and
 - (b) the total period of retention does not exceed 12 months; and
 - (c) retention of the document or other thing is necessary—
 - (i) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (ii) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- (4) At least 7 days prior to the hearing of an application under this section, notice of the application must be sent to the owner of the document or thing described in the application.

S. 229E
inserted by
No. 21/2017
s. 46.

229E Taking samples

- (1) If an authorised person proposes to take a sample in the exercise of a power under this Division, the authorised person must advise the person in possession of the sample of the reason why the sample is being taken.
- (2) The authorised person, at the request of the person from whom the sample was taken, must give part of the sample taken to that person.
- (3) If an authorised person takes a sample in the exercise of a power under this Division, the authorised person must return the sample to the person from whom it was taken within 28 days after the sample was taken, if the sample is not required for the purposes of proceedings under this Act or the regulations.

- (4) Subsection (3) does not apply to a sample taken by an authorised person, and subjected to destructive testing, in the exercise of a power under this Division.

S. 229E(4)
inserted by
No. 46/2018
s. 71.

229F Refusal or failure to comply with requirement

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an authorised person exercising a power under this Division.

S. 229F
inserted by
No. 21/2017
s. 46.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

229G Protection against self-incrimination

S. 229G
inserted by
No. 21/2017
s. 46.

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information, including information required to be given under section 246(2), or do any other thing that the person is required to do by or under this Division, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Division, if the production of the document would tend to incriminate the person.
- (3) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to provide information or assistance that a person is required under section 228P to provide, if the provision of the information or assistance would tend to incriminate the person.

S. 229H
inserted by
No. 21/2017
s. 46.

229H Police to assist authorised persons

An authorised person exercising a power under this Division may request the assistance of a member of the police force who may assist the authorised person to take any action authorised by this Division.

S. 229I
inserted by
No. 21/2017
s. 46.

229I Impersonation of authorised person

A person must not impersonate an authorised person carrying out a function under this Part.

Penalty: 60 penalty units.

S. 229J
inserted by
No. 21/2017
s. 46.

229J Confidentiality

- (1) An authorised person must not give to any other person, whether directly or indirectly, any information gained in the exercise of powers as an authorised person under this Part.

Penalty: 60 penalty units.

- (2) Despite subsection (1), information may be given—

- (a) to the extent necessary—
- (i) to carry out functions under this Act or the regulations; or
 - (ii) in connection with the administration or enforcement of this Act or the regulations; or
 - (iii) to give any information the authorised person is authorised, permitted or required to give under this Act or any other Act or the regulations under this Act; or
- (b) for the purpose of any legal proceedings arising out of this Act or the regulations, or of any report of those proceedings; or
- (c) with the consent of the Minister.

Subdivision 7—Complaints and register of entry powers

230 Register of exercise of powers of entry

**S. 230
substituted by
No. 21/2017
s. 46.**

- (1) The Authority must keep a register containing the prescribed information relating to the exercise of a power of entry under Subdivision 5 by any of the following authorised persons referred to in section 228—
 - (a) a VBA inspector;
 - (b) a compliance auditor appointed under Part 12A;
 - (c) a plumbing inspector appointed under Part 12A.
- (2) A council must keep a register containing the prescribed information relating to the exercise of a power of entry under Subdivision 5 by any of the following authorised persons referred to in section 228—
 - (a) a municipal building surveyor of that council or a person authorised by a municipal building surveyor of that council to act on behalf of the municipal building surveyor;
 - (b) a relevant building surveyor, who is a municipal building surveyor, or a person authorised by the relevant building surveyor to act on behalf of the relevant building surveyor.
- (3) Energy Safe Victoria must keep a register containing the prescribed information relating to the exercise of a power of entry under Subdivision 5 by a person acting on behalf of Energy Safe Victoria.

- (4) A relevant building surveyor, who is a private building surveyor, must keep a register containing the prescribed information relating to the exercise of a power of entry under Subdivision 5 by the relevant building surveyor or a person authorised by the relevant building surveyor to act on behalf of the relevant building surveyor.
- (5) The Authority may inspect a register required to be kept by a person under this section.
- (6) The occupier of a building or land, in respect of which a power of entry under Subdivision 5 has been exercised, may request that the person required to keep a register under this section containing information about the exercise of that power provides an extract to the occupier of that information.
- (7) A person required to keep a register under this section must—
 - (a) keep the prescribed information relating to each exercise of a power of entry under Subdivision 5 for 10 years after the date of that entry; and
 - (b) make the register available for inspection by the Authority on the request of the Authority at a time agreed to between the person and the Authority; and
 - (c) provide an extract under subsection (6) if so requested.

231 Complaints to the Authority

S. 231
substituted by
No. 21/2017
s. 46.

Any person may complain to the Authority about the exercise of a power—

- (a) under Subdivision 2, by the Authority; or
- (b) under this Division, by any of the following authorised persons—
 - (i) a VBA inspector;
 - (ii) a compliance auditor or a plumbing inspector appointed under Part 12A;
 - (iii) a relevant building surveyor, who is a private building surveyor;
 - (iv) a relevant building surveyor, who is a municipal building surveyor;
 - (v) a person authorised by a relevant building surveyor to act on behalf of the relevant building surveyor.

232 Complaints to a council

S. 232
substituted by
No. 21/2017
s. 46.

Any person may complain to a council about the exercise of a power under this Division by a municipal building surveyor of that council or a person authorised by the municipal building surveyor to act on behalf of the municipal building surveyor.

233 Complaints to Energy Safe Victoria

S. 233
substituted by
No. 21/2017
s. 46.

Any person may complain to Energy Safe Victoria about the exercise of a power—

- (a) under Subdivision 2 by Energy Safe Victoria; or
- (b) under this Division by a person authorised to act on behalf of Energy Safe Victoria.

S. 234
substituted by
No. 21/2017
s. 46.

234 Complaints relating to the chief officer

- (1) Any person may complain to the Country Fire Authority within the meaning of the **Country Fire Authority Act 1958** about the exercise of a power under this Division—
 - (a) by the chief officer within the meaning of that Act; or
 - (b) by a person authorised by the chief officer to act on behalf of the chief officer under section 228(1) or (3).
- (2) Any person may complain to the Metropolitan Fire and Emergency Services Board established under the **Metropolitan Fire Brigades Act 1958** about the exercise of a power under this Division—
 - (a) by the chief officer within the meaning of that Act; or
 - (b) by a person authorised by the chief officer to act on behalf of the chief officer under section 228(1) or (3).

S. 234A
substituted by
No. 21/2017
s. 46.

234A Investigation and report

If a person receives a complaint under this Division, the person must—

- (a) consider the complaint; and
- (b) give a written report to the complainant of the person's consideration of the complaint.

Division 2A—Remedies

Pt 13 Div. 2A
(Heading and
ss 234B–
234D)
inserted by
No. 15/2016
s. 54.

Subdivision 1—Undertakings

Pt 13 Div. 2A
Subdiv. 1
(Heading)
inserted by
No. 21/2017
s. 47.

234B Undertakings

S. 234B
inserted by
No. 15/2016
s. 54.

- (1) The Authority may accept a written undertaking given by a person in connection with a matter in relation to which the Authority has a function under this Act.
- (2) The person may withdraw or vary an undertaking at any time, if the person has first obtained the consent of the Authority.
- (3) If the Authority considers that the person who gave the undertaking has failed to comply with any of its terms, the Authority may apply to a court for an order under subsection (4).
- (4) If a court is satisfied that the person has failed to comply with a term of the undertaking, the court may make all or any of the following orders—
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) an order directing the person to carry out building work, protection work or plumbing work;

S. 234B(1)
amended by
No. 21/2017
s. 89(1).

S. 234B(4)(b)
amended by
No. 21/2017
s. 89(2).

- (c) an order directing the person to pay to the State an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the failure to comply;
 - (d) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss, injury or damage as a result of the failure to comply;
 - (e) any other order that the court considers appropriate.
- (5) If a body corporate is found to have failed to comply with an undertaking, each officer of the body corporate is taken to have so failed to comply with the undertaking if the officer knowingly authorised or permitted the failure and the court may, against the officer, make all or any of the orders set out in subsection (4) that the court thinks appropriate.

S. 234C
inserted by
No. 15/2016
s. 54.

234C Copy of undertaking

The Authority must give a copy of an undertaking under section 234B to the person who made the undertaking.

S. 234D
inserted by
No. 15/2016
s. 54.

234D Register of undertakings

- (1) The Authority must—
 - (a) maintain a register of undertakings; and
 - (b) register each undertaking given under section 234B in the register of undertakings.
- (2) The register of undertakings must include the following—
 - (a) the name and address of the person who gave the undertaking;

- (b) the date of the undertaking;
 - (c) a copy of the undertaking.
- (3) The register of undertakings may be inspected by any person at any reasonable time, without charge.

Subdivision 2—Injunctions

Pt 13 Div. 2A
Subdiv. 2
(Heading and
ss 234E–
234J)
inserted by
No. 21/2017
s. 48.

234E Injunctions

S. 234E
inserted by
No. 21/2017
s. 48.

- (1) A court may grant an injunction, in such terms as the court considers appropriate, if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute—
- (a) a contravention of a provision of this Act or of the regulations or of a notice, permit, direction, order or determination issued or made under this Act or the regulations (including a notice or order or determination of the Building Appeals Board); or
 - (b) attempting to contravene such a provision; or
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision.

- (2) The court may grant the injunction on application by—
 - (a) the Authority; or
 - (b) a municipal building surveyor; or
 - (c) Energy Safe Victoria; or
 - (d) any other prescribed person.
- (3) An application for an injunction under subsection (1) may be made *ex parte*.
- (4) The power of the court to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised—
 - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
- (5) Without limiting subsection (1), the Supreme Court may grant an injunction under subsection (1) restraining a person from carrying on a business as a building practitioner or a plumber or supplying goods or services used in building work or plumbing work (whether or not as part of, or incidental to, the carrying on of another business)—
 - (a) for a specified period; or
 - (b) except on specified terms and conditions.
- (6) Without limiting subsection (1), the court may grant an injunction under that subsection requiring a person to do any of the following—

- (a) institute a training program for the person's employees in relation to compliance with this Act and the building regulations;
 - (b) carry out building work, protection work, plumbing work or other work;
 - (ba) in accordance with the regulations (if any)—
 - (i) carry out testing, including the destructive testing, of a building product or material used in the construction of a building and to provide the results of such testing to the applicant; or
 - (ii) arrange for the testing (including the destructive testing) of that building product or material by a prescribed testing authority and for that authority to provide the results of such testing to the applicant;
 - (c) transfer property;
 - (d) pay money, including the payment of money into court in relation to building work carried out, or to be carried out, under this Act by a municipal building surveyor;
 - (e) destroy or dispose of goods that have been or may be used in carrying out building work or plumbing work.
- (7) The power of the court to grant an injunction under subsection (1) requiring a person to do an act or thing may be exercised—
- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and

S. 234E(6)(ba)
inserted by
No. 46/2018
s. 72.

- (c) whether or not there is an imminent danger of substantial damage to any other person if the person refuses or fails to do that act or thing.

S. 234F
inserted by
No. 21/2017
s. 48.

234F Consent injunctions

If an application is made under section 234E, the court may, if it considers that it is appropriate to do so, grant an injunction under this section by consent of all the parties to the proceeding, whether or not the court is satisfied as required by section 234E(1).

S. 234G
inserted by
No. 21/2017
s. 48.

234G Interim injunctions

If an application is made under section 234E, the court, if it considers that it is desirable to do so, may grant an interim injunction under this section pending the determination of the application.

S. 234H
inserted by
No. 21/2017
s. 48.

234H Variation and discharge of injunctions

A court may vary or discharge—

- (a) an injunction that it has granted under section 234E or 234F; or
- (b) an interim injunction that it has granted under section 234G.

S. 234I
inserted by
No. 21/2017
s. 48.

234I Injunction may be granted during offence proceedings

An injunction may be granted under this Subdivision during proceedings for an offence under this Act or the regulations and may be granted instead of or in addition to any penalty imposed in those or any other proceedings.

S. 234J
inserted by
No. 21/2017
s. 48.

234J Undertakings as to damages and costs

In an application for an injunction under section 234E, if the application has been made by the Authority or a municipal building surveyor or Energy Safe Victoria and if the

court has determined to grant an interim injunction, the court must not, as a condition of granting the interim injunction, require the Authority, the municipal building surveyor, Energy Safe Victoria or any other person to give any undertaking as to damages or costs.

Division 3—Evidence and notices

235 Evidence of ownership or occupation

- (1) The following is evidence that a person is the owner or occupier of land in any legal proceedings under this Act or the regulations—
 - (a) evidence that the person is liable to be rated in respect of the land; or
 - (b) evidence by a certificate as to any recording in the Register or by a certified reproduction of a registered instrument given under section 114(2) of the **Transfer of Land Act 1958** that any person is the registered proprietor of an estate in fee-simple or of a leasehold estate held of the Crown in any land; or
 - (c) evidence by the certificate of the Registrar-General or a Deputy Registrar-General authenticated by the seal of the Registrar-General that any person appears from the memorial of any deed, conveyance or instrument to be the last registered owner of any land.
- (2) The Registrar-General must provide a certificate under subsection (1)(c) on the written application of a person authorised under Division 4 to bring proceedings who must certify that it is required for legal proceedings under this Act or the regulations.

236 Service of documents—generally

- (1) Any document to be served on or given to a person under this Act or the regulations may be served on or given to the person by—
 - (a) delivering the document to the person; or
 - (b) leaving the document at the person's usual or last known place of residence or business with a person apparently not less than 16 years of age and apparently residing or employed at that place; or
 - (c) sending the document by post addressed to the person at the person's usual or last known place of residence or business or in any other prescribed manner.
- (2) A building order made under section 112 may be served on any person apparently in charge of the site on which building work is carried out.
- (3) If a document is to be served on or given to the owner or occupier of any land and the name of that person is not known the document may be addressed to "the owner" or "the occupier".
- (4) If a document is to be served on or given to the owner or occupier of any land, the document may be put up in a conspicuous position on the land if the name and address of the owner are not known and there is no occupier of the land.
- (4A) An emergency order referred to in section 103, a building notice referred to in section 108(1) or a building order referred to in section 111(3) or (4) may be served on a person by putting the order or notice up in a conspicuous position on the building, land or place of public entertainment to which it applies.

**S. 236(4A)
inserted by
No. 21/2017
s. 49(1).**

- (4B) An order or notice served in accordance with subsection (4A) must include the prescribed additional information. **S. 236(4B) inserted by No. 21/2017 s. 49(1).**
- (4C) If a notice or order under Part 8 or Part 12A is to be served on an owner of a lot affected by an owners corporation, the notice or order may be served on the owners corporation and if so served is taken to be served on the owner. **S. 236(4C) inserted by No. 21/2017 s. 49(1).**
- (4D) An owners corporation on whom a notice or order is served in accordance with subsection (4C) must not fail to provide a copy of the notice or order to each lot owner affected by the notice or order within a reasonable time of receiving the notice or order. **S. 236(4D) inserted by No. 21/2017 s. 49(1).**
- Penalty: 60 penalty units.
- (5) If the owner has authorised a person to act on behalf of the owner under this Act or the regulations, any document served on or given to that person under this Act or the regulations is taken to have been served on or given to the owner. **S. 236(5) amended by No. 21/2017 s. 99.**
- (6) If a document to be served on or given to an owner or occupier of any land is properly served on or given to the owner or occupier of the land the document is binding on every subsequent owner or occupier of the land.
- (7) A person must not, without the consent of the relevant building surveyor, the relevant council or the Authority, remove or deface an order or notice put up under subsection (4) or (4A). **S. 236(7) inserted by No. 21/2017 s. 49(2).**
- Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

S. 236(8)
inserted by
No. 21/2017
s. 49(3).

- (8) Without limiting any other provision for the service of documents under this Act, service on a person named in a building permit under section 24A(1)(d) in relation to a body corporate of a direction, notice or order under this Act or the regulations directed to the body corporate is taken to be service on the body corporate.

237 Service on Boards

S. 237(1)
repealed by
No. 15/2016
s. 18(7).

* * * * *

- (2) A document to be served on the Building Appeals Board must be taken to have been served if it is served on the Registrar of the Building Appeals Board.

S. 237(3)
inserted by
No. 39/1996
s. 8(3),
amended by
Nos 75/1998
s. 5(g),
34/2013
s. 27(2).

- (3) A document to be served on the Authority must be taken to be served if it is served on the Registrar of the Victorian Building Authority appointed or engaged under section 204(1)(a).

238 Building surveyor may rely on certificate by other registered building practitioner

S. 238(1)
substituted by
No. 18/1998
s. 10.

- (1) A municipal building surveyor or a private building surveyor, in carrying out a function under this Act or the regulations, may rely on a certificate by a registered building practitioner in a prescribed category or class of practitioners—
- (a) that proposed building work of a prescribed class complies with any provision of this Act or the regulations; or
 - (b) that building work of a prescribed class complies with any provision of this Act or the regulations.

- (2) A registered building practitioner must not give a certificate under subsection (1) in respect of building work unless the certificate states that the registered building practitioner has inspected that building work.

239 Certificate of Registrar

A certificate of the Registrar of the Victorian Building Authority specifying that a person is or is not registered in the Register of Building Practitioners or the category or class of registration of a person or that a certificate of registration has been issued in respect of a person is evidence and, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

S. 239
amended by
Nos 15/2016
s. 18(12),
46/2018
s. 75(2).

239A No proof required

- (1) In any proceedings by or against or before the Authority or by or against a Registrar, no proof is required (until evidence is given to the contrary) of—
- (a) the due constitution of the Authority; or
 - (b) any determination of the Authority; or
 - (c) the appointment of a Commissioner or a Registrar; or
 - (d) the presence of a quorum at a meeting of the VBA Board.
- (2) In this section—

S. 239A
inserted by
No. 21/2017
s. 90.

Registrar means the Registrar of the Victorian Building Authority or the Registrar of the Building Appeals Board.

240 Appointment of agents

An owner of a building or land may in writing authorise another person to make any application, appeal, referral or representation under this Act on behalf of the owner.

Division 4—Offences and penalties

241 Proceedings for offences

S. 241(1)
amended by
No. 47/2017
s. 13.

- (1) Proceedings for a summary offence against Part 3, 4, 5, 7 or 8 or the building regulations within a municipal district may be brought by—
- (a) a person authorised by the council; or
 - (b) a prescribed person or a person in a prescribed class of persons.

S. 241(1A)
inserted by
No. 85/2000
s. 12,
repealed by
No. 46/2008
s. 248(8).

* * * * *

S. 241(2)
repealed by
No. 15/2016
s. 18(7).

* * * * *

S. 241(2A)
inserted by
No. 39/1996
s. 8(4),
amended by
No. 75/1998
s. 5(g),
substituted by
No. 91/2000
s. 38,
amended by
No. 39/2005
s. 54,
substituted by
No. 34/2013
s. 32(1).

- (2A) Proceedings for an offence against Part 12A or any regulations made for the purposes of that Part may be brought by Energy Safe Victoria.

- (2B) Proceedings to recover money payable under Part 11 or 12A may be brought by the Authority or any person authorised by the Authority. **S. 241(2B) inserted by No. 91/2000 s. 38, amended by Nos 34/2013 s. 32(2), 15/2016 s. 18(13).**
- (3) Proceedings for any offence against this Act or the regulations may be brought by—
- (a) the Authority; or **S. 241(3)(a) amended by No. 34/2013 s. 32(3).**
- (b) any person authorised by the Minister or the Authority; or **S. 241(3)(b) amended by No. 34/2013 s. 32(3).**
- (c) a police officer. **S. 241(3)(c) amended by No. 37/2014 s. 10(Sch. item 9.2).**
- (4) An authority given by any person or body under this section must be in writing and may be given generally or in relation to a particular matter.
- (5) Until evidence is given to the contrary proof is not required of any authority to bring proceedings under this section.
- (6) No person other than a person authorised by or under this section may bring proceedings for an offence against this Act or the regulations.
- (7) Despite anything in any Act, proceedings for an offence against this Act (except proceedings for an offence against section 16B(1) or (3)) or the regulations may be commenced within the longer of the following periods in relation to an alleged offence— **S. 241(7) amended by No. 21/2017 s. 50(1), substituted by No. 21/2017 s. 50(2).**

- (a) within the period of 3 years after the commission of the alleged offence;
 - (b) in relation to proceedings under subsection (1), within 2 years after the commission of the alleged offence first came to the attention of the relevant council or the Authority;
 - (c) in relation to proceedings under subsection (2A), within 2 years after the commission of the alleged offence first came to the attention of Energy Safe Victoria or the Authority;
 - (d) in relation to any other proceedings under this Act or the regulations, within 2 years after the commission of the alleged offence first came to the attention of the Authority.
- (8) Despite subsection (7), proceedings must not be commenced more than 10 years after the commission of an alleged offence.

S. 241(8)
inserted by
No. 21/2017
s. 50(2).

S. 241A
inserted by
No. 91/1995
s. 154,
amended by
No. 15/2016
s. 18(1),
substituted by
No. 21/2017
s. 15.

241A Ineligibility for registration

- (1) If a court finds an unregistered builder guilty of carrying out domestic building work in contravention of this Act or entering into a major domestic building contract in contravention of section 29 of the **Domestic Building Contracts Act 1995**, the court may, in addition to any penalty for that offence, direct that the builder is ineligible to apply for registration under Part 11 for not more than 3 years.
- (2) If a court finds a body corporate that is an unregistered builder guilty of carrying out domestic building work in contravention of this Act or entering into a major domestic building contract in contravention of section 29 of the **Domestic Building Contracts Act 1995**, the court may, in addition to any penalty for that offence, direct that any officer of the body

corporate is ineligible to apply for registration under Part 11 for not more than 3 years.

- (3) If a court finds one or more members of a partnership guilty of carrying out domestic building work in contravention of this Act or entering into a major domestic building contract in contravention of section 29 of the **Domestic Building Contracts Act 1995**, the court may, in addition to any penalty for that offence, direct that each member of the partnership is ineligible to apply for registration under Part 11 for not more than 3 years.
- (4) The Authority must comply with a direction under this section.

* * * * *

S. 241B
inserted by
No. 36/2002
s. 15,
amended by
No. 34/2013
s. 34(Sch. 1
item 111),
repealed by
No. 15/2016
s. 68.

242 Application of penalties

- (1) If an offence has been prosecuted by a person authorised by a council, all penalties recovered in relation to the offence must be paid into the municipal fund of that council.
- (2) If an offence has been prosecuted by the Authority or a person authorised by the Minister or the Authority, all penalties recovered in relation to the offence must be paid into the Victorian Building Authority Fund.

S. 242(2)
substituted by
No. 34/2013
s. 32(4),
amended by
No. 15/2016
s. 18(14).

S. 242(3)
inserted by
No. 39/1996
s. 8(5),
amended by
No. 75/1998
s. 5(g),
repealed by
No. 34/2013
s. 32(4).

* * * * *

S. 242A
inserted by
No. 21/2017
s. 91.

242A Offences by partners

If this Act or a regulation made under this Act provides that a builder is guilty of an offence and the builder is a partnership, the reference to the builder is taken to be instead a reference to each member of the partnership.

243 Offences by bodies corporate

If a body corporate is guilty of an offence against this Act or the regulations, any person who is concerned in or takes part in the management of the body corporate who was in any way, by act or omission, directly or indirectly knowingly concerned in or party to the commission of the offence is also guilty of that offence.

S. 243A
inserted by
No. 21/2017
s. 16.

243A Conduct by officers, employees or agents of bodies corporate

- (1) If, in a proceeding under this Act in relation to conduct that is engaged in by a body corporate and to which this Act applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show—
 - (a) that an officer, employee or agent of the body corporate engaged in that conduct within the scope of the actual or apparent authority of the officer, employee or agent; and

- (b) that the officer, employee or agent had that state of mind.
- (2) The following conduct engaged in on behalf of a body corporate is also taken, for the purposes of this Act, to have been engaged in by the body corporate—
- (a) conduct by an officer, employee or agent of the body corporate within the scope of the actual or apparent authority of the officer, employee or agent; or
- (b) conduct by any other person—
- (i) at the direction of an officer, employee or agent of the body corporate; or
- (ii) with the consent or agreement (whether express or implied) of such an officer, employee or agent—
- if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the officer, employee or agent.
- (3) If, in a proceeding under this Act in relation to conduct that is engaged in by a person (the *principal*) other than a body corporate and to which this Act applies, it is necessary to establish the state of mind of the principal, it is sufficient to show—
- (a) that an employee or agent of the principal engaged in that conduct within the scope of the actual or apparent authority of the employee or agent; and
- (b) that the employee or agent had that state of mind.

- (4) The following conduct engaged in on behalf of a person (the *principal*) other than a body corporate is also taken, for the purposes of this Act, to have been engaged in by the principal—
- (a) conduct by an employee or agent of the principal within the scope of the actual or apparent authority of the employee or agent;
 - (b) conduct by any other person—
 - (i) at the direction of an employee or agent of the principal; or
 - (ii) with the consent or agreement (whether express or implied) of such an employee or agent—
if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

S. 244
(Heading)
inserted by
No. 21/2017
s. 51(1).

S. 244
amended by
No. 21/2017
s. 51(2)(3).

244 Offence to hinder or obstruct

A person must not without reasonable excuse hinder or obstruct any person or body in carrying out any function or taking any action that the person or body is authorised or required to carry out or take under this Act or the regulations.

Penalty: 60 penalty units.

245 Offences by or relating to registered building practitioners

- (1) A registered building practitioner must not ask for or receive or obtain, or offer or agree to ask for or receive or obtain, any property or benefit of any kind (other than the consideration or remuneration payable under his or her contract of engagement or appointment) for himself or herself or any other person, on an understanding that the carrying out by him or her of his or her functions under this Act or the regulations will, in any manner, be influenced or affected or that he or she will not carry out those functions.

S. 245(1)
amended by
Nos 33/2010
s. 49(1),
21/2017
s. 17(2).

Penalty: 500 penalty units, in the case of a natural person;

2500 penalty units, in the case of a body corporate.

- (2) A person must not, in order to influence or affect a registered building practitioner in carrying out his or her functions under this Act or the regulations or to influence a registered building practitioner not to carry out those functions—

S. 245(2)
amended by
No. 33/2010
s. 49(2).

- (a) give or confer or promise or offer to give or confer any property or benefit of any kind (other than the consideration or remuneration payable under the registered building practitioner's contract of engagement or appointment) to or on a registered building practitioner or any other person; or
- (b) remove or threaten to remove any property or benefit of any kind from a registered building practitioner or any other person.

Penalty: 500 penalty units, in the case of a natural person.

2500 penalty units, in the case of a body corporate.

S. 246
amended by
No. 33/2010
s. 50,
substituted by
No. 21/2017
s. 52.

246 Offence to give false or misleading statements or documents

- (1) A person must not knowingly make any false or misleading statement or provide any false or misleading information to a person or body carrying out any function under this Act or the regulations.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

- (2) A person must not produce a document, to a person or body carrying out any function under this Act or the regulations, which the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units, in the case of a natural person;

300 penalty units, in the case of a body corporate.

247 Offence relating to disclosure of pecuniary interest

A person must not contravene clause 6 of Schedule 3.

Penalty: 10 penalty units.

248 Offence for agent to act without authority

S. 248(1)
amended by
No. 33/2010
s. 51.

- (1) A person must not act on behalf of an owner of a building or land for the purpose of making any application, appeal or referral under this Act or the regulations unless the person is authorised in writing by the owner to do so.

Penalty: 120 penalty units.

- (2) A person or body carrying out a function under this Act or the regulations may accept production of a document purporting to be an authorisation, by an owner, of a person to act on behalf of the owner as evidence that the person is so authorised.
- (3) Nothing in this Act requires a person or body carrying out a function under this Act or the regulations to inquire whether an agent is acting under this Act or the regulations with the written authority of the owner.

* * * * *

S. 249
repealed by
No. 91/1995
s. 155.

250 Right of owner to carry out required work on occupied building or land

- (1) If the owner of a building or land is required to carry out any work or do any other thing under this Act or the regulations the owner may give a written notice to the occupier of the building or land—
 - (a) stating particulars of the work to be carried out or thing to be done; and
 - (b) requiring the occupier to permit the owner and any other person to enter the building or land and carry out the work or do the thing.
- (2) If the occupier of the building or land does not comply with a notice within 7 days after the notice is given, the owner of the building or land may apply to the Magistrates' Court for an order.
- (3) The Magistrates' Court may make an order requiring the occupier of the building or land to permit the owner and any other person to enter the building or land and carry out the work or do the thing.

S. 250(4)
amended by
No. 33/2010
s. 52.

- (4) The occupier of the building or land must comply with the order.

Penalty: 120 penalty units.

- (5) While the occupier of the building or land fails to comply with the order the owner of the building or land is not liable for an offence for failing to carry out the work or do the thing.

251 Occupier or registered mortgagee may carry out work

- (1) If the owner of a building or land is required under this Act or the regulations to carry out any work or do any other thing and the owner does not carry out the work or do the thing, the occupier of that building or land or any registered mortgagee of the land or the land on which the building is situated, may carry out the work or do the thing.

- (2) An occupier may—

- (a) recover any expenses necessarily incurred under subsection (1) from the owner as a debt due to the occupier; or
(b) deduct those expenses from or set them off against any rent due or to become due to the owner.

- (3) A registered mortgagee may—

- (a) recover any expenses necessarily incurred under subsection (1) from the owner as a debt due to the mortgagee; or
(b) give notice in writing of those expenses to the mortgagor.

- (4) On the giving of notice under subsection (3)(b), the expenses are taken to be added to the principal sum owing under the mortgage.

S. 251(4)
amended by
No. 21/2017
s. 99.

- (5) If the mortgagor is not the owner the mortgagor may recover the amount taken under subsection (4) to be added to the principal sum from the owner as a debt due to the mortgagor.
- (6) This section applies despite any covenant or agreement to the contrary.

S. 251(5)
amended by
No. 21/2017
s. 99.

251A Owners corporation may carry out work

S. 251A
inserted by
No. 21/2017
s. 53.

- (1) This section applies if an order or notice under this Act requires or proposes that the owner of a lot affected by an owners corporation carry out building work, protection work, plumbing work or other work in relation to that lot.
- (2) If the order or notice is served on the owners corporation under section 236(4C), the owners corporation may make representations under Part 8 or Part 12A (as the case may be) in relation to the notice as if it were the owner of the lot.
- (3) If the order or notice is served on the owners corporation under section 236(4C), the owners corporation must comply with the order as if it were the owner of the lot.
- Penalty: 2500 penalty units.
- (4) An owners corporation may authorise a person to enter a lot or a building on a lot on its behalf to carry out works in accordance with this section.
- (5) Section 51 of the **Owners Corporations Act 2006** applies in relation to an entry under subsection (4) as if it were an entry under section 50 of that Act.
- (6) An owners corporation may recover from the owner of the lot as a debt due to the owners corporation the cost of any work carried out under subsection (3) that is not covered by the insurance held by the owners corporation.

252 Vacation of building or land

S. 252(1)
amended by
No. 34/2013
s. 34(Sch. 1
item 112).

- (1) The Authority or a council may apply to the Magistrates' Court for a warrant under this section if a person refuses to vacate a building or land when required to do so by order under this Act.
- (2) An application must be accompanied by a copy of the order.
- (3) The Magistrates' Court must issue a warrant under this section if it is satisfied that the building or land referred to in the application is the same as the building or land referred to in the order.
- (4) A warrant under this section may be directed to—

S. 252(4)(a)
substituted by
No. 37/2014
s. 10(Sch.
item 9.3).

(a) a specified police officer; or

S. 252(4)(b)
substituted by
No. 37/2014
s. 10(Sch.
item 9.3).

(b) generally all police officers.

- (5) A warrant under this section directs and authorises a person to whom it is directed—
 - (a) to enter the building or land (by force if necessary); and
 - (b) with such assistance as is necessary, to compel all persons for the time being occupying the building or land to vacate that building or land.
- (6) The Magistrates' Court may exercise jurisdiction under this section despite any claim of title, question of property or suggestion of right which may be made in any proceedings under this section.

253 Powers of court if requirement of authorised person not complied with

S. 253
amended by
No. 34/2013
s. 34(Sch. 1
item 113),
substituted by
No. 21/2017
s. 54.

- (1) Subject to subsection (2), if an authorised person is satisfied that a person has failed, without reasonable excuse, to comply with a requirement under section 227G(1), 228D(6)(c), 228E(4)(e), 228I(2), 228J(4)(a)(i) or 229, the authorised person may apply to a court for an order directing the person to comply with the requirement.
- (2) The authorised person must not make an application under subsection (1) if the person to whom the failure relates has been charged with an offence against section 229F.
- (3) On an application under subsection (1), the court may—
 - (a) order the person to comply with the requirement within a period specified in the order; and
 - (b) make any other orders it considers appropriate.
- (4) If a proceeding is brought under this section in relation to a failure to comply with a requirement, a person to whom the failure relates cannot be charged with an offence under section 229F in relation to that failure.

Division 5—Building infringements

254 Definitions

In this Division—

authorised officer means the holder of a prescribed office or the holder of an office in a prescribed class of officers;

prescribed offence means an offence against this Act or the building regulations which is prescribed for the purpose of this Division.

255 Building infringements

- (1) An authorised officer may serve a building infringement notice on the owner or the occupier of any building or land or any person carrying out building work, if the authorised officer has reason to believe that that person has committed a prescribed offence in respect of the building or land.
- (2) An offence referred to in subsection (1) for which a building infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (2A) In addition to the details required under section 13 of the **Infringements Act 2006**, the details of the additional steps (if any) required to expiate the offence must be included in an infringement notice served under subsection (1).
- (3) The prescribed penalty for a prescribed offence is the amount, not exceeding 10 penalty units, prescribed for that offence for the purposes of this Division.

S. 255(2)
substituted by
No. 32/2006
s. 94(Sch.
item 4(4)).

S. 255(2A)
inserted by
No. 32/2006
s. 94(Sch.
item 4(4)).

256 Additional steps

- (1) Additional steps required to expiate a prescribed offence may include, but are not limited to, the following—
 - (a) carrying out any work if failure to carry out the work constitutes the offence;
 - (b) stopping any work that constitutes the offence;
 - (c) doing or omitting to do anything in order to remedy a contravention of the building regulations.

- (2) If a building infringement notice requires additional steps to be taken to expiate an offence, and, before the end of the remedy period set out in the notice, or if the authorised officer allows, at any time before the service of a summons in respect of the offence, the person served with the notice informs the authorised officer that those steps have been taken—
- (a) the authorised officer must, without delay, find out whether or not those steps have been taken; and
 - (b) serve on the person a notice stating whether or not those steps have been taken.
- (3) A statement in a notice under subsection (2) that additional steps have been taken is for all purposes conclusive proof of that fact.

* * * * *

Ss 257, 258
repealed by
No. 32/2006
s. 94(Sch.
item 4(5)).

259 Proceedings where building infringement notice requiring additional steps is served

S. 259
(Heading)
inserted by
No. 32/2006
s. 94(Sch.
item 4(6)).

- (1) Nothing in this section prejudices the institution or the prosecution of proceedings for an offence for which a building infringement notice has been served—

* * * * *

S. 259(1)(a)
repealed by
No. 32/2006
s. 94(Sch.
item 4(7)(a)).

- (b) if the notice states that a penalty must be paid and additional steps must be taken to expiate the offence, and—

Building Act 1993
No. 126 of 1993
Part 13—General enforcement provisions

S. 259(1)(b)(ii) amended by No. 32/2006 s. 94(Sch. item 4(7)(b)).	(i) the amount of the penalty is not paid before the end of the period for payment shown in the notice or of any further period allowed by the authorised officer; or					
	(ii) the person served with the notice does not, before the end of the remedy period shown in the notice or of any further period allowed by the authorised officer, take those additional steps.					
S. 259(1)(c) repealed by No. 32/2006 s. 94(Sch. item 4(7)(c)).	*	*	*	*	*	
S. 259(2) repealed by No. 32/2006 s. 94(Sch. item 4(8)).	*	*	*	*	*	

Part 14—General

259A Improper use of information

- (1) A member or former member of the Authority, the Building Appeals Board, the Building Practitioners Board, the Building Advisory Council, the Building Regulations Advisory Committee, the Plumbing Industry Commission or the Plumbing Advisory Council or a person employed or formerly employed for the purposes of this Act to assist any of these bodies must not make improper use of information acquired by virtue of the person's position to gain directly or indirectly a pecuniary advantage for the person or for any other person.

Penalty: 20 penalty units.

- (2) In this section—

S. 259A
inserted by
No. 71/1995
s. 22,
amended by
Nos 39/1996
s. 8(6),
75/1998
s. 5(h)(i)(ii),
34/2013 s. 33
(ILA s. 39B(1)).

S. 259A(2)
inserted by
No. 34/2013
s. 33(2).

Building Practitioners Board means the Building Practitioners Board established under Part 11 as in force immediately before the commencement of Division 2 of Part 3 of the **Building Legislation Amendment (Consumer Protection) Act 2016**;

S. 259A(2) def.
of ***Building Practitioners Board***
inserted by
No. 15/2016
s. 18(15).

Plumbing Industry Commission means the Plumbing Industry Commission established under section 221ZZR as in force immediately before the commencement of the **Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013**.

S. 259AB
inserted by
No. 21/2017
s. 55.

259AB Information sharing

- (1) The Authority may enter into, or approve of, an arrangement (an *information sharing arrangement*) with a relevant agency for the purpose of sharing or exchanging information held by the Authority and the relevant agency.
- (2) The information to which an information sharing arrangement may relate is limited to the following—
 - (a) information concerning investigations, law enforcement, assessment of complaints, registration or disciplinary matters;
 - (b) probity assessments and reference checks concerning persons who carry out or propose to carry out building work or plumbing work;
 - (c) any other information affecting the users of the services of building practitioners or plumbers;
 - (d) any other information of a prescribed kind.
- (3) Under an information sharing arrangement, the Authority and the relevant agency are authorised—
 - (a) to request and receive information held by the other party to the arrangement; and
 - (b) to disclose information to the other party—
but only to the extent that the information is reasonably necessary to assist in the exercise of functions under this Act or the functions of the relevant agency concerned.
- (4) Without limiting subsection (3), the Authority may also (whether as part of an information sharing arrangement or otherwise)—

- (a) refer any matter (including any complaint) with respect to building work, plumbing work or architectural services to a building regulator or law enforcement agency; or
 - (b) receive any matter of a type described in paragraph (a) from a building regulator or law enforcement agency; or
 - (c) conduct a joint investigation into any such matter with a building regulator or law enforcement agency.
- (5) Any building regulator or law enforcement agency referred to in subsection (4) is, despite any other Act or law of the State, authorised to refer a matter referred to in subsection (4) to the Authority or to conduct an investigation into the matter jointly with the Authority.
- (6) This section does not limit—
- (a) the powers of the Authority under this Act; or
 - (b) the operation of any other Act under which a relevant agency is authorised or required to disclose information to another person or body; or
 - (c) the giving of information—
 - (i) to a court or tribunal in the course of legal proceedings; or
 - (ii) pursuant to an order of a court or tribunal; or
 - (iii) to the extent reasonably required to enable the investigation or the enforcement of a law of the State or of any other State or Territory or of the Commonwealth; or

- (iv) with the written authority of the Secretary; or
- (v) with the written authority of the person to whom the information relates.

(7) In this section—

building regulator means a municipal council or an agency of the Commonwealth or of a State or Territory or of another jurisdiction that carries out functions under an enactment in relation to building, plumbing or architecture;

law enforcement agency means—

- (a) the police force of Victoria or the police force of another State or Territory or of an overseas jurisdiction; or
- (b) the Australian Federal Police; or
- (c) the Australian Crime Commission; or
- (d) any other authority or person responsible for the investigation or prosecution of offences against the laws of the State or of the Commonwealth, another State or Territory or an overseas jurisdiction;

plumbing work has the same meaning as in section 221C;

relevant agency means—

- (a) a building regulator; or
- (b) a law enforcement agency; or
- (c) the Secretary; or
- (d) the Director of Consumer Affairs Victoria; or

- (e) the Victorian WorkCover Authority; or
- (f) the Architects Registration Board of Victoria established under Part 6 of the **Architects Act 1991**; or
- (g) the Victorian Managed Insurance Authority; or
- (h) an agency of the Commonwealth; or
- (i) a council; or
- (j) the Commissioner of State Revenue referred to in section 62 of the **Taxation Administration Act 1997**; or
- (k) any other agency of the State or of the Commonwealth, another State or a Territory or an overseas jurisdiction; or
- (l) any other person or body that exercises functions in the public interest that involve protecting the interests of users of services of building practitioners, plumbers or architects.

259B Authority may provide information to the Director of Consumer Affairs Victoria

S. 259B
inserted by
No. 34/2013
s. 7.

The Authority may provide the Director of Consumer Affairs Victoria with any information held by the Authority in relation to a domestic building dispute (within the meaning of the **Domestic Building Contracts Act 1995**) if the Authority considers that the information will assist in the resolution of the dispute.

259BA Certificate evidence—decisions of Authority and predecessor bodies

S. 259BA
inserted by
No. 21/2017
s. 92(1).

- (1) A certificate purporting to be signed by the Registrar of the Authority and purporting to record a decision, resolution or determination of the Authority or a predecessor body is evidence

of the making of the decision, resolution or determination recorded in the certificate.

- (2) In this section, *predecessor body* means any of the following—
- (a) the Building Practitioners Board established under Part 11 as in force immediately before the commencement of Division 2 of Part 3 of the **Building Legislation (Consumer Protection) Act 2016**;
 - (b) the Building Commission established under Part 12 as in force before 1 July 2013;
 - (c) the Director of Building Control within the meaning of the **Building Control Act 1981**;
 - (d) the Plumbing Industry Commission established under section 221ZZR as in force immediately before 1 July 2013;
 - (e) the Plumbing Industry Board established under Part 12A as in force immediately before 1 January 1999.

S. 259BB
inserted by
No. 21/2017
s. 92(2).

259BB Certificate of Authority

A certificate of the Authority specifying—

- (a) that a person is or is not registered on the Register of Building Practitioners; or
- (b) the category or class of registration of a person—

is evidence and, in the absence of evidence to the contrary, proof of the matters stated in the certificate.

S. 259C
inserted by
No. 34/2013
s. 7.

259C Authority may disclose cooling tower information

The Authority may disclose any information it obtains under Part 12A in relation to a cooling tower system to the Secretary to the Department of Health.

260 Supreme Court—limitation of jurisdiction

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary—
 - (a) to prevent the Supreme Court from entertaining actions of a kind referred to in section 128 and clause 10 of Schedule 4; and
 - (b) to ensure that proceedings are determined in accordance with sections 129 to 134.
- (2) It is the intention of section 134A to alter or vary section 85 of the **Constitution Act 1975**.

S. 260
amended by
No. 39/1996
s. 9(a).

S. 260(2)
inserted by
No. 39/1996
s. 9(b).

261 General regulation-making powers

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) building permits, occupancy permits and temporary approvals, including the duration of permits and approvals and the matters to be complied with by the relevant building surveyor before a permit or approval can be issued;
 - (aa) the matters which a reporting authority is required or permitted to take into account in reporting on, or considering whether to consent to, an application for a building permit;
 - (ab) applying section 188A to specified classes of applications for building permits;
- (b) conditions on permits and approvals including a condition requiring persons skilled in safety matters to be present when a place of public entertainment is occupied;

S. 261
amended by
No. 85/2000
s. 13(2) (ILA
s. 39B(1)).

S. 261(1)(a)
amended by
No. 34/1997
s. 28.

S. 261(1)(aa)
inserted by
No. 30/2001
s. 5.

S. 261(1)(ab)
inserted by
No. 30/2001
s. 5.

S. 261(1)(b)
amended by
No. 71/1995
s. 23(1)(a).

- S. 261(1)(ba)
inserted by
No. 66/2004
s. 19(1)(a).
- S. 261(1)(c)
amended by
No. 66/2004
s. 19(1)(b).
- S. 261(1)(d)
amended by
No. 66/2004
s. 19(1)(b).
- S. 261(1)(ea)
inserted by
No. 18/1998
s. 11.
- S. 261(1)(eb)
inserted by
No. 21/2017
s. 56(1).
- S. 261(1)(f)
amended by
No. 71/1995
s. 23(1)(b).
- (ba) certificates of consent including a requirement that any matter in an application for a certificate be verified by statutory declaration;
- (c) the making, keeping and production of records of permits, certificates of consent, approvals, notices and orders and the keeping and production of other plans and documents provided under this Act or the regulations;
- (d) the keeping of registers of permits, certificates of consent, approvals, notices and orders;
- (e) the issue of building certificates relating to notices and orders under this Act and regulations;
- (ea) the provision of certificates as to compliance with conditions on permits and approvals;
- (eb) prescribing classes of building practitioner;
- (f) the qualifications (whether obtained inside or outside Victoria) for registration in the different categories or classes of the Register of Building Practitioners, including but not limited to degrees, diplomas, certificates, accreditations, authorities, examinations and periods of training or experience;
- (g) examinations for registration in the different categories or classes of the Register of Building Practitioners, including the determination of the subjects to be examined, the conduct of examinations and eligibility for examination;

- (h) the conditions prerequisite to registration in the different categories or classes (including but not limited to conditions as to age, training, experience, and authority to practise) of the Register of Building Practitioners;
- (ha) specifying the work that a category or class of registration as a building surveyor or building inspector authorises a person to carry out; **S. 261(1)(ha) inserted by No. 15/2016 s. 26.**
- (hb) specifying the domestic building work that a category or class of registration as a builder authorises a person to carry out; **S. 261(1)(hb) inserted by No. 15/2016 s. 26.**
- (i) the form and divisions of the Register of Building Practitioners and the information to be included in it;
- (j) the professional standards to be observed by registered building practitioners in the different categories or classes;
- (ja) the information to be included in, or to accompany, any notice or application required under this Act or the regulations; **S. 261(1)(ja) inserted by No. 66/2004 s. 19(1)(c).**
- (k) forms;
- * * * * *
- (l) fees payable for applications, inspections, referrals, requests, appeals and lodgement of documents under this Act and for other services provided and work done by persons and bodies under this Act and the regulations; **S. 261(1)(l) amended by No. 71/1995 s. 23(1)(c).**

- S. 261(1)(la)
inserted by
No. 28/2000
s. 16,
substituted by
No. 68/2001
s. 13(1)(a),
amended by
No. 66/2004
s. 19(1)(d).
- (la) maximum fees payable for consideration by reporting authorities of applications for permits referred to them under this Act or the regulations for consent and report;
- S. 261(1)(m)
amended by
No. 21/2017
s. 95(13).
- (m) the procedure for making applications, referrals, requests, appeals and reviews under this Act or the regulations;
- S. 261(1)(n)
amended by
No. 21/2017
s. 56(2).
- (n) the giving of copies of documents or information to specified persons and bodies and the public and the manner and form in which copies of documents or information may be given under this Act or the regulations;
- S. 261(1)(o)
amended by
No. 68/2001
s. 3(3),
substituted by
No. 34/2013
s. 34(Sch. 1
item 114),
amended by
No. 15/2016
s. 18(16).
- (o) the procedures of the Authority, the Building Advisory Council, the Plumbing Advisory Council and the Building Regulations Advisory Committee;
- S. 261(1)(oa)
inserted by
No. 34/2013
s. 34(Sch. 1
item 114).
- (oa) the proceedings of the Building Appeals Board;
- S. 261(1)(p)
amended by
No. 34/2013
s. 23(2).
- (p) the circumstances in which refunds are payable out of the Victorian Building Authority Fund;
- (q) bonds and guarantees and the circumstances in which refunds are payable in respect of them;

- (r) requiring or authorising inspections of buildings, building work, places of public entertainment and services, installations and equipment located in or in relation to buildings, building work or places of public entertainment;
- (ra) requiring or authorising the testing of essential services in buildings, building work and places of public entertainment; **S. 261(1)(ra) inserted by No. 68/2001 s. 13(1)(b).**
- (s) certificates of registration; **S. 261(1)(s) substituted by No. 46/2018 s. 75(3).**
- (t) prescribing any office or position or class of offices or positions in—
- (i) Victoria Police; or **S. 261(t)(i) substituted by No. 37/2014 s. 10(Sch. item 9.4).**
 - (ii) the Metropolitan Fire Brigades Board or any brigade under its control; or
 - (iii) the Country Fire Authority or any brigade under its control; or
 - (iv) a government department; or
 - (v) a public authority—
- as a prescribed office or prescribed class of offices for the purpose of Division 5 of Part 13;
- (u) prescribing offences against the building regulations for the purposes of Division 5 of Part 13;
- (v) prescribing penalties not exceeding 10 penalty units for the offences prescribed under paragraph (u);

S. 261(1)(w)(x)
repealed by
No. 32/2006
s. 94(Sch.
item 4(8)).

* * * * *

- (y) generally providing for any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.

S. 261(2)
inserted by
No. 85/2000
s. 13(2),
amended by
No. 54/2007
s. 11(3),
repealed by
No. 46/2008
s. 248(9).

* * * * *

262 Additional powers

Any regulations made under this Act—

- (a) may be of general or limited application; and
- (b) may differ according to differences in time, place and circumstance; and
- (c) may confer a discretionary authority or impose a duty on or leave any matter to be determined or approved by a specified person or body or class of persons or bodies; and
- (d) may provide for the exemption of persons or classes of persons, or buildings or classes of buildings, land or classes of land or building work or plumbing work or classes of building work or plumbing work, or materials or products or classes of materials or products in relation to building work or plumbing work, from any or all of the provisions of this Act or the regulations including any fees prescribed under this Act or the regulations; and

S. 262(d)
amended by
Nos 71/1995
s. 23(2),
39/1996
s. 10(a),
31/2007
s. 21(a).

- (e) may confer power on a council or municipal building surveyor or private building surveyor to exempt any building or classes of buildings or building work or classes of building work or any materials or products or classes of materials or products in relation to building work from all or any of the requirements of the building regulations; **S. 262(e)** amended by **No. 31/2007** s. 21(b).
- (ea) may confer power on a compliance auditor or plumbing inspector to exempt any plumbing work or any materials or products or classes of materials or products in relation to plumbing work from all or any of the requirements of regulations made under Part 12A; **S. 262(ea)** inserted by **No. 39/1996** s. 10(b), amended by **No. 31/2007** s. 21(c).
- (f) may impose penalties not exceeding 20 penalty units for a contravention of the regulations. **S. 262(f)** amended by **No. 66/2004** s. 19(2).

263 Transitional provisions

Schedule 4 has effect.

264 Transitional provisions relating to the Building (Plumbing) Act 1998

Schedule 6 has effect.

S. 264 repealed by **No. 34/1997** s. 30(d), new s. 264 inserted by **No. 75/1998** s. 18.

265 Transitional—Effect of change to Commission's name

- (1) The Building Commission is the same body as the Building Control Commission, despite the change to its name by section 3(3) of the **Building (Amendment) Act 2001** and no act, matter or thing is to be affected because of that change of name.

S. 265 inserted by **No. 68/2001** s. 14.

- (2) On and from the commencement of this section, in any Act or in any instrument made under any Act or in any other document of any kind, a reference to the Building Control Commission is deemed to be a reference to the Building Commission, unless the contrary intention appears.

S. 266
inserted by
No. 68/2001
s. 15,
repealed by
No. 21/2017
s. 100(4).

* * * * *

S. 267
inserted by
No. 60/2003
s. 18.

267 Transitional—proportionate liability

Despite the repeal of sections 131, 132 and 133 by the **Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003**, those sections continue to apply to and in relation to an award of damages in a building action commenced before that repeal.

S. 268
inserted by
No. 35/2004
s. 37,
repealed by
No. 21/2017
s. 100(4).

* * * * *

S. 269
inserted by
No. 36/2008
s. 26.

269 Transitional—owner-builders

- (1) Subject to subsection (2), section 137B(7) as amended by the **Building Amendment Act 2008** applies in relation to a building whether the building was constructed before or after the commencement of section 3 of that Act.
- (2) Section 137B(7) as in force immediately before the commencement of section 3 of the **Building Amendment Act 2008** continues to apply in relation to a building if the required insurance under section 137B(2) was obtained in respect of that building before that commencement.

270 Transitional—building surveyors

On the commencement of section 5(2) of the **Building Amendment Act 2008**, any person who was registered under this Act as a building surveyor immediately before that commencement is taken to be registered as a building surveyor (unlimited).

S. 270
inserted by
No. 36/2008
s. 27.

271 Transitionals—Building Amendment Act 2012

- (1) Despite the amendments made to section 179A by section 4 of the **Building Amendment Act 2012**, section 179A as in force immediately before the commencement day continues to apply in respect of an inquiry into the conduct of a person, if the registration of the person as a building practitioner was suspended and the suspension was still in effect immediately before the commencement day, whether the inquiry commenced before, on or after the commencement day.
- (2) Section 179A as amended by section 4 of the **Building Amendment Act 2012** applies in respect of an inquiry that was commenced and continuing immediately before the commencement day in relation to the conduct of a person, if the person's registration as a building practitioner is suspended and the suspension takes effect on or after the commencement day.
- (3) For the purposes of this section, an inquiry commences when the Building Practitioners Board causes a notice to be served under section 178(2) on the registered building practitioner or the person whose registration as a registered building practitioner has been suspended (as the case may be).
- (4) In this section *commencement day* means the day on which section 4 of the **Building Amendment Act 2012** comes into operation.

S. 271
inserted by
No. 9/2012
s. 5.

S. 272
inserted by
No. 34/2013
s. 15.

272 Transitional and savings provisions—Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013

Schedule 7 has effect.

New s. 272A
inserted by
No. 21/2017
s. 95(15).

272A Schedule 9—House Contracts Guarantee Repeal Act 2016

Schedule 9 has effect.

S. 273
inserted by
No. 15/2016
s. 57.

273 Transitional and savings provisions—Building Legislation Amendment (Consumer Protection) Act 2016

Schedule 8 has effect.

S. 274
inserted by
No. 21/2017
s. 93.

274 Transitional and savings provisions relating to the Building Amendment (Enforcement and Other Measures) Act 2017

Schedule 10 has effect.

S. 275
inserted by
No. 46/2018
s. 73.

275 General transitional and savings provisions—Building Amendment (Registration of Building Trades and Other Matters) Act 2018

- (1) Section 169EA as inserted by section 10 of the amending Act does not apply to a person who carries out a type of building work prescribed for the purposes of section 169EA under a contract to carry out that building work, including a subcontract, if the person entered into that contract before that building work was prescribed.
- (2) Section 169EA as inserted by section 10 of the amending Act does not apply to a person who carries out, as a subcontractor or as an employee, a type of building work prescribed for the purposes of section 169EA during the following periods—
 - (a) the period of 12 months after the relevant building work is prescribed;

- (b) if the person applies for registration as a builder or for a licence as a building employee to carry out the relevant building work during that 12 month period but the Authority does not grant the registration or licence during that period, the longer of the following periods of time—
 - (i) before the Authority decides to grant or not to grant the registration or the licence;
 - (ii) if the person applies for an internal review under Part 11 or 11A of the Authority's decision to refuse to grant the registration or licence, before the Authority makes a review decision in relation to the reviewable decision;
 - (iii) if the person applies to VCAT for review of the Authority's decision to refuse to grant the registration or licence or the review decision, before VCAT makes a decision in relation to the reviewable decision or the review decision.
- (3) Section 169FA as inserted by section 12 of the amending Act does not apply to a person who engages an unregistered person as a subcontractor to carry out a type of building work prescribed for the purposes of section 169EA during the following periods—
 - (a) the period of 12 months after the relevant building work is prescribed;
 - (b) if the person to be engaged as a subcontractor applies for registration as a builder to carry out the relevant building work during that 12 month period but the Authority does not grant the registration

during that period, the longer of the following periods of time—

- (i) before the Authority decides to grant or not to grant the registration;
 - (ii) if the person applies for an internal review under Part 11 of the Authority's decision to refuse to grant the registration, before the Authority makes a review decision in relation to the reviewable decision;
 - (iii) if the person applies to VCAT for review of the Authority's decision to refuse to grant the registration or the review decision, before VCAT makes a decision in relation to the reviewable decision or the review decision.
- (4) Section 169FB as inserted by section 12 of the amending Act does not apply to a person who directs or requires a person to carry out a type of building work prescribed for the purposes of section 169EA during the following periods—
- (a) the period of 12 months after the relevant building work is prescribed;
 - (b) if the person directed or required to carry out the relevant building work applies for registration as a builder or for a licence as a building employee to carry out the relevant building work during that 12 month period but the Authority does not grant the registration or licence during that period, the longer of the following periods of time—
 - (i) before the Authority decides to grant or not to grant the registration or licence;
 - (ii) if the person applies for an internal review under Part 11 or Part 11A of the Authority's decision to refuse to grant

- the registration or licence, before the Authority makes a review decision in relation to the reviewable decision;
- (iii) if the person applies to VCAT for review of the Authority's decision to refuse to grant the registration or licence or the review decision, before VCAT makes a decision in relation to the reviewable decision or the review decision.
- (5) Section 25AA(1) as inserted by section 32 of the amending Act applies in relation to land that is the subject of a building permit issued between 1 July 2018 and immediately before the day on which section 32 comes into operation as well as to a building permit issued on or after that day.
- (6) A registration card issued by the Authority to a registered building practitioner who is a natural person immediately before the day on which section 43 of the amending Act comes into operation and which contains the following information, is taken on and after that day to be a registration card issued under section 171GA—
- (a) the name of the building practitioner;
 - (b) the registration number of the building practitioner;
 - (c) a recent photo of the building practitioner.
- (7) Section 179(1)(db) as inserted by section 46(2) of the amending Act only applies in relation to a breach of dispute resolution order notice issued on or after the day on which section 46(2) comes into operation.
- (8) Section 179B as inserted by section 47 of the amending Act only applies in relation to a finding in respect of which a show cause notice is

issued to the building practitioner on or after the day on which section 47 comes into operation.

(9) In this section—

amending Act means the **Building Amendment (Registration of Building Trades and Other Matters) Act 2018**;

relevant building work means a type of building work prescribed for the purposes of section 169EA;

unregistered person means a person who does not hold a registration under Part 11 that authorises the carrying out of the relevant building work.

S. 276
inserted by
No. 46/2018
s. 73.

276 Transitional regulations

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the amending Act, including any repeals and amendments made as a result of the enactment of that Act.
- (2) Regulations under this section may—
 - (a) have a retrospective effect to a day that is not before the day on which the amending Act receives the Royal Assent; and
 - (b) be of limited or general application; and
 - (c) differ according to time, place or circumstance; and
 - (d) leave any matter or thing to be decided by a specified person or class of person.
- (3) To the extent to which any provision of the regulations takes effect from a date that is earlier than the date of its making, 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 making; 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 making.
- (4) Regulations under this section have effect despite anything to the contrary in any Act (other than this Act or the **Charter of Human Rights and Responsibilities Act 2006**) or in any subordinate instrument.
- (5) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to any regulations made under this section.
- (6) This section expires on 1 September 2022.
- (7) In this section—

amending Act means the **Building Amendment (Registration of Building Trades and Other Matters) Act 2018**.

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S. 272A
inserted by
No. 37/2016
s. 7,
repealed by
No. 21/2017
s. 95(14).

Schedules

Schedule 1—Building regulations

Part 1—Regulation-making powers

Part 2

Sch. 1 Pt 1
cl. 1
amended by
No. 30/2001
s. 6.

1. Design and siting of buildings including—
 - (a) matters relating to the availability of light to, and the overshadowing of, nearby buildings and allotments;
 - (b) matters relating to privacy and overlooking, in relation to nearby buildings and allotments;
 - (c) matters relating to the height of a building, and the distances from buildings to the boundaries of an allotment or to nearby buildings;
 - (d) matters relating to how much of an allotment may be used for buildings, how much of an allotment may be covered by impermeable surfaces and the provision of open spaces on an allotment;
 - (e) matters relating to the preservation of trees, and of architectural or heritage features;
 - (f) matters relating to the provision of car parking in relation to an allotment;
 - (g) matters relating to the use of impermeable surface materials on an allotment and their effect on drainage and runoff;
 - (h) matters relating to the amenity of nearby buildings and allotments;
 - (i) matters relating to the energy efficiency of buildings;
 - (j) matters relating to associated fences and boundary walls.

Building Act 1993
No. 126 of 1993
Schedule 1—Building regulations

2. Form and contents of plans and specifications for building work.
3. Preparation of land for building work.
4. The construction of buildings.
5. Certificates of accreditation for building products, construction methods or designs, components or systems connected with building work.
6. The use and testing of specified building materials.
7. Structural strength, integrity, stability, durability and insulating properties of building work and materials.
8. Fire prevention, fire fighting equipment and precautions and other emergency installations, services and equipment.
9. The designation of areas liable to bushfires.
10. Prevention of flooding of buildings and designation of areas liable to flooding.
11. The designation of alpine areas.
12. The environmental and energy efficiency of buildings.
13. Moisture resistance of buildings.
14. Heating, cooling, ventilation, air conditioning and lighting of buildings.
15. Noise resistant construction of buildings.
16. The resistance of buildings to infestation and the designation of areas liable to infestation.
17. The construction and maintenance of floor, wall and roof coverings and of finishes to buildings.
18. The construction and maintenance of lifts and lift-shafts in buildings.

* * * * *

**Sch. 1 Pt 1
cl. 19
repealed by
No. 68/2001
s. 16.**

Building Act 1993
No. 126 of 1993
Schedule 1—Building regulations

20. Utility, safety and hygiene services, installations and equipment located in, or related to, buildings and places of public entertainment.
21. The structural adequacy of advertising signs and hoardings.
22. Fixtures projecting from buildings and dangers arising out of projections from construction work.
23. The protection of adjoining property.
24. Use of public space for construction work.
25. Access to and egress from buildings and places of public entertainment.
26. Suitability of buildings and places of public entertainment for occupation.
27. The number of people who can be accommodated in buildings and places of public entertainment.
28. Use and maintenance of buildings and places of public entertainment including use and maintenance and replacement of services, installations and equipment referred to in this Schedule.
29. Changes of use of buildings and places of public entertainment.
30. The manner of alteration and demolition of and additions to buildings, including the connecting or dividing of buildings.
31. The classification of buildings and places of public entertainment and the application of building regulations to different classes of buildings and places of public entertainment.
32. The provision of certificates as to compliance with any or all of the building regulations or with respect to any other matters under the building regulations.

Building Act 1993
No. 126 of 1993
Schedule 1—Building regulations

33. The records to be kept of—
- (a) the carrying out of building work; and
 - (b) the maintenance of buildings and places of public entertainment; and
 - (c) the maintenance and replacement of services, installations and equipment referred to in this Schedule.
34. The safety of buildings and places of public entertainment.

* * * * *

**Sch. 1 Pt 2
amended by
No. 34/1997
s. 29,
repealed by
No. 68/2001
s. 4(2).**

Schedule 2—Procedures for building permits and occupancy permits

Ss 18, 42, 54

1 Form of application

An application must—

Sch. 2 cl. 1(a)
substituted by
No. 66/2004
s. 9(4).

(a) contain the prescribed information; and

(b) contain any matters, and be accompanied by any documents, prescribed for the purposes of this clause; and

Sch. 2 cl. 1(c)
amended by
No. 71/1995
s. 24.

(c) be accompanied by the fees—

(i) determined by the council in accordance with the **Local Government Act 1989**; or

(ii) in the case of an application to a private building surveyor, determined by the private building surveyor; and

Sch. 2 cl. 1(d)
inserted by
No. 71/1995
s. 24,
amended by
No. 28/2000
s. 17(1).

(d) be accompanied by the appropriate prescribed lodgement fee (if any); and

Sch. 2 cl. 1(e)
inserted by
No. 28/2000
s. 17(1),
amended by
Nos 68/2001
s. 13(2)(a),
66/2004
s. 20(1).

(e) if the relevant building surveyor is required to give a copy of the application to an authority which is a reporting authority, be accompanied by the relevant fees (if any) fixed by the reporting authority under clause 4 for payment to the reporting authority.

2 Building surveyor may request more information

- (1) The relevant building surveyor may require an applicant to provide additional information or documents or to amend the application before the relevant building surveyor deals with or deals further with the application.
- (2) The prescribed time within which the relevant building surveyor must decide an application for a permit—
 - (a) ceases to run at the time when the relevant building surveyor requires the applicant to provide additional information or documents or amend the application; and
 - (b) recommences to run only when the information, documents or amended application are supplied to the relevant building surveyor.

3 Application may be refused if information not provided

- (1) If additional information or a document or an amended application required to be supplied by an applicant is not supplied within the time specified by the relevant building surveyor, the relevant building surveyor may refuse the application.
- (2) Before refusing an application under subclause (1), the relevant building surveyor must give the applicant 30 days notice in writing of his or her intention to refuse the application.

4 Reporting authorities must be consulted

- (1) Subject to this Schedule, the relevant building surveyor must not decide an application for a permit that is required by this Act or the regulations or by any other Act or regulations to be reported on, or consented to, by a reporting

Sch. 2 cl. 4(1)
amended by
No. 28/2000
s. 17(2).

authority unless the report or consent has been obtained.

(2) Unless exempted by this Schedule, the relevant building surveyor must give a copy of an application to each reporting authority within the prescribed time after the application is received by the relevant building surveyor.

Sch. 2 cl. 4(3)
inserted by
No. 28/2000
s. 17(3).

(3) The relevant building surveyor must forward to a reporting authority with the copy of an application, any fees paid to the building surveyor under clause 1(e) in respect of that application and that reporting authority.

Sch. 2 cl. 4(4)
inserted by
No. 66/2004
s. 20(2).

(4) A reporting authority may fix fees (not exceeding the maximum fees prescribed for the purposes of this clause) for applications or classes of applications referred to it under this Act or the regulations.

Sch. 2 cl. 4(5)
inserted by
No. 66/2004
s. 20(2).

(5) If the reporting authority is a council, the fees must be determined in accordance with the **Local Government Act 1989**.

Sch. 2 cl. 4(6)
inserted by
No. 66/2004
s. 20(2).

(6) A reporting authority other than a council must publish a notice in the Government Gazette of any fees fixed by it under this clause.

Sch. 2 cl. 4A
inserted by
No. 30/2001
s. 7.

4A Reporting authority must have regard to section 188A guidelines in some cases

- (1) This clause applies if—
- (a) a reporting authority is required by this or any other Act or by the regulations to report on, or to consent to, an application for a building permit for a single dwelling, within the meaning of section 188A(4); and
 - (b) the regulations provide that section 188A applies to applications of that kind.

- (2) In reporting on, or considering whether to consent to, the application, the reporting authority—
- (a) must have regard to the guidelines for the time being in force under section 188A; and
 - (b) in having regard to those guidelines, if in the opinion of the reporting authority the application may result in a nearby allotment suffering detriment, must give the owner of the allotment an opportunity to make a submission in respect of the possible detriment; and
 - (c) must consider any submission made under paragraph (b); and
 - (d) must refuse to give its consent to the application if the application does not comply with any matter set out in those guidelines.

5 Applicant may obtain report or consent

- (1) An applicant for a permit may obtain a required report or consent from a reporting authority.
- (1A) If the applicant applies for a consent or report to a reporting authority, the application must be accompanied by the relevant fees (if any) fixed by the reporting authority under clause 4.
- (2) An applicant for a permit must notify the relevant building surveyor when the application is made as to whether the applicant has applied or intends to apply for any required report or consent by a reporting authority;

Sch. 2
cl. 5(1A)
inserted by
No. 28/2000
s. 17(4),
amended by
Nos 68/2001
s. 13(2)(b)(i)
(ii), 66/2004
s. 20(3).

- (3) The relevant building surveyor need not obtain a report or consent from a reporting authority if the applicant—
 - (a) notifies the building surveyor that the applicant has applied for or intends to apply for that report or consent; or
 - (b) supplies the relevant building surveyor with a copy of the report made in the last 12 months or of the consent.
- (4) An applicant who applies for and obtains a required report or consent must supply a copy of the report or consent to the relevant building surveyor—
 - (a) when the application for the permit is made; or
 - (b) within any further time that is prescribed or allowed by the building surveyor.

6 What if a reporting authority (other than a council or council officer) fails to supply a report or consent?

- (1) Despite anything to the contrary in the regulations or any other Act or regulations, the relevant building surveyor may proceed to decide an application without a report being obtained if a copy of the report is not supplied by the reporting authority (other than a council or an officer of a council) within the prescribed time.
- (2) A reporting authority (other than a council or an officer of a council) is taken to have consented to a permit if the authority has not within the prescribed time informed the relevant building surveyor or the applicant of—
 - (a) its consent to the application; or
 - (b) refusal of consent and the reasons for that refusal.

Sch. 2 cl. 6(2)
amended by
No. 21/2017
s. 99.

- (3) An applicant for a permit may appeal to the Building Appeals Board against a failure of a reporting authority which is a council or an officer of a council to inform the relevant building surveyor or the applicant within the prescribed time of—
- (a) its consent to the application; or
- (b) its refusal of consent and the reasons for that refusal.
- (4) The Building Appeals Board must consider an appeal under subclause (3) and may make any order that it considers appropriate in the circumstances.
- (5) This clause does not apply to a responsible authority under the **Planning and Environment Act 1987** in its capacity as a reporting authority for the purposes of section 29A of this Act.
- (6) A reference in this clause to a council, with respect to an application, is to be read as including a reference to any reporting authority that has to comply with clause 4A(2) in reporting on, or considering whether to consent to, the application.
- 6A What if the reporting authority is the responsible authority under the Planning and Environment Act 1987?**
- (1) This clause applies only to a responsible authority under the **Planning and Environment Act 1987** in its capacity as a reporting authority for the purposes of section 29A of this Act.
- (2) Despite anything to the contrary in the regulations or any other Act or regulations, the relevant building surveyor may proceed to decide an application without a report being obtained if a copy of the report is not supplied by the reporting authority within the prescribed time.

Sch. 2 cl. 6(3)
inserted by
No. 71/1995
s. 25.

Sch. 2 cl. 6(4)
inserted by
No. 71/1995
s. 25.

Sch. 2 cl. 6(5)
inserted by
No. 28/2000
s. 17(5).

Sch. 2 cl. 6(6)
inserted by
No. 30/2001
s. 8.

Sch. 2 cl. 6A
inserted by
No. 28/2000
s. 18.

Sch. 2
cl. 6A(3)
amended by
No. 21/2017
s. 99.

- (3) Subject to subclause (4), a reporting authority is taken to have consented to a permit if the authority has not within the prescribed time informed the relevant building surveyor of—
- (a) its consent to the application; or
 - (b) its refusal of consent and the reasons for that refusal.

Sch. 2
cl. 6A(4)
amended by
No. 21/2017
s. 99.

- (4) A reporting authority is taken to have refused to consent to a permit if—
- (a) the authority is required under section 29A to refuse its consent; and
 - (b) the authority has not within the prescribed time informed the relevant building surveyor of that refusal.

7 Relevant building surveyor must consider report

- (1) The relevant building surveyor must consider any report of a reporting authority supplied under this Schedule before deciding the relevant application for a permit.
- (2) In deciding an application, the relevant building surveyor must implement the recommendations of a prescribed reporting authority in relation to a prescribed matter.
- (3) Except as provided in subclause (2), the relevant building surveyor is not required to implement any of the recommendations in a report by a reporting authority.
- (4) For the purposes of subclause (2) and without limiting that subclause—
 - (a) a responsible authority under the **Planning and Environment Act 1987** is a prescribed reporting authority; and
 - (b) a demolition to which section 29A applies is a prescribed matter.

Sch. 2 cl. 7(4)
inserted by
No. 28/2000
s. 19.

Schedule 3—Membership and procedure of boards

Part 1—Membership

Parts 10, 11 and 12

1 Term of Appointment

- (1) Subject to this clause, a member of a Board holds office for a period, not exceeding 3 years, specified in the instrument of his or her appointment.
- (2) A member of a Board is eligible for re-appointment.
- (3) The instrument of appointment of a member of a Board may specify terms and conditions of appointment not inconsistent with this Act or the regulations.
- (4) A member of a Board appointed by the Minister can be removed from office by the Minister.

2 Remuneration and allowances

A member of a Board (including a chairperson or deputy chairperson) who is not a member of the public service or the holder of a full-time statutory office is entitled to receive—

- (a) remuneration; and
- (b) travelling or other allowances—

from time to time fixed by the Minister in respect of that member.

3 Vacancies

- (1) A member of a Board may resign from membership by letter signed by the member and delivered to the Minister.

- (2) The office of a member of a Board becomes vacant if the member—
- (a) becomes bankrupt¹⁰; or
 - (b) is convicted in Victoria of an offence punishable on first conviction with imprisonment for a term of 12 months or more or is elsewhere convicted of an offence which, if committed in Victoria, would be so punishable; or
 - (c) ceases to hold a position or qualification which made the member eligible for appointment as a member.

Sch. 3 cl. 4
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 21.4),
80/2006
s. 26(Sch.
item 6).

4 Application of Public Administration Act 2004

The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member of a Board in respect of the office of member.

5 Acting members

- (1) If a member of a Board is unable to perform the duties of his or her office, the Minister may appoint a person to act in the place of the member during that period of inability.
- (2) An acting appointment is to be for any term and on any conditions determined by the Minister.
- (3) The Minister may at any time terminate an acting appointment.
- (4) An acting member of a Board has all the functions of the member for whom he or she is acting.

- (5) An acting member of a Board is entitled to receive any remuneration or travelling or other allowances fixed from time to time by the Minister in respect of that acting member.
- (6) The provisions of this Schedule (except clause 2) applying to members of a Board also apply to acting members.

6 Pecuniary interests

- (1) If a member of a Board has a direct or an indirect pecuniary interest in a matter which is about to be or is being considered by the Board, the member must as soon as possible after the relevant facts come to his or her knowledge disclose the nature of the interests—
 - (a) to the Minister, in the case of the chairperson; or
 - (b) to the chairperson, in the case of any other member.
- (2) A member who has disclosed a pecuniary interest in a matter under subclause (1) must not be present while the Board is considering or deciding the matter and must not take part or further part in that consideration or decision.
- (3) An act or decision of a Board is not invalid merely because a member contravenes subclause (1) or (2).
- (4) Subclause (3) does not prevent a member of a Board being removed from office because he or she has contravened subclause (1) or (2).
- (5) For the purposes of this clause, a member of a Board must not be taken to have a pecuniary interest in a matter merely because the member is engaged in the building industry or in any matter connected with that industry.

- (6) Without limiting what is a pecuniary interest in a matter for the purposes of this clause, a person must be taken to have a pecuniary interest in a matter relating to a building or building work if the person—
- (a) is or was involved in designing the building;
or
 - (b) has assisted in preparing or making an application for a building permit or occupancy permit for the building or work;
or
 - (c) is the relevant building surveyor in respect of an application for a permit for that building or building work.

7 Membership of Board not office or place of profit

A member of a Board must not, in respect of the office of member, be taken to hold an office or place of profit under the Crown which would—

- (a) prevent the member sitting or voting as a member of the Legislative Council or Legislative Assembly; or
- (b) make void the member's election to the Legislative Council or Legislative Assembly;
or
- (c) prevent the member continuing to be a member of the Legislative Council or Legislative Assembly; or
- (d) subject the member to liability to a penalty under the **Constitution Act 1975**.

Part 2—General procedure

8 Building Appeals Board may sit in panels

- (1) For the purposes of performing any of its functions, the Building Appeals Board may be constituted by one or more panels of its members.
- (2) The chairperson of the Building Appeals Board may determine which and how many of its members are to constitute a panel and what proceedings or classes of proceedings are to be allocated to each panel.
- (3) If a panel of two or more members includes the chairperson of the Building Appeals Board, he or she is the chairperson of the panel.
- (4) If a panel of two or more members includes the deputy chairperson but not the chairperson of the Building Appeals Board, the deputy chairperson is the chairperson of the panel.
- (5) If a panel of two or more members does not include the chairperson or deputy chairperson of the Building Appeals Board, the members of the panel may elect the chairperson of the panel.
- (6) If, after a proceeding has commenced before a panel of two or more members, a member of the panel becomes unavailable—
 - (a) if the parties to the proceeding agree, the proceeding may be continued and completed before the remaining members of the panel; and
 - (b) if the member who is unavailable is the chairperson of the panel another chairperson of the panel must be chosen in accordance with this clause.

- (7) If the parties do not agree to continue a proceeding under subclause (6) the chairperson of the Building Appeals Board must arrange for the matter to be reconsidered by another panel, and that other panel may have regard to the earlier proceedings.
- (8) The chairperson of the Building Appeals Board must arrange for records to be kept of the proceedings and decisions of each panel of the Board.
- (9) Except where this Schedule otherwise expressly provides, a provision of this Part or Part 3 applying to a Board applies to a panel.

9 Decisions not affected by certain matters

An act or decision of a Board is not invalid only because—

- (a) of a defect or irregularity in the appointment of a member or acting member; or
- (b) of a vacancy in its membership; or
- (c) the occasion for the appointment of an acting member has ceased to exist.

10 Meetings

- (1) Subclauses (2), (3) and (5) do not apply to the Building Appeals Board when constituted by a panel.
- (2) At a meeting of a Board a quorum is half the number of the members currently holding office and, if this would not be a whole number, the next highest whole number.
- (3) The functions of a Board may be performed at a meeting at which there is a quorum.

- (4) At a meeting a decision of a Board is the decision of the majority of the members present and voting at the meeting and if voting is equal, the person presiding at the meeting has a casting vote as well as a deliberative vote.
- (5) The person who is to preside at a meeting of a Board is—
- (a) the chairperson, if present; or
 - (b) the deputy chairperson (if any), if the chairperson is not present; or
 - (c) a person elected by the members present, if the chairperson is not present and either there is no deputy chairperson or the deputy chairperson is not present.
- (6) Subject to this Act and the regulations, the procedure of a Board is in its discretion.
- (7) If a member of a Board holds 2 or more positions on the Board ex officio—
- (a) he or she is only entitled to exercise a single deliberative vote at meetings of the Board, regardless of how many of those positions he or she holds on the Board; and
 - (b) for the purposes of determining the total number of members of the Board currently holding office for the purposes of determining whether a quorum of the members is present, all the ex officio positions held by the member are to be counted as one member.

Sch. 3 cl. 10(7)
inserted by
No. 96/2004
s. 22.

11 Authentication of documents

- (1) A document required or authorised to be prepared by a Board must be taken to be authenticated by the Board if—
 - (a) in the case of a document of a panel of the Building Appeals Board, it is signed by the Registrar of the Building Appeals Board and either the chairperson of the panel or the chairperson of the Building Appeals Board; or
 - (b) in any other case, it is signed by the chairperson or deputy chairperson of the Board and the Registrar of the Board or another person employed for the purposes of this Act and designated by the Board for that purpose.
- (2) The production of a document purporting to be a copy of a record of an act or decision of a Board and purporting to be signed by the Registrar is evidence and, in the absence of evidence to the contrary, is proof that a decision in those terms was duly made by the Board or that the stated act was duly done by the Board.

Part 3—Proceedings before the Building Appeals Board

12 Additional powers of Board

This Part is in addition to and does not take away from any other provision of this Act.

13 How to commence a proceeding

- (1) A person may commence a proceeding before the Building Appeals Board by serving on the Board an application, a notice of appeal or a notice of referral of a matter to the Board, as appropriate.

- (2) A document commencing a proceeding—
- (a) must specify—
 - (i) the nature of the proceeding; and
 - (ii) the grounds for commencing the proceeding; and
 - (iii) the relief sought; and
 - (b) must be in accordance with the regulations (if any).
- (3) The person who serves a document commencing a proceeding must without delay serve a copy of that document on—
- (a) the decision-maker, if the proceeding is an appeal; and
 - (b) in the case of a matter referred to the Building Appeals Board, any other person with a right to refer that matter to the Board; and
 - (c) in the case of an application for a modification of a provision of the building regulations that relates to a building or land on the Heritage Register under the **Heritage Act 2017**, the Heritage Council; and
 - (d) any other party concerned.

Sch. 3
cl. 13(3)(c)
substituted by
Nos 21/2017
s. 95(16),
7/2017
s. 296(4).

14 Parties to a proceeding

A person who, under clause 13, is entitled to be served with a copy of a document commencing a proceeding before the Building Appeals Board is a party to that proceeding.

15 Conducting a proceeding

- (1) The Building Appeals Board must give the parties to the proceeding reasonable opportunity to make—
 - (a) oral submissions at a hearing; or
 - (b) written submissions in the case of a proceeding that is not a hearing.
- (2) Sections 14, 15, 16 and 21A of the **Evidence (Miscellaneous Provisions) Act 1958**, as in force immediately before their repeal, apply to the Building Appeals Board in relation to a proceeding as if the Board were a Board appointed by the Governor in Council.
- (3) The Building Appeals Board—
 - (a) may proceed by accepting written submissions or by conducting a hearing; and
 - (b) may inform itself in any manner it thinks fit; and
 - (c) is bound by the rules of natural justice; and
 - (d) is not bound by any rule or practice as to evidence; and
 - (e) may conduct a proceeding in private if it considers it in the public interest or the interest of justice to do so, but must otherwise hold its hearing in public; and
 - (f) must proceed with as little formality and technicality and with as much expedition as the requirements of this Act and the regulations and the proper consideration of the matter before it permit; and

Sch. 3 cl. 15(2)
amended by
Nos 69/2009
s. 54(Sch. Pt 2
item 7.1),
21/2017
s. 95(17).

Sch. 3
cl. 15(3)(b)
amended by
No. 21/2017
s. 95(18).

- (g) may proceed with the hearing in the absence of a party to the proceeding if it is satisfied that the party has been given reasonable notice of the date, time and place of the hearing; and
 - (h) may at any time adjourn the proceeding; and
 - (i) may deal with proceedings or classes of proceedings together if it is satisfied that they relate to the same parties, the same building, land or building work or the same or related subject-matter; and
 - (j) may seek the independent advice of a person to assist it in dealing with the proceeding.
- (4) A party to a proceeding may appear at a hearing before the Building Appeals Board or do anything else in relation to a proceeding before that Board either personally or through an agent.
- (5) The Board must disclose to each party to a proceeding any advice it receives under subclause (3)(j) and give each party a reasonable opportunity to make submissions about that advice before determining the proceeding.

16 Determinations and reasons

- (1) A determination of the Building Appeals Board must be in writing.
- (2) The determination may include any order as to costs that the Building Appeals Board, on the application of a party to the proceeding, considers is just.
- (3) The determination may include any other incidental order or direction that the Building Appeals Board considers is necessary.

- (4) The Building Appeals Board must without delay cause a copy of its determination in any proceeding to be served on each party to the proceeding.
- (5) Within one month after being served with a copy of the Building Appeals Board's determination, or within any further time allowed by the Board, a party to a proceeding may request the Board to give to the party written reasons for its determination.
- (6) The Building Appeals Board must comply with a request received under subclause (5) without delay after receiving it.
- (7) The Building Appeals Board may make public any of its determinations in any manner it thinks fit.
- (8) The Building Appeals Board is not bound by its earlier determinations.

17 Costs

Unless the Building Appeals Board otherwise determines, a party to a proceeding before the Board must bear his, her or its own costs.

18 Correction of errors

- (1) On its own initiative or at the request of a party to a proceeding, the Building Appeals Board or a panel of the Board may make a determination correcting an earlier determination in which there is—
 - (a) a clerical error or accidental slip or omission;
or
 - (b) an evident material miscalculation of figures;
or
 - (c) an evident material mistake in the description of a person, property or thing.

- (2) The powers of the Board under subclause (1) may also be exercised on behalf of the Board by—
- (a) the chairperson of a panel of two or more members; or
 - (b) the chairperson of the Building Appeals Board, if the relevant panel or the chairperson of the panel is unavailable.

19 Enforcement of determination

A determination of the Building Appeals Board may be enforced as if it were a judgment or order of a court of competent jurisdiction.

Schedule 4—Transitional provisions

Section 263

1 Definitions

In this Schedule—

former body means any of the following bodies established under the old Act—

- (a) the Building Control Technical Advisory Council;
- (b) an advisory committee (including a special advisory committee);
- (c) a Development Approvals Co-ordinating Committee;
- (d) the Building Control Accreditation Authority;
- (e) the Building Control Qualification Board;
- (f) a Building Referees Board;
- (g) the Building Referees Panel;

former officer means any of the following people appointed or employed for the purposes of the old Act—

- (a) a Development Approvals Co-ordinator;
- (b) the Registrar of the Building Control Accreditation Authority;
- (c) the Registrar of Building Referees Boards;
- (d) the Registrar of the Building Control Qualification Board;
- (e) the Director of Building Control;
- (f) the State Building Surveyor;

- (g) the Secretary of the Building Control Technical Advisory Council;
- (h) any other officer or employee of the public service;

old Act means the **Building Control Act 1981**;

proceeding includes an inquiry, investigation, appeal, reservation of a question of law, dispute, reference or application but does not include an application for accreditation or for a certificate of qualification as a building surveyor or building inspector.

2 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) Without limiting subclause (1), in declaring that certain provisions of this Act are to be treated as re-enacting with modifications certain provisions of the old Act, this Schedule must not be taken to—
 - (a) limit the operation of any provision of the **Interpretation of Legislation Act 1984** relating to re-enactment; or
 - (b) be an exhaustive list of the provisions of the old Act re-enacted by this Act.
- (3) If this Schedule provides that a provision of the old Act continues to apply to any matter or thing, then any regulation or other instrument having effect under that Act for the purposes of that provision also continues to apply to that matter or thing.
- (4) If—
 - (a) a provision of the old Act; or
 - (b) a provision of the Victoria Building Regulations 1983; or

(c) a provision of a regulation or instrument referred to in subclause (3)—

continues to apply to a matter or thing, it continues to apply as in force immediately before that provision was repealed or revoked.

(5) This Schedule applies despite anything to the contrary in any other provision of this Act.

3 Superseded references

On the commencement of this clause, in any Act (other than this Act or a provision of the old Act continued by this Act), or in any instrument made under any Act or in any other document of any kind—

- (a) a reference to the old Act is deemed to be a reference to the **Building Act 1993**; and
- (b) a reference to the Co-ordinator or Development Approvals Co-ordinator or the Development Approvals Co-ordinating Committee under the old Act is deemed to be a reference to the municipal building surveyor; and
- (c) a reference to building approval in relation to the old Act is deemed to be a reference to a building permit; and
- (d) a reference to a relevant authority in relation to the old Act is deemed to be a reference to a reporting authority; and
- (e) a reference to a certificate of occupancy in relation to the old Act or the building regulations is deemed to be a reference to an occupancy permit; and
- (f) a reference to the Building Control Qualification Board is deemed to be a reference to the Building Practitioners Board; and

- (g) a reference to a certificate of qualification as a building surveyor in relation to the old Act or any corresponding previous enactment is deemed to be a reference to registration as a building surveyor under this Act; and
- (h) a reference to a certificate of qualification as a building inspector in relation to the old Act or any corresponding previous enactment is deemed to be a reference to registration as a building inspector under this Act; and
- (i) a reference to the Building Control Accreditation Authority is deemed to be a reference to the Building Regulations Advisory Committee; and
- (j) a reference to the Building Control Technical Advisory Council or the Secretary, Building Control Technical Advisory Council is deemed to be a reference to the Building Regulations Advisory Committee; and
- (k) a reference to a Building Referees Board or the building referees is deemed to be a reference to the Building Appeals Board; and
- (l) a reference to the building regulations is deemed to be a reference to the building regulations made under this Act; and
- (m) a reference to the Director of Building Control is deemed to be a reference to the Commission; and
- (n) a reference to the State Building Surveyor is deemed to be a reference to the Commission; and
- (o) a reference to the approval of a temporary public building under the **Health Act 1958** is deemed to be a reference to an occupancy permit issued under Division 2 of Part 5 of this Act in respect of a temporary structure.

Sch. 4 cl. 4
repealed by
No. 21/2017
s. 100(5).

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5 Former officers

A former officer who, immediately before the commencement of this clause, was a member of staff within the meaning of the **Public Sector Management Act 1992** continues, subject to that Act, as a member of staff within the meaning of that Act, with a position or employment in the Department of Planning and Development corresponding as nearly as practicable to that held immediately before that commencement, on the same terms and conditions and with the same classification and accrued or accruing entitlements as applied to the person immediately before that commencement.

Sch. 4 cl. 6
repealed by
No. 21/2017
s. 100(5).

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7 Directions about enforcement of old Act

- (1) A direction in force under section 16(1) of the old Act immediately before the commencement of this clause has effect, on and from that commencement, as if it were a declaration made and published under section 191 in relation to this Act.
- (2) A direction in force under section 16(2) of the old Act immediately before the commencement of this clause in relation to an area declared under the **Alpine Resorts Act 1983** to be an alpine resort has effect, on and from the commencement of this clause, as if it were a declaration made and published under section 192 in relation to this Act.

- (3) On the date of commencement of this clause any reference in the direction to which subclause (1) or (2) applies to—
- (a) Part III of the old Act is deemed to be a reference to Part 3 of this Act; and
 - (b) Part VIII of the old Act is deemed to be a reference to Part 8 of this Act; and
 - (c) Part IX of the old Act is deemed to be a reference to Part 7 of this Act.

8 Building approvals

- (1) A building approval or building permit granted under the old Act or a corresponding previous enactment and existing immediately before the commencement of this clause is, on that commencement, deemed to be a building permit issued under this Act.
- (2) An application for building approval made under the old Act and not determined immediately before the commencement of this clause is deemed, on that commencement, to be an application made to a municipal building surveyor for a building permit under this Act.
- (3) Anything done before the commencement of this clause in relation to an application to which subclause (2) applies is, on and from that commencement, deemed to have been done for the purposes of this Act.
- (4) Without limiting subclause (3), a consent, refusal of consent, or condition required in relation to a matter by a relevant authority within the meaning of the old Act in relation to an application to which subclause (2) applies is deemed to be a consent, refusal of consent, or condition required by a prescribed reporting authority under this Act in relation to a prescribed matter.

- (5) If under section 20A of the old Act the Minister has appointed a person to act in place of a relevant authority in relation to an application to which subclause (2) applies, a consent, refusal of consent, or condition required in relation to a matter by that person has effect for the purposes of this Act as if the person were a prescribed reporting authority and the matter were a prescribed matter.
- (6) A levy is not payable under Division 2 of Part 12 in respect of an application to which subclause (2) applies.

Sch. 4 cl. 9
repealed by
No. 21/2017
s. 100(5).

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10 Continued immunities

- (1) Section 22 of the old Act continues to apply where—
 - (a) a building approval was granted under the old Act before the commencement of this clause in respect of land liable to flooding; or
 - (b) an exemption has, before that commencement, been granted from any requirement of the building regulations within the meaning of the old Act.
- (2) Section 80 of the old Act continues to apply to the former members and the former Registrar of the Building Control Accreditation Authority in respect of anything done by that Authority, a member of that Authority, an Advisory Committee to that Authority or the Registrar before the commencement of this clause.

Sch. 4 cl. 11
repealed by
No. 34/1997
s. 30(e).

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12 Certificates of occupancy

- (1) A certificate of occupancy issued under the Victoria Building Regulations 1983 or under any corresponding previous regulations and in force immediately before the commencement of this clause is deemed, on and from that commencement, to be an occupancy permit issued under Division 1 of Part 5 of this Act, and may be amended or cancelled accordingly.
- (2) Despite anything to the contrary in the old Act or the regulations under it or in the **Interpretation of Legislation Act 1984**, a person who commenced building work more than 3 years before the commencement of this clause cannot, on or after the commencement of this clause, be charged with an offence because he or she was required to obtain a certificate of occupancy in respect of that building work and did not do so.
- (3) If the municipal building surveyor has received a notice under regulation 6.3 of the Victoria Building Regulations 1983 but has not issued a certificate of occupancy before the date of commencement of this clause, the municipal building surveyor may issue a certificate of occupancy in respect of that building on or after that commencement under those regulations.
- (4) If a municipal building surveyor has received advice under regulation 6.5 of the Victoria Building Regulations 1983, and has not revoked the existing certificate of occupancy under those regulations, that certificate of occupancy may be revoked and a new certificate of occupancy may be issued under those regulations on or after the commencement of this clause.

- (5) If a person has commenced building work 3 years or less than 3 years before the commencement of this clause but, at that commencement, has not obtained a certificate of occupancy in respect of that building work—
- (a) a certificate of occupancy may be obtained on or after that commencement under the old Act and the Victoria Building Regulations 1983 in respect of the building work; and
 - (b) the old Act and the Victoria Building Regulations 1983 apply to any failure by that person to obtain a certificate of occupancy in respect of the building work whether before or after that commencement.
- (6) A certificate of occupancy issued after the commencement of this clause under subclause (3), (4) or (5) is deemed to be an occupancy permit under Division 1 of Part 5 of this Act.
- (7) Subject to this clause, on and from the commencement of this clause—
- (a) no further certificate of occupancy can be issued under the Victoria Building Regulations 1983; and
 - (b) a certificate of occupancy cannot be revoked under those regulations.

13 Instruments and other matters under the building regulations

- (1) Clause 11 and the amendment of the old Act do not affect the continuity of any instrument issued or served, or thing done, under the building regulations under the old Act before the commencement of this clause.

- (2) If—
- (a) a matter can be dealt with by issuing a building notice, building order or emergency order under Part 8 of this Act; and
 - (b) the Victoria Building Regulations 1983 provide a mechanism for dealing with that matter (whether by notice, direction, requirement or otherwise)—
- that mechanism cannot be used to deal with that matter on or after the commencement of this clause.
- (3) A notice served under regulation 57.1 or 57.2 of the Victoria Building Regulations 1983 is deemed, on the commencement of this clause, to be an emergency order under Part 8 of this Act.
 - (4) A notice served under regulation 3.2(1) or 57.3 of the Victoria Building Regulations 1983 is deemed, on the commencement of this clause, to be a building notice under Part 8 of this Act.
 - (5) A notice issued under regulation 3.2(3) of the Victoria Building Regulations 1983 is deemed, on the commencement of this clause, to be a building order under section 111 of this Act.

14 Building actions

Division 2 of Part 9 does not apply to building work commenced before the commencement of this clause or to building work for which an application for building approval was made before that commencement.

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Sch. 4 cl. 15
repealed by
No. 46/2008
s. 271.

Sch. 4 cl. 16
repealed by
No. 21/2017
s. 100(5).

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17 Agreements required by determinations

If, before or after the commencement of this clause, an agreement has been entered into in accordance with—

- (a) a determination of a Building Referees Board under the old Act; or
- (b) a determination of a Building Referees Board or the Building Appeals Board in a proceeding referred to in clause 16—

this Act applies to the variation or release of the agreement as if it had been made in accordance with a determination under Part 10.

18 Accreditation

- (1) Anything which, immediately before the commencement of this clause, was for the time being accredited by the Building Control Accreditation Authority is deemed to be accredited by the Building Regulations Advisory Committee for the purposes of this Act.

Sch. 4 cl. 18(2)
repealed by
No. 21/2017
s. 100(5).

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19 Building surveyors and inspectors

- (1) A person who, immediately before the commencement of this clause, holds a current certificate of qualification as a building surveyor issued or deemed to have been issued under the old Act is deemed to be registered under Part 11 of this Act as a building surveyor.

- (2) A person who, immediately before the commencement of this clause, holds a current certificate of qualification as a building inspector issued or deemed to have been issued under the old Act is deemed to be registered under Part 11 of this Act as a building inspector.
- (3) If a certificate of qualification referred to in subclause (1) or (2) was suspended immediately before the commencement of this clause, the deemed registration of the person concerned is suspended for the remainder of that period of suspension.
- (4) The Building Qualifications Register existing under the old Act immediately before the commencement of this clause is deemed to form part of the Register of Building Practitioners.
- (5) A person deemed to be registered by this clause may apply to the Registrar of the Building Practitioners Board for a building practitioner's certificate. The application must include written proof that the applicant is covered by any insurance required under Part 9.
- (6) Without delay after receiving an application in accordance with subclause (5), the Registrar of the Building Practitioners Board must issue the applicant an appropriate building practitioner's certificate in accordance with Part 11.
- (7) No fee is payable for the issue of a building practitioner's certificate under subclause (6).
- (8) A building practitioner's certificate issued under subclause (6) remains in force for 12 months after the date of its issue.
- (9) A reference in Part 11 to the anniversary of the registration of a person under that Part is deemed to be a reference to the anniversary of the date of issue of a building practitioner's certificate under

subclause (6) in relation to a person deemed to be registered under this clause.

- (10) An application made to the Building Control Qualification Board before the commencement of this clause but not determined at that commencement is deemed to be an application made to the Building Practitioners Board for registration under Part 11 of this Act.

Sch. 4 cl. 20
repealed by
No. 21/2017
s. 100(5).

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21 Offences by unregistered people—exemptions

An approval in force under section 127A(2)(d) of the old Act immediately before the commencement of this clause is deemed to be an exemption under section 176(5)(b) of this Act.

22 Fire protection

- (1) Subject to this clause, Part VIII of the old Act continues to apply to a building if, before the commencement of this clause, a joint report or fire protection notice has been issued or an order has been made under that Part.
- (2) Part VIII of the old Act ceases to apply to a building if a building notice, building order or emergency order under Part 8 of this Act is issued for that building.
- (3) Part VIII of the old Act ceases to apply to a building at the end of twelve months after the day on which action was last taken by the council or the municipal building surveyor under that Part in respect of the building.

Sch. 4
cls 23, 24
repealed by
No. 21/2017
s. 100(5).

* * * * *

25 Delegations

A document evidencing a resolution in force under section 163 of the old Act issued before the commencement of this clause is deemed to be an instrument of delegation under section 98 of the **Local Government Act 1989**.

26 Re-enacted provisions

A provision of the old Act specified in Column 1 of the Table is deemed to be re-enacted (with modifications) by the provision of this Act appearing opposite in Column 2 of the Table.

TABLE

<i>Old Provision</i>	<i>New Provision</i>
Section 17	Part 12 Division 6
Section 23	Section 27
Sections 178A to 178C	Part 13 Division 5
Part IX	Part 7
Section 161	Part 13 Division 1
Section 169(1)	Section 236(6)
Section 171	Section 250
Section 173	Section 251
Section 174	Section 252

27 Saving Provision

A building permit issued in April 1996 in respect of prescribed building work within the meaning of section 27 of this Act as in force before the commencement of section 138 of the **Domestic Building Contracts and Tribunal Act 1995** is deemed to have been validly issued even if the certificate referred to in section 27(4) had not been given to the relevant building surveyor before the building permit was issued.

Sch. 4 cl. 27
inserted by
No. 2/1996
s. 13.

Sch. 4 cl. 28
inserted by
No. 26/2001
s. 15.

28 Saving provision—repeal of additional levy

- (1) The repeal of section 201(1A) by section 14 of the **House Contracts Guarantee (HH) Act 2001** does not affect—
 - (a) any liability to pay any levy imposed under that provision before that repeal; or
 - (b) any right, obligation or power of any person relating to the payment, collection, recovery or receipt of any levy so imposed.
- (2) The provisions of subsection (1) are in addition to and not in derogation of the provisions of the **Interpretation of Legislation Act 1984**.

Building Act 1993
No. 126 of 1993
Schedule 5—Infringement offences

Schedule 5—Infringement offences

Offences	Infringement Penalty
section 221ZH(2)	5 penalty units
section 221ZI(1)	3 penalty units
section 221ZLA	1 penalty unit
section 221ZO(2)	2 penalty units
section 221ZP(3)	3 penalty units
section 221ZPA(1) or (2)	1 penalty unit

Sch. 5
repealed by
No. 34/1997
s. 30(f),
new Sch. 5
inserted by
No. 75/1998
s. 20,
amended by
Nos 96/2004
s. 19(2),
33/2010 s. 53,
21/2017
s. 44(2).

**Schedule 6—Transitional provisions
relating to the Building (Plumbing) Act 1998**

Sch. 6
inserted by
No. 75/1998
s. 20.

**1 Plumbing Industry Commission is the successor of
the Plumbing Industry Board**

* * * * *

Sch. 6
cl. 1(1)(2)
repealed by
No. 21/2017
s. 100(6).

(3) Any reference to the Plumbing Industry Board in any Act, subordinate instrument, agreement or other document as far as it relates to any period after the commencement of this section is to be treated as a reference to the Plumbing Industry Commission, unless the contrary intention appears.

* * * * *

Sch. 6 cls 2–4
repealed by
No. 21/2017
s. 100(6).

Schedule 7—Transitional and savings provisions relating to the Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013

Sch. 7
inserted by
No. 34/2013
s. 16.

Section 272

Part 1—Preliminary

1 Definitions

In this Schedule—

Building Administration Fund means the Building Administration Fund established and administered by the Building Commission under section 200 as in force immediately before the commencement day;

Building Commission means the Building Commission established by section 193 as in force immediately before the commencement day;

Building Commissioner means the Commissioner of the Building Commission;

commencement day means the day on which the 2013 Act came into operation;

Note

The **Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013** came into operation on 1 July 2013.

plumbing fund means the fund established and administered by the Plumbing Industry Commission under section 221ZZZR as in force immediately before the commencement day;

Plumbing Industry Advisory Council means the body established under Division 9A of Part 12A as in force immediately before the commencement day;

Plumbing Industry Commission means the Plumbing Industry Commission established by section 221ZZR as in force immediately before the commencement day;

Plumbing Industry Commissioner means the Commissioner of the Plumbing Industry Commission;

Registrar has the same meaning as it has in section 221B;

Registrar of the Plumbing Industry Commission means the Registrar of the Plumbing Industry Commission appointed or employed under section 221ZZX as in force immediately before the commencement day;

2013 Act means the **Building and Planning Legislation Amendment (Governance and Other Matters) Act 2013**.

Part 2—Building Commission

2 Building Commission

On the commencement day—

- (a) the Building Commission is abolished and the Building Commissioner goes out of office; and
- (b) the Victorian Building Authority becomes the successor in law of the Building Commission; and

- (c) all rights, assets, liabilities and obligations of the Building Commission immediately before the commencement day become rights, assets, liabilities and obligations of the Victorian Building Authority; and
- (d) the Victorian Building Authority is substituted as a party in any proceedings, contract, agreement or arrangement commenced or made by or against or in relation to the Building Commission; and
- (e) the Victorian Building Authority may continue and complete any other continuing matter or thing commenced by or against or in relation to the Building Commission; and
- (f) any matter or thing done under an enactment or subordinate instrument by the Building Commission before the commencement day is taken to have been done by the Victorian Building Authority, so far as it relates to any period after the commencement day.

3 Superseded references

On and from the commencement day, any reference to the Building Commission in any Act, subordinate instrument, agreement or other document is taken to be a reference to the Victorian Building Authority, so far as it relates to any period after the commencement day.

* * * * *

Sch. 7 cls 4, 5
repealed by
No. 21/2017
s. 100(7).

6 Transfer of staff

- (1) On and from the commencement day, all persons who were appointed or employed by the Building Commission under section 205 as in force immediately before the commencement day, and

whose appointments or employment were in force immediately before the commencement day, are taken to be appointed or engaged by the Victorian Building Authority under section 204.

- (2) A person taken to be appointed or engaged by the Authority under subclause (1) is taken to be appointed or engaged on the same terms and with the same accrued and accruing entitlements as applied to the person immediately before the commencement day.
- (3) If a person is taken to be appointed or engaged by the Authority under subclause (1)—
 - (a) the service of the person with the Authority is to be regarded for all purposes as having been continuous with the person's service with the Building Commission; and
 - (b) the person is not entitled to receive any payment or other benefit by reason only of having ceased to be appointed or employed by the Building Commission.
- (4) Nothing in this clause prevents a person appointed or employed by the Building Commission from resigning or being dismissed at any time after the commencement day in accordance with the terms of his or her appointment or employment.

7 Immunity of former Commissioners and staff

On and from the commencement day, an entitlement of the Building Commissioner or a person appointed, employed or engaged by the Building Commission to immunity under section 127, as in force immediately before the commencement day, in relation to anything done before the commencement day continues to apply to the Commissioner or person.

8 Building Administration Fund

- (1) On the commencement day, all amounts standing to the credit of the Building Administration Fund immediately before the commencement day are credited to the Building account of the Victorian Building Authority Fund.
- (2) Without limiting the generality of subclause (1)—
 - (a) all amounts standing to the credit of the general account of the Building Administration Fund immediately before the commencement day are credited to the building general account; and
 - (b) all amounts standing to the credit of the building permit levy account of the Building Administration Fund immediately before the commencement day are credited to the building permit levy account; and
 - (c) all amounts standing to the credit of the domestic building account of the Building Administration Fund immediately before the commencement day are credited to the domestic building account; and
 - (d) all amounts standing to the credit of the domestic building dispute account of the Building Administration Fund immediately before the commencement day are credited to the domestic building dispute account.
- (3) Words and expressions used in this clause have the same meaning as they have in section 205.

9 Inquiries by Building Practitioners Board—new decisions

Section 179(2) as amended by section 10 of the 2013 Act does not apply to a decision of the Building Practitioners Board on an inquiry commenced before the commencement day.

10 Building practitioner appeals

- (1) This clause applies to an appeal to the Building Appeals Board under section 143 as in force immediately before the commencement day that had commenced but had not been determined before the commencement day.
- (2) Despite the repeal of section 143 by the 2013 Act, the Building Appeals Board may continue to hear and determine the appeal—
 - (a) if the Building Appeals Board has accepted a written submission from a party or commenced to conduct a hearing; or
 - (b) in any other case, unless the Building Appeals Board refers the matter to the Victorian Civil and Administrative Tribunal under subclause (3).
- (3) For the purposes of subclause (2)(b), the Building Appeals Board, on the application of the appellant, may refer an appeal to the Victorian Civil and Administrative Tribunal for hearing and determination.
- (4) The Victorian Civil and Administrative Tribunal may hear and determine an appeal referred to it under subclause (3) as if the appeal were an application for review under section 25J or section 182A (as the case requires).

Part 3—Plumbing Industry Commission

11 Plumbing Industry Commission

On the commencement day—

- (a) the Plumbing Industry Commission is abolished and the Plumbing Industry Commissioner goes out of office; and

- (b) the Victorian Building Authority becomes the successor in law of the Plumbing Industry Commission; and
- (c) all rights, assets, liabilities and obligations of the Plumbing Industry Commission immediately before the commencement day become rights, assets, liabilities and obligations of the Victorian Building Authority; and
- (d) the Victorian Building Authority is substituted as a party in any proceedings, contract, agreement or arrangement commenced or made by or against or in relation to the Plumbing Industry Commission; and
- (e) the Victorian Building Authority may continue and complete any other continuing matter or thing commenced by or against or in relation to the Plumbing Industry Commission; and
- (f) any matter or thing done under an enactment or subordinate instrument by the Plumbing Industry Commission before the commencement day is taken to have been done by the Victorian Building Authority, so far as it relates to any period after the commencement day.

12 Superseded references

On and from the commencement day, any reference to the Plumbing Industry Commission in any Act, subordinate instrument, agreement or other document, as far as it relates to any period after the commencement day, is taken to be a reference to the Victorian Building Authority.

13 Plumbing Advisory Council

Sch. 7 cl. 13(1)
repealed by
No. 21/2017
s. 100(7).

* * * * *

- (2) On and from the commencement day, any reference to the Plumbing Industry Advisory Council in any Act, subordinate instrument, agreement or other document, as far as it relates to any period after the commencement day, is taken to be a reference to the Plumbing Advisory Council.

14 Registrar of Plumbing Industry Commission

On the commencement day—

- (a) the position of Registrar of the Plumbing Industry Commission is abolished and the person occupying that position goes out of office but is taken to be a person appointed or engaged by the Authority in accordance with clause 16; and
- (b) the Registrar may continue and complete any continuing matter or thing commenced by or against or in relation to the Registrar of the Plumbing Industry Commission; and
- (c) any matter or thing done under an enactment or subordinate instrument by the Registrar of the Plumbing Industry Commission before the commencement day is taken to have been done by the Registrar, so far as it relates to any period after the commencement day.

15 Superseded references

On and from the commencement day, any reference to the Registrar of the Plumbing Industry Commission in any Act, subordinate instrument, agreement or other document, as far as

it relates to any period after the commencement day, is taken to be a reference to the Registrar.

16 Transfer of staff

- (1) On and from the commencement day, all persons who were appointed or employed by the Plumbing Industry Commission under section 221ZZX as in force immediately before the commencement day, and whose appointments or employment were in force immediately before the commencement day, are taken to be appointed or engaged by the Victorian Building Authority under section 204.
- (2) A person taken to be appointed or engaged by the Authority under subclause (1) is taken to be appointed or engaged on the same terms and with the same accrued and accruing entitlements as applied to the person immediately before the commencement day.
- (3) If a person is taken to be appointed or engaged by the Authority under subclause (1)—
 - (a) the service of the person with the Authority is to be regarded for all purposes as having been continuous with the person's service with the Plumbing Industry Commission; and
 - (b) the person is not entitled to receive any payment or other benefit by reason only of having ceased to be appointed or employed by the Plumbing Industry Commission.
- (4) Nothing in this clause prevents a person appointed or employed by the Plumbing Industry Commission from resigning or being dismissed at any time after the commencement day in accordance with the terms of his or her appointment or employment.

17 Immunity of former Commissioners and staff

On and from the commencement day, an entitlement of the Plumbing Industry Commissioner or a person appointed or employed by the Plumbing Industry Commission to immunity under section 127, as in force immediately before the commencement day, in relation to anything done before the commencement day continues to apply to the Commissioner or person.

18 Plumbing fund

On the commencement day, all amounts standing to the credit of the plumbing fund immediately before the commencement day are credited to the Plumbing account of the Victorian Building Authority Fund.

Part 4—Miscellaneous

* * * * *

Sch. 7 cl. 19
repealed by
No. 21/2017
s. 100(7).

20 Registrar of Titles to amend Register

The Registrar of Titles, on being requested to do so and on submission of any relevant certificate of title or other document, must make any amendments to the Register under the provisions of the **Transfer of Land Act 1958** that are necessary because of the operation of any provision of the 2013 Act.

Schedule 8—Transitional and savings provisions relating to the Building Legislation Amendment (Consumer Protection) Act 2016

Sch. 8
inserted by
No. 15/2016
s. 58.

Section 273

Part 1—Preliminary

1 Definitions

In this Schedule—

amending Act means the **Building Legislation Amendment (Consumer Protection) Act 2016**;

new provision means a provision of this Act as in force on or after the relevant commencement day;

old provision means a provision of this Act as in force before the relevant commencement day;

relevant commencement day means—

- (a) in relation to Part 2, the day on which Division 2 of Part 3 of the **Building Legislation Amendment (Consumer Protection) Act 2016** comes into operation; and
- (b) in relation to Part 3, the day on which section 22 of the **Building Legislation Amendment (Consumer Protection) Act 2016** comes into operation.

2 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If this Part provides that an old provision continues to apply to any matter or thing, then any regulation or other instrument having effect for the purposes of that provision also continues to apply to that matter or thing.
- (3) This Schedule applies despite anything to the contrary in this Act.

Part 2—Building Practitioners Board

3 Abolition of Building Practitioners Board

- (1) On the relevant commencement day—
 - (a) the Building Practitioners Board is abolished and its members go out of office; and
 - (b) any subcommittee of the Building Practitioners Board is abolished and its members go out of office.
- (2) Subclause (1) does not affect any other provisions of this Part—
 - (a) dealing with proceedings before the Building Practitioners Board; or
 - (b) providing for the Building Practitioners Board to continue for certain purposes.
- (3) If, under this Part, the Building Practitioners Board continues for certain purposes, the old provisions relating to the membership and procedure of the Board continue to apply for those purposes.

4 Proceedings—Building Practitioners Board

- (1) If, before the relevant commencement day, the Building Practitioners Board had commenced an inquiry into the conduct of a building practitioner but the Board had not determined the inquiry, the Board may continue and determine the inquiry in accordance with the old provisions.
- (2) A determination of the Building Practitioners Board referred to in subclause (1) is taken—
 - (a) in the case of a decision under section 179 of the old provisions, to be a decision of the Authority under section 182E of the new provisions; or
 - (b) in the case of a decision under section 180 of the old provisions, to be a decision of the Authority under section 181 of the new provisions.
- (3) An application for a review that has been made under section 182A of the old provisions but not determined before the relevant commencement day may be continued and completed in accordance with the old provisions.
- (4) If the time within which an application for review could be made under section 182A of the old provisions had not expired before the relevant commencement day, the application may be made and dealt with in accordance with the old provisions.
- (5) Any costs incurred by the Authority in administering this Part, including the remuneration and allowances of members of the Building Practitioners Board continuing and completing an inquiry or proceedings under this Part, must be paid out of the Building account.

5 Proceedings against the members of the Building Practitioners Board

On the relevant commencement day, the Authority is substituted for the members of the Building Practitioners Board as a party in any proceedings against the Board or its members in their capacity as such.

6 Decisions and actions of Building Practitioners Board

On the relevant commencement day, all decisions and actions taken by the Building Practitioners Board under this Act before the relevant commencement day are taken to be decisions and actions taken by the Authority in relation to any period on or after the relevant commencement day.

7 Certificates of consent

Without limiting clause 6, a certificate of consent issued by the Building Practitioners Board under Division 3A of Part 3 and existing immediately before the relevant commencement day is taken on and after that day to be a certificate of consent issued by the Authority under that Division.

8 Register of certificates of consent

The register of certificates of consent kept under section 25H immediately before the relevant commencement day is taken on and after that day to form part of the register of certificates of consent required to be kept by the Authority under that section.

9 References to Building Practitioners Board

On and from the relevant commencement day, in any Act (other than this Act or an old provision continued by this Part) or in any instrument made under any Act or in any other document of any

kind, a reference to the Building Practitioners Board is taken to be a reference to the Authority in relation to any period on or after that day unless a contrary intention appears.

Part 3—Building practitioners

10 Expiry of existing registration

- (1) This clause applies to a person who was registered under Part 11 as a building practitioner immediately before the relevant commencement day.
- (2) The registration of the registered building practitioner (unless cancelled sooner) expires on the anniversary of that registration that occurs in the financial year set out in column 2 of the Table opposite the class of practitioner in column 1 of the Table to which the practitioner belongs.
- (3) The registered building practitioner may apply under Part 11 for the renewal of the registration and for that purpose the practitioner is taken to hold the prescribed qualifications for the registration.
- (4) If the registered building practitioner was taken by clause 19 of Schedule 4 to be registered, a reference in this clause to the anniversary of the registration of the practitioner is taken to be a reference to the anniversary of the date of issue of the building practitioner's certificate under clause 19(6) of Schedule 4 unless the registration currently held by the building practitioner was granted after the date of issue of that certificate.

<i>Class of building practitioner</i>	<i>Financial year</i>
Practitioners first registered in a year ending in zero or 5	Financial year commencing 1 July 2017
Practitioners first registered in a year ending in 1 or 6	Financial year commencing 1 July 2018

Building Act 1993
No. 126 of 1993
Schedule 8—Transitional and savings provisions relating to the Building
Legislation Amendment (Consumer Protection) Act 2016

<i>Class of building practitioner</i>	<i>Financial year</i>
Practitioners first registered in a year ending in 2 or 7	Financial year commencing 1 July 2019
Practitioners first registered in a year ending in 3 or 8	Financial year commencing 1 July 2020
Practitioners first registered in a year ending in 4 or 9	Financial year commencing 1 July 2021

Part 4—Building surveyors

11 Circumstances in which private building surveyor may not act

- (1) The amendments made to section 79(1) by section 39(1) of the amending Act apply only in relation to a matter referred to in section 79(1)(a) to (d) that occurs on or after the commencement of that section 39.
- (2) The amendment made to section 79 by section 39(2) of the amending Act apply only in relation to a conflict of interest that arises on or after the commencement of that section 39.

12 Recovery of money from private building surveyor

Section 83V as inserted by section 41 of the amending Act applies in relation to money paid to a private building surveyor appointed under Part 6 before, on or after the commencement of that section 41.

13 Further limitations on issue of building permit

- (1) The amendments made to section 24A by section 45 of the amending Act apply only in relation to an application for a building permit accepted by the relevant building surveyor on or after the commencement of that section 45.

- (2) The amendments made to section 24A by section 46 of the amending Act apply only in relation to an application for a building permit accepted by the relevant building surveyor on or after the commencement of that section 46.

14 Certifying of documents given to relevant council

Section 30B as inserted by section 47 of the amending Act applies only in relation to a building permit issued by the relevant building surveyor on or after the commencement of that section 47.

15 Directions under section 37

Section 37 as in force immediately before the commencement of section 49 of the amending Act continues to apply in relation to any direction given before the commencement of that section 49.

Part 5—Dispute resolution

16 Reports of inspectors

Despite the repeal of section 241B by section 68 of the amending Act, section 241B continues to apply to any report of an inspector given to the Authority before the commencement of that section 68.

Part 6—General

17 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the amending Act, including any repeals and amendments made as a result of the enactment of that Act.

Building Act 1993

No. 126 of 1993

Schedule 8—Transitional and savings provisions relating to the Building
Legislation Amendment (Consumer Protection) Act 2016

- (2) Regulations made under this clause may have a retrospective effect to a day on or from a date not earlier than the date on which the amending Act receives the Royal Assent.
- (3) Regulations made under this clause have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human Rights and Responsibilities) or in any subordinate instrument.
- (4) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to regulations made under this clause that expire on or before 1 July 2017.
- (5) This clause is **repealed** on 1 July 2019.

Schedule 9—House Contracts Guarantee Act 1987

Sch. 9
inserted by
No. 37/2016
s. 8.

1 Payments from Consolidated Fund

Despite the repeal of the **House Contracts Guarantee Act 1987** by the **House Contracts Guarantee Repeal Act 2016**—

- (a) any amount payable after that repeal to a claimant under a claim made under the **House Contracts Guarantee Act 1987** before that repeal is payable from the Consolidated Fund, which is to the necessary extent appropriated accordingly; and
- (b) any amount that, but for that repeal, would be payable under section 46(2)(c) of the **House Contracts Guarantee Act 1987** into the Domestic Building (HIH) Indemnity Fund is payable into the Consolidated Fund.

Sch. 10
inserted by
No. 21/2017
s. 94.

Schedule 10—Transitional and savings provisions relating to the Building Amendment (Enforcement and Other Measures) Act 2017

Section 274

Part 1—Preliminary

1 Definitions

In this Schedule—

amending Act means the **Building Amendment (Enforcement and Other Measures) Act 2017**;

appointed day means—

- (a) in relation to clause 5, the day determined by the Authority for the purposes of clause 5 published in the Government Gazette and that is at least 28 days earlier than the relevant commencement day; and
- (b) in relation to clause 6, the day determined by the Authority for the purposes of clause 6 published in the Government Gazette and that is at least 28 days earlier than the relevant commencement day;

new provision means a provision of this Act as in force on or after the relevant commencement day;

old provision means a provision of this Act as in force before the relevant commencement day;

relevant commencement day means the day on which section 7 of the amending Act comes into operation.

2 General transitional provisions

- (1) This Schedule does not affect or take away from the **Interpretation of Legislation Act 1984**.
- (2) If this Part provides that an old provision continues to apply to any matter or thing, then any regulation or other instrument having effect for the purposes of that provision also continues to apply to that matter or thing.
- (3) This Schedule applies despite anything to the contrary in this Act.

Part 2—Building practitioners

3 Registration of body corporate builders—domestic building work

- (1) This clause applies to a body corporate if—
 - (a) immediately before the relevant commencement day, the body corporate had at least one director holding a current registration of a category or class authorising the carrying out of domestic building work; and
 - (b) immediately before the relevant commencement day, the Authority held evidence from the designated insurer of the body corporate that the body corporate held a certificate of eligibility to hold the required insurance for the domestic building work referred to in paragraph (a); and
 - (c) the body corporate had in the period of 12 months immediately preceding the relevant commencement day carried out domestic building work under a major

- domestic building contract that was covered by the required insurance; and
- (d) the Authority had not before the relevant commencement day received a report from the designated insurer of the body corporate providing that the body corporate is in a high risk insurance category; and
 - (e) the Authority had not before the relevant commencement day decided under clause 4 that the body corporate was not suitable to be registered under this clause; and
 - (f) the body corporate had not opted out of being registered under this clause in accordance with clause 5.
- (2) On the relevant commencement day, the body corporate is taken to be a registered builder in the category or class authorising the carrying out of the domestic building work referred to in subclause (1)(a).
- (3) The registration (unless sooner cancelled under this Act) expires on—
- (a) the date of expiry of the registration under clause 10 of Schedule 8 of the director referred to in subclause (1)(a); or
 - (b) if more than one director is registered as referred to in subclause (1)(a), the date of expiry under clause 10 of Schedule 8 of the first of the registrations of those directors to expire (otherwise than by resignation or cancellation).
- (4) If a body corporate is taken to be registered as a result of this clause, a director referred to in subclause (1)(a) is taken to be a nominee director of the body corporate.

- (5) The registered body corporate may apply under Part 11 for the renewal of its registration.

4 Authority may decide that body corporate not be registered under clause 3

- (1) Before the relevant commencement day, the Authority may decide that on the relevant commencement day a body corporate must not be taken to be a registered builder under clause 3 if the Authority considers that the body corporate or a director of the body corporate is not a fit and proper person.

- (2) A decision made by the Authority under subclause (1) is not reviewable by VCAT.

5 Body corporate builders that opt out of being transitioned under clause 3

- (1) This clause applies to a body corporate if—
- (a) before the relevant commencement day, the body corporate had at least one director holding a current registration of a category or class authorising the carrying out of domestic building work; and
 - (b) before the relevant commencement day, the body corporate was carrying out domestic building work under a major domestic building contract and the body corporate had at least one director holding a current registration authorising the carrying out of the domestic building work under that contract; and
 - (c) the body corporate has notified the Authority by the appointed day that the body corporate opts out of being registered in accordance with clause 3.

- (2) On the relevant commencement day, the body corporate may continue to carry out domestic building work under any major domestic building contract entered into before the relevant commencement date provided the body corporate continues to have a director holding a current registration authorising the carrying out of the work.

6 Registration of other bodies corporate

- (1) This clause does not apply to the registration of a body corporate to authorise the carrying out of domestic building work.
- (2) This clause applies to a body corporate if—
- (a) immediately before the relevant commencement day, the body corporate had at least one director who was registered as a building practitioner; and
 - (b) the Authority had not before the relevant commencement day decided under subclause (7) that the body corporate was not suitable to be registered under this clause; and
 - (c) the body corporate notified the Authority by the appointed day that the body corporate has elected to be registered in accordance with this clause.
- (3) On the relevant commencement day, the body corporate is taken to be registered as a building practitioner in the category or class in which the director of the body corporate was registered.
- (4) The registration (unless sooner cancelled under this Act) expires on—
- (a) the date of expiry of the registration under clause 10 of Schedule 8 of the director referred to in subclause (2); or

- (b) if more than one director is registered as referred to in subclause (2), the date of expiry under clause 10 of Schedule 8 of the first of the registrations of those directors to expire (otherwise than by resignation or cancellation).
- (5) If a body corporate is taken to be registered as a result of this clause, a director referred to in subclause (2) is taken to be a nominee director of the body corporate.
- (6) The registered body corporate may apply under Part 11 for the renewal of its registration.
- (7) Before the relevant commencement day, the Authority may decide that on the relevant commencement day the body corporate must not be taken to be registered under subclause (3) if the Authority considers that the body corporate or a director of the body corporate is not a fit and proper person.
- (8) A decision made by the Authority under subclause (7) is not reviewable by VCAT.

Part 3—Other transitional provisions

7 Further limitations on the issue of building permits

- (1) Section 24A as substituted by section 22 of the amending Act does not apply in relation to an application for a building permit that is accepted by the relevant building surveyor before the commencement of section 22 of the amending Act.
- (2) Section 24A as in force immediately before the commencement of section 22 of the amending Act continues to apply in relation to an application for a building permit that was accepted by the relevant building surveyor before that commencement.

8 Notice of ending of engagement of builder

- (1) Section 25A as substituted by section 23 of the amending Act does not apply in relation to building work for which a permit was issued before the commencement of section 23 of the amending Act.
- (2) Section 25A as in force immediately before the commencement of section 23 of the amending Act continues to apply in relation to building work for which a building permit was issued before that commencement.

9 Notice to relevant building surveyor of subsequent engagement of builder

Section 25AB as inserted by section 23 of the amending Act does not apply in relation to building work for which a permit was issued before the commencement of section 23 of the amending Act.

10 Relevant building surveyor to notify Authority and relevant council of certain information

Section 25AD as inserted by section 23 of the amending Act does not apply in relation to a building permit issued before the commencement of section 23 of the amending Act.

10A Suspension of building permit

Section 25AE as inserted by section 23 of the amending Act does not apply in relation to a building permit issued before the commencement of section 23 of the amending Act.

11 Building orders to stop building work

Section 112 as amended by section 35 of the amending Act applies to a building order made before, on or after the commencement of section 35 of the amending Act.

12 Relevant building surveyor must apply for building permit number for building permit

Section 18AA as inserted by section 58 of the amending Act does not apply in relation to an application for a building permit accepted by the relevant building surveyor before the commencement of section 58 of the amending Act.

13 Authority must be notified of increased building costs

Section 205KA as inserted by section 69 of the amending Act does not apply in relation to building work for which a building permit was issued before the commencement of section 69 of the amending Act.

14 Authority may reassess levy after building permit issued

Subdivision 4A of Division 2 of Part 12 as inserted by section 70 of the amending Act does not apply in relation to a building permit issued before the commencement of section 70 of the amending Act.

15 Assessments of levy by the Authority for unauthorised building work

Subdivision 4B of Division 2 of Part 12 as inserted by section 70 of the amending Act applies in relation to building work carried out before, on or after the commencement of section 70 of the amending Act unless the carrying out of the building work relates to an offence against section 16(1) or 16B(1) for which a person was found guilty before the commencement of section 70 of the amending Act.

Part 4—General

16 Regulations dealing with transitional matters

- (1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the amending Act, including any repeals and amendments made as a result of the enactment of that Act.
- (2) Regulations made under this clause may have a retrospective effect to a day on or from a date not earlier than the date on which the amending Act receives the Royal Assent.
- (3) Regulations made under this clause have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human Rights and Responsibilities) or in any subordinate instrument.
- (4) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to regulations made under this clause that expire on or before 1 July 2019.
- (5) This clause is **repealed** on 1 July 2021.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 11 November 1993

Legislative Council: 30 November 1993

The long title for the Bill for this Act was "A Bill to provide for the regulation of building and building standards, to amend various Acts and for other purposes."

Constitution Act 1975:

Section 85(5) statement:

Legislative Assembly: 11 November 1993

Legislative Council: 30 November 1993

Absolute majorities:

Legislative Assembly: 26 November 1993

Legislative Council: 1 December 1993

The **Building Act 1993** was assented to on 14 December 1993 and came into operation as follows:

Sections 1, 2 on 14 December 1993; Schedule 4 clause 11(2)(3) on 14 April 1994: Government Gazette 14 April 1994 page 882; sections 3–23, 24(1)(2)(4), 25–56, 57(1)(a)(2), 58–135, 137–175, 176(1)(a)(i)–(iii)(b)(c) (2)–(7), 177–264, Schedules 1–3, 4 (clauses 1–10, 11(1)(4)–(7), 12–26), 5 on 1 July 1994: Special Gazette (No. 42) 1 July 1994 page 1; section 24(3) on 16 January 1995: Government Gazette 15 December 1994 page 3308; rest of Act on 1 March 1995: section 2(3).

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the

insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Building Act 1993** by Acts and subordinate instruments.

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 9) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Project Development and Construction Management Act 1994, No. 101/1994

Assent Date: 13.12.94
Commencement Date: S. 64 on 22.5.95: Government Gazette 18.5.95 p. 1180
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 6 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Planning and Environment (Development Contributions) Act 1995, No. 50/1995

Assent Date: 14.6.95
Commencement Date: S. 5 on 30.11.95: Government Gazette 30.11.95 p. 3303
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Amendment) Act 1995, No. 71/1995 (as amended by Nos 91/1995, 34/1997)

Assent Date: 31.10.95
Commencement Date: Ss 1, 2 on 31.10.95: s. 2(1); ss 3–6, 8, 10–19, 22–25 on 1.12.95: Government Gazette 16.11.95 p. 3171; s. 7 on 1.2.96: Government Gazette 21.12.95 p. 3570; ss 9, 21 never proclaimed, repealed by No. 91/1995 s. 156; s. 20 on 1.5.96: Government Gazette 18.4.96 p. 913
Current State: All of Act in operation

Domestic Building Contracts and Tribunal Act 1995, No. 91/1995

Assent Date: 5.12.95
Commencement Date: Pt 7 (ss 136–156) on 1.5.96: Government Gazette 29.2.96 p. 445
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Act 1993
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Heritage Act 1995, No. 93/1995

Assent Date: 5.12.95
Commencement Date: S. 218(1)(Sch. 2 items 1.1, 1.2) on 23.5.96:
Government Gazette 23.5.96 p. 1248
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Domestic Building Contracts and Tribunal (Amendment) Act 1996, No. 2/1996
(as amended by No. 34/1997)

Assent Date: 18.6.96
Commencement Date: 18.6.96
Current State: All of Act in operation

Building (Amendment) Act 1996, No. 39/1996

Assent Date: 12.11.96
Commencement Date: Ss 3–10 on 24.3.97: s. 2(2); s. 29 on 29.11.98: s. 2(3)
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Building (Further Amendment) Act 1997, No. 34/1997

Assent Date: 3.6.97
Commencement Date: S. 32 on 31.10.95: s. 2(2); s. 33(1) on 18.6.96: s. 33(2);
ss 1, 2 on 3.6.97: s. 2(1); rest of Act on 1.8.97: Special
Gazette (No. 84) 29.7.97 p. 1
Current State: All of Act in operation

Local Government (Miscellaneous Amendment) Act 1997, No. 76/1997

Assent Date: 25.11.97
Commencement Date: S. 23 on 25.11.97: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Vocational Education and Training (Training Framework) Act 1997, No. 80/1997

Assent Date: 25.11.97
Commencement Date: S. 55(Sch. 1 item 1) on 1.1.98: Government Gazette
18.12.97 p. 3614
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Alpine Resorts (Management) Act 1997, No. 89/1997

Assent Date: 9.12.97
Commencement Date: S. 70 on 30.4.98: Government Gazette 30.4.98 p. 926
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Gas Safety Act 1997, No. 99/1997

Assent Date: 16.12.97
Commencement Date: S. 121 on 1.2.99: Government Gazette 21.1.99 p. 80
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Building Act 1993
No. 126 of 1993
Endnotes

Residential Tenancies Act 1997, No. 109/1997

Assent Date: 23.12.97
Commencement Date: S. 533(Sch. 2 item 1.1) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Amendment) Act 1998, No. 18/1998

Assent Date: 5.5.98
Commencement Date: Ss 3–9 on 1.7.98: Special Gazette (No. 65) 30.6.98 p. 2; ss 10, 11 on 1.7.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 10) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Mutual Recognition (Victoria) Act 1998, No. 62/1998

Assent Date: 27.10.98
Commencement Date: S. 8(1) on 27.10.98: s. 2(1)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Plumbing) Act 1998, No. 75/1998 (as amended by No. 74/2000)

Assent Date: 10.11.98
Commencement Date: Ss 3–5, 7–20 on 1.1.99: Government Gazette 17.12.98 p. 3053; s. 6 on 1.7.99: Government Gazette 3.6.99 p. 1256
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Transfer of Land (Single Register) Act 1998, No. 85/1998

Assent Date: 17.11.98
Commencement Date: S. 24(Sch. item 6) on 1.1.99: s. 2(3)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Gas Industry Acts (Amendment) Act 1998, No. 91/1998

Assent Date: 24.11.98
Commencement Date: S. 35 on 1.9.99: Government Gazette 5.8.99 p. 1825
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Act 1993
No. 126 of 1993
Endnotes

Fair Trading (Inspectors Powers and Other Amendments) Act 1999, No. 17/1999

Assent Date: 18.5.99
Commencement Date: S. 22 on 1.9.99: Government Gazette 19.8.99 p. 1901
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Planning and Environment (Amendment) Act 2000, No. 28/2000

Assent Date: 30.5.00
Commencement Date: Ss 12–20 on 1.11.00: Special Gazette (No. 157) 1.11.00 p. 2
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Business Registration Acts (Amendment) Act 2000, No. 35/2000

Assent Date: 6.6.00
Commencement Date: S. 42 on 19.6.00: Government Gazette 15.6.00 p. 1248
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Legionella) Act 2000, No. 85/2000

Assent Date: 5.12.00
Commencement Date: Ss 3, 10, 11 on 6.12.00: s. 2(1); ss 4–9, 12, 13 on 1.3.01: Government Gazette 1.3.01 p. 304
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Gas Industry Acts (Amendment) Act 2000, No. 91/2000

Assent Date: 5.12.00
Commencement Date: S. 38 on 12.4.01: Government Gazette 12.4.01 p. 643
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 8) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

House Contracts Guarantee (HIH) Act 2001, No. 26/2001 (as amended by No. 33/2010)

Assent Date: 7.6.01
Commencement Date: Ss 9–13 on 8.6.01: s. 2(1); ss 14, 15 on 30.6.10: s. 2(3)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Single Dwellings) Act 2001, No. 30/2001

Assent Date: 19.6.01
Commencement Date: 20.6.01: s. 2
Current State: All of Act in operation

Building Act 1993
No. 126 of 1993
Endnotes

Gas Industry Legislation (Miscellaneous Amendments) Act 2001, No. 32/2001

Assent Date: 19.6.01
Commencement Date: S. 25 on 1.9.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Amendment) Act 2001, No. 68/2001

Assent Date: 7.11.01
Commencement Date: Ss 4, 5, 9, 10, 13 on 8.11.01: s. 2(1); ss 6, 16 on 21.12.01: Special Gazette (No. 239) 21.12.01 p. 1; ss 3, 14 on 1.1.02: s. 2(2); ss 7, 8, 11, 12, 15 on 1.7.02: s. 2(5)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 6) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building and Construction Industry Security of Payment Act 2002, No. 15/2002

Assent Date: 14.5.02
Commencement Date: S. 53 on 31.1.03: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Domestic Building Contracts (Conciliation and Dispute Resolution) Act 2002, No. 36/2002

Assent Date: 18.6.02
Commencement Date: Ss 9, 10(1)–(3), 11–15 on 1.7.02: s. 2(2); s. 10(4) on 31.5.03: s. 2(3)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Fair Trading (Amendment) Act 2003, No. 30/2003

Assent Date: 27.5.03
Commencement Date: S. 82 on 28.5.03: s. 2(1)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003, No. 60/2003

Assent Date: 16.6.03
Commencement Date: Ss 17, 18 on 1.1.04: Government Gazette 18.12.03 p. 3208
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Act 1993
No. 126 of 1993
Endnotes

Wrongs and Other Acts (Law of Negligence) Act 2003, No. 102/2003

Assent Date: 2.12.03
Commencement Date: Ss 41, 42 on 1.1.04: Government Gazette 18.12.03 p. 3208
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Architects (Amendment) Act 2004, No. 35/2004 (as amended by No. 66/2004)

Assent Date: 8.6.04
Commencement Date: Ss 34–37 on 14.6.05: Government Gazette 5.5.05 p. 851
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Amendment) Act 2004, No. 66/2004

Assent Date: 19.10.04
Commencement Date: Ss 3–20 on 14.6.05: Government Gazette 5.5.05 p. 851
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building (Cooling Towers and Plumbing) (Amendment) Act 2004, No. 96/2004

Assent Date: 14.12.04
Commencement Date: Ss 3, 4, 15, 17, 18, 20–22 on 15.12.04: s. 2(1); ss 5–14 on 1.3.05: s. 2(2); ss 16, 19 on 1.2.06: s. 2(4)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Planning and Environment (Development Contributions) Act 2004, No. 101/2004

Assent Date: 14.12.04
Commencement Date: S. 11 on 15.12.04: s. 2
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 21) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 10) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Energy Safe Victoria Act 2005, No. 39/2005

Assent Date: 27.7.05
Commencement Date: S. 54 on 10.8.05: Special Gazette (No. 147) 9.8.05 p. 1
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Act 1993
No. 126 of 1993
Endnotes

Health Legislation (Miscellaneous Amendments) Act 2005, No. 42/2005

Assent Date: 2.8.05
Commencement Date: S. 51 on 3.8.05: s. 2
Current State: This information relates only to the provision/s amending the **Building Act 1993**

House Contracts Guarantee (Amendment) Act 2005, No. 52/2005

Assent Date: 13.9.05
Commencement Date: S. 29 on 1.2.06: Government Gazette 25.1.06 p. 108
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 2) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 4) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Victorian Urban Development Authority (Amendment) Act 2006, No. 35/2006

Assent Date: 13.6.06
Commencement Date: Ss 9–11 on 1.9.06: s. 2(2)
Current State: This information relates only to provision/s amending the **Building Act 1993**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 6) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Statute Law Revision Act 2007, No. 28/2007

Assent Date: 26.6.07
Commencement Date: S. 3(Sch. item 3) on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Amendment (Plumbing) Act 2007, No. 31/2007

Assent Date: 24.7.07
Commencement Date: Ss 3–21 on 1.1.08: s. 2(2)
Current State: All of Act in operation

Building Amendment Act 2007, No. 54/2007

Assent Date: 7.11.07
Commencement Date: Ss 3–11 on 8.11.07: s. 2
Current State: All of Act in operation

Building Act 1993
No. 126 of 1993
Endnotes

Motor Car Traders Amendment Act 2008, No. 4/2008

Assent Date: 4.3.08
Commencement Date: S. 32(Sch. item 2) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Amendment Act 2008, No. 36/2008

Assent Date: 26.8.08
Commencement Date: Ss 16–25 on 1.1.09: Government Gazette 18.12.08 p. 2998; ss 3–15, 26, 27 on 1.9.09: s. 2(2)
Current State: All of Act in operation

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: Ss 248, 271 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 13) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 2 item 7) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Planning and Environment Amendment (Growth Areas Infrastructure Contribution) Act 2010, No. 23/2010

Assent Date: 1.6.10
Commencement Date: Ss 14, 15 on 1.7.10: Special Gazette (No. 242) 25.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 48 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Amendment Act 2010, No. 33/2010

Assent Date: 15.6.10
Commencement Date: Ss 3–38, 41–46, 49–53 on 16.7.10: Government Gazette 15.7.10 p. 1579; ss 39, 40, 47, 48 on 1.3.11: s. 2(3)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Act 1993
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Fair Trading Amendment (Australian Consumer Law) Act 2010, No. 72/2010

Assent Date: 19.10.10
Commencement Date: S. 48(Sch. item 2) on 1.1.11: Special Gazette
(No. 502) 20.12.10 p. 1
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Building Amendment Act 2011, No. 5/2011

Assent Date: 12.4.11
Commencement Date: 1.5.11: s. 2
Current State: All of Act in operation

**Victorian Urban Development Authority Amendment (Urban Renewal
Authority Victoria) Act 2011, No. 35/2011**

Assent Date: 5.7.11
Commencement Date: S. 17 on 25.10.11: Special Gazette (No. 342) 25.10.11
p. 1
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Building Amendment Act 2012, No. 9/2012

Assent Date: 20.3.12
Commencement Date: 21.3.12: s. 2
Current State: All of Act in operation

Water Amendment (Governance and Other Reforms) Act 2012, No. 17/2012

Assent Date: 3.4.12
Commencement Date: S. 83 on 1.7.12: Special Gazette (No. 172) 29.5.12 p. 1
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Australian Consumer Law and Fair Trading Act 2012, No. 21/2012

Assent Date: 8.5.12
Commencement Date: S. 239(Sch. 6 item 5) on 1.7.12: Special Gazette
(No. 214) 28.6.12 p. 1
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

**Building and Planning Legislation Amendment (Governance and Other Matters)
Act 2013, No. 34/2013**

Assent Date: 18.6.13
Commencement Date: Ss 3–12, 15–33, 34(Sch. 1 items 1–114) on 1.7.13: s. 2
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 3(Sch. 1 item 3) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Building Act 1993**

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Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 11) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 9) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Inquiries Act 2014, No. 67/2014¹¹

Assent Date: 23.9.14
Commencement Date: S. 147(Sch. 2 item 5) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Legislation Amendment (Consumer Protection) Act 2016, No. 15/2016
(as amended by No. 21/2017)

Assent Date: 19.4.16
Commencement Date: Ss 19, 34–36, 39, 42, 44, 45, 47–51, 53, 54, 56–58 on 4.7.16: Special Gazette (No. 194) 21.6.16 p. 1; ss 16–18, 20–23, 25–27, 29–33, 38, 43, 55 on 1.9.16: Special Gazette (No. 261) 23.8.16 p. 1; ss 59–68 on 26.4.17: Special Gazette (No. 94) 27.3.17 p. 1; ss 24, 28, 37, 40–41, 46(2), 52 on 1.7.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

House Contracts Guarantee Repeal Act 2016, No. 37/2016

Assent Date: 28.6.16
Commencement Date: Ss 7, 8 on 29.6.16: s. 2
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Heritage Act 2017, No. 7/2017

Assent Date: 15.3.17
Commencement Date: S. 296 on 1.11.17: s. 2(2)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Urban Renewal Authority Victoria Amendment (Development Victoria) Act 2017, No. 10/2017

Assent Date: 27.3.17
Commencement Date: S. 31 on 1.4.17: Special Gazette (No. 94) 27.3.17 p. 1
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Act 1993
No. 126 of 1993
Endnotes

Building Amendment (Enforcement and Other Measures) Act 2017, No. 21/2017
(as amended by No. 47/2017)

Assent Date: 23.5.17
Commencement Date: Ss 21(2), 50(1), 56, 72–76, 79–82, 86–100 on 24.5.17: s. 2(1); ss 3(2), 17(1), 18(1), 19, 26, 27, 31–38, 49, 50(2), 51, 53, 55, 66(1), 83 on 16.8.17: Special Gazette (No. 257) 1.8.17 p. 1; ss 4, 5, 13, 14, 16, 18(2)(3), 25, 28–30, 39–41, 43–48, 52, 54, 59(2), 85 on 31.1.18: Special Gazette (No. 443) 19.12.17 p. 1; ss 3(1)(3), 6–12, 15, 17(2), 20, 21(1), 22–24, 42, 77, 78, 84 on 1.7.18: s. 2(3)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Planning and Building Legislation Amendment (Housing Affordability and Other Matters) Act 2017, No. 47/2017

Assent Date: 26.9.17
Commencement Date: Ss 10–13 on 27.9.17: s. 2(1)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Planning and Environment Amendment (Public Land Contributions) Act 2018, No. 7/2018

Assent Date: 27.2.18
Commencement Date: Ss 21, 22 on 2.7.18: Special Gazette (No. 305) 26.6.18 p. 1
Current State: This information relates only to the provision/s amending the **Building Act 1993**

Building Amendment (Registration of Building Trades and Other Matters) Act 2018, No. 46/2018

Assent Date: 25.9.18
Commencement Date: Ss 30, 38–41, 45–56, 58, 64–73, 75 on 26.9.18: s. 2(1)
Current State: This information relates only to the provision/s amending the **Building Act 1993**

3 Amendments Not in Operation

This publication does not include amendments made to the **Building Act 1993** by the following Act/s.

Building Act 1993, No. 126/1993

<i>Assent Date:</i>	14.12.93
<i>Commencement Date:</i>	Sch. 8 cl. 17(5) inserted on 4.7.16 by No. 15/2016 s. 58: Special Gazette (No. 194) 21.6.16 p. 1; Sch. 10 cl. 16(5) inserted on 24.5.17 by No. 21/2017 s. 94: s. 2(1); s. 276(6) inserted on 26.9.18 by No. 46/2018 s. 73: s. 2(1)
<i>Note:</i>	Sch. 8 cl. 17(5) repeals Sch. 8 cl. 17 on 1.7.19; Sch. 10 cl. 16(5) repeals Sch. 10 cl. 16 on 1.7.21; s. 276(6) provides that s. 276 expires on 1.9.22
<i>Current State:</i>	This information relates only to the provision/s amending the Building Act 1993

Building Amendment (Enforcement and Other Measures) Act 2017, No. 21/2017

<i>Assent Date:</i>	23.5.17
<i>Commencement Date:</i>	Ss 57–59(1), 60–65, 66(2)–71 not yet proclaimed
<i>Current State:</i>	This information relates only to the provision/s amending the Building Act 1993

Oaths and Affirmations Act 2018, No. 6/2018

<i>Assent Date:</i>	27.2.18
<i>Commencement Date:</i>	S. 68(Sch. 2 item 16) not yet proclaimed
<i>Current State:</i>	This information relates only to the provision/s amending the Building Act 1993

Building Amendment (Registration of Building Trades and Other Matters) Act 2018, No. 46/2018

<i>Assent Date:</i>	25.9.18
<i>Commencement Date:</i>	Ss 4–29, 31–37, 42–44, 57, 59–63, 74 not yet proclaimed
<i>Current State:</i>	This information relates only to the provision/s amending the Building Act 1993

At the date of this publication, the following provisions amending the **Building Act 1993** were Not in Operation:

Amending Act/s:

Building Act 1993, No. 126/1993

276 Transitional regulations

(6) This section expires on 1 September 2022.

Schedule 8—Transitional and savings provisions relating to the Building Legislation Amendment (Consumer Protection) Act 2016

17 Regulations dealing with transitional matters

(5) This clause is **repealed** on 1 July 2019.

Schedule 10—Transitional and savings provisions relating to the Building Amendment (Enforcement and Other Measures) Act 2017

16 Regulations dealing with transitional matters

(5) This clause is **repealed** on 1 July 2021.

Building Amendment (Enforcement and Other Measures) Act 2017, No. 21/2017

57 Definition

In section 3(1) of the **Building Act 1993** insert—

"building permit number means a building permit number issued by the Authority under section 25BA for a proposed building permit;"

58 New section 18AA inserted

After section 18 of the **Building Act 1993** insert—

"18AA Relevant building surveyor must apply for building permit number for building permit

(1) On accepting an application for a building permit in relation to building work, the relevant building surveyor must apply to the

Authority for a building permit number for the proposed building permit.

- (2) An application under subsection (1) must—
- (a) be in writing in the form (if any) approved by the Authority; and
 - (b) include the cost of the proposed building work estimated by the relevant building surveyor under section 205I; and
 - (c) include the estimate of the amount of building levy payable estimated by the relevant building surveyor under section 205I; and
 - (d) include the prescribed information relating to the proposed building permit and building work to which the permit relates.
- (3) The relevant building surveyor may consider the application pending the issue of the building permit number for the building permit."

59 Consequential amendments relating to building permit levies

- (1) In section 18A(2)(a)(iii) of the **Building Act 1993**, for "section 205H(3)(b) or (c)" **substitute** "section 205HA".

60 New section 18C inserted

After section 18B of the **Building Act 1993** **insert—**

"18C Further notice to Commissioner of State Revenue

- (1) This section applies if—

- (a) a relevant building surveyor has given a notice to the Commissioner of State Revenue under section 18B(2) relating to an application for a building permit described in section 18B(1)(a); and
 - (b) the relevant building surveyor receives a notice from the Authority under section 205LB(1)(b) stating that the estimated cost of building work relating to the application has increased; and
 - (c) the increase in the estimated cost of building work means that the application is no longer an excluded event (within the meaning of section 201RB of the **Planning and Environment Act 1987**); and
 - (d) none of the circumstances described in section 201SA of the **Planning and Environment Act 1987** applies to the land on which the building work is to be carried out.
- (2) The relevant building surveyor must give a further notice of the application to the Commissioner of State Revenue containing the following information—
- (a) a description of the land on which the building work is being or is to be carried out;
 - (b) a description of the building work specified in the application and the purpose of the building work;
 - (c) the date the application was made;
 - (d) the applicant's name and contact details;

- (e) the name and contact details of any owner of the land, if the applicant is not the owner;
 - (f) the cost of the building work estimated under Subdivision 4A of Division 2 of Part 12.
- (3) A notice under subsection (2) must be given within 10 business days after the relevant building surveyor receives the notice under section 205LB(1)(b) from the Authority."

61 Amendment to heading of Division 3 of Part 3

In the heading to Division 3 of Part 3 of the **Building Act 1993**, after "permits" insert "and other matters".

62 New section 23A inserted

After section 23 of the **Building Act 1993** insert—

"23A Offences relating to the issue of a building permit

- (1) The relevant building surveyor must not issue a building permit unless the Authority has issued a building permit number for that building permit.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (2) The relevant building surveyor must not issue a building permit unless the permit specifies—
- (a) the building permit number issued by the Authority for that building permit; and

(b) any other information required by the regulations to be specified in the building permit.

Penalty: 10 penalty units, in the case of a natural person;
50 penalty units, in the case of a body corporate."

63 New Division 3AA of Part 3 inserted

After Division 3 of Part 3 of the **Building Act 1993 insert—**

"Division 3AA—Issue of building permit number by the Authority

25BA Issue of building permit number

- (1) The Authority must issue a building permit number for a proposed building permit on receiving an application from the relevant building surveyor under section 18AA if—
 - (a) the relevant building surveyor has given to the Authority all of the information required under section 18AA in relation to the proposed building permit; and
 - (b) the Authority has been paid the whole amount of the building permit levy determined under section 205I in relation to the proposed building work.
- (2) A building permit number may be issued in the prescribed manner (if any).

25BB Authority may refuse to issue building permit number

The Authority may refuse to issue a building permit number if—

- (a) the relevant building surveyor has not given the Authority all of the information required under section 18AA in relation to the proposed building permit; or
- (b) the Authority has not been paid the whole amount of the building permit levy determined under section 205I in relation to the proposed building work.

25BC Authority must decide to issue building permit number within prescribed period

- (1) The Authority must issue or refuse to issue a building permit number within the prescribed period after receiving the information and the building permit levy required under section 25BA(1).
- (2) The Authority is taken to have refused to issue a building permit number if it has not made a decision to issue or refuse to issue a building permit number in accordance with subsection (1).
- (3) In this section—

prescribed period means the longer of—

- (a) the period prescribed by the regulations (if any); or
- (b) 5 business days.

25BD Authority must notify applicant of refusal to issue building permit number

- (1) If the Authority refuses to issue a building permit number for a building permit, it must give written notice to the applicant for the building permit of—
 - (a) the refusal; and
 - (b) the reasons for the refusal; and

- (c) the applicant's right to apply to VCAT for review of the decision to refuse to issue the building permit number.
- (2) Subsection (1) does not apply if the Authority is taken to have refused to issue the building permit number under section 25BC(2).
- (3) The Authority must give a copy of a notice under subsection (1) to the relevant building surveyor.

25BE Authority must notify council of issue of building permit number

After issuing a building permit number under this Division for a building permit for building work to be carried out in or on a building or land, the Authority must, without delay, provide the relevant council with—

- (a) the building permit number; and
- (b) the information given to the Authority by the relevant building surveyor under section 18AA in relation to the application for the building permit number.

25BF Review by VCAT of refusal to issue building permit number

An applicant for a building permit may apply to VCAT for review of a refusal by the Authority to issue a building permit number for the building permit under section 25BB."

64 Functions of the Authority

For section 197(j) of the **Building Act 1993** substitute—

"(j) to collect the building permit levy;"

65 Payments into Building account

For section 205A(1)(c) of the **Building Act 1993 substitute**—

"(c) the following amounts—

- (i) any amounts received by the Authority under Subdivision 4 of Division 2 on account of the building permit levy;
- (ii) any amounts received by the Authority under Subdivision 4A or 4B of Division 2 on account of the building permit levy, any penalty levy imposed by the Authority under those Subdivisions and any costs charged by the Authority under section 205LJ(1); and".

66 Building permit levy must be paid

(2) For section 205G(3), (4) and (5) of the **Building Act 1993 substitute**—

"(3) A building permit levy is not payable if the cost of the building work (including the cost of labour and materials) is \$10 000 or less."

67 New section 205GA inserted

After section 205G of the **Building Act 1993 insert**—

"205GA Applicant must pay building permit levy

The applicant for a building permit, or a person acting on behalf of the applicant, must pay to the Authority the amount of building permit levy calculated under section 205I before the building permit is issued."

68 Section 205H substituted and new section 205HA inserted

For section 205H of the **Building Act 1993** substitute—

"205H Building permit application must contain information about cost of building work

- (1) An application for a building permit must—
 - (a) specify the contract price for the building work (including the cost of labour and materials), if there is a contract for the building work; or
 - (b) in any other case, include sufficient information to enable the relevant building surveyor to estimate the cost of the building work (including the cost of labour and materials).
- (2) The requirements of subsection (1) are in addition to any other requirements under this Act or the regulations in relation to applications for building permits.

205HA Relevant building surveyor must refuse permit in certain circumstances

Without limiting the circumstances in which a relevant building surveyor may refuse to issue a building permit under Part 3, the relevant building surveyor must refuse an application for a building permit if the relevant building surveyor is satisfied—

- (a) that the contract price for the building work specified in the application is substantially lower than the price normally payable under contracts for building work of that kind; or

- (b) that the application—
 - (i) does not comply with section 205H(1)(b); or
 - (ii) contains a statement about the cost of the building work that is false or misleading in a material particular."

69 Substitution of sections 205J and 205K and insertion of section 205KA

For sections 205J and 205K of the **Building Act 1993** substitute—

"205J Offence for person not to remit levy to Authority

- (1) A person who receives an amount of money on account of the building permit levy must remit that amount of money to the Authority within the prescribed period after receiving that money.

Penalty: 120 penalty units, in the case of a natural person;
600 penalty units, in the case of a body corporate.

- (2) In this section—

prescribed period means the longer of—

- (a) the period prescribed by the regulations (if any); or
- (b) 5 business days.

205K Authority may recover unpaid levy

The Authority may recover from a person required to pay an amount of building permit levy to the Authority under section 205GA that amount in a court of competent jurisdiction as a debt due to the Authority.

205KA Authority must be notified of increased building costs

- (1) This section applies if, after the issue of a building permit in relation to the carrying out of building work in or on a building or land, a variation has been made to the building work which has resulted in an increase in the cost of the building work estimated under section 205I by at least the prescribed amount.
- (2) If the variation to the building work is not related to an amendment of the building permit, the owner of the building or land must give written notice to the Authority of the revised final cost of the building work within 28 days after the owner becomes aware of the increase in cost.
- (3) If the variation to the building work is related to an amendment of the building permit, the applicant for the amendment to the building permit must give written notice to the Authority of the revised final cost of the building work within 28 days after the applicant becomes aware of the increase in cost.
- (4) In this section—
prescribed amount means the greater of—
 - (a) the amount prescribed by the regulations (if any); or
 - (b) \$15 625.

Note

Under Subdivision 4A the Authority may reassess and charge an additional amount of building permit levy and also impose a penalty levy if subsection (2) or (3) is not complied with."

70 New Subdivisions 4A and 4B inserted in Division 2 of Part 12

After Subdivision 4 of Division 2 of Part 12 of the **Building Act 1993 insert—**

"Subdivision 4A—Reassessments of levy by the Authority after permit issued

205L Authority may reassess levy after building permit issued

- (1) The Authority may reassess the amount of building permit levy required to be paid in relation to building work after a building permit for that work has been issued because—
 - (a) of a variation made to the building work which has resulted in an increase in the estimated cost of the building work; or
 - (b) the estimate under section 205I by the relevant building surveyor of the cost of the building work was incorrect; or
 - (c) the Authority considers that the information provided by the applicant in the application for the building permit required under section 205H(1) was incorrect or misleading.
- (2) An amount of building permit levy reassessed under this section is to be calculated on the cost of the building work in accordance with section 205G.
- (3) The Authority may reassess an amount of building permit levy under subsection (1) no later than 5 years after the later of the following—

- (a) the issue of an occupancy permit required by the building permit;
- (b) a certificate of final inspection for the building work;
- (c) the date of practical completion of the building work.

205LA Authority must take into account matters in reassessing levy

In reassessing a building permit levy under section 205L, the Authority must take into account the following—

- (a) the information included in the application for the building permit under section 205H;
- (b) any other information given to the Authority by the applicant for the building permit or the relevant building surveyor relating to the cost of the building work;
- (c) any other information relating to the cost of the building work that the Authority considers relevant.

205LB Authority to give notice of additional levy to be paid

- (1) If a reassessment of the building permit levy under section 205L exceeds the amount of levy calculated under section 205I by at least the prescribed amount, the Authority must—
 - (a) give to the person liable to pay the additional amount of levy a notice of—
 - (i) the reassessment of the levy; and
 - (ii) the additional levy to be paid by the person, being the difference between the levy paid in

accordance with section 205GA
and the reassessed levy amount;
and

(iii) any penalty levy imposed under
section 205LC; and

(b) give a notice to the relevant building
surveyor of the revised cost of the
building work on which the
reassessment of the levy is based.

(2) A notice under subsection (1)(a) must
state that the person given the notice has
the right to apply to VCAT for review of the
reassessment of building permit levy and any
penalty levy imposed.

(3) In this section—

***person liable to pay the additional amount
of levy*** means—

(a) if the reassessment of the building
levy was based on the ground
under section 205L(1)(a) and the
variation to the building work is
not related to an amendment of the
building permit, the owner of the
building or land at the time at
which the work that caused the
increase in the cost of the building
work was carried out; or

(b) if the reassessment of the building
levy was based on the ground
under section 205L(1)(a) and the
variation to the building work is
related to an amendment of the
building permit, the applicant for
the amendment of the permit; or

- (c) if the reassessment of the building levy was based on a ground under section 205L(1)(b) or (c), the applicant for the building permit;

prescribed amount means—

- (a) the amount prescribed by the regulations (if any); or
(b) if an amount is not prescribed, \$20.

205LC Authority may impose amount of penalty levy

- (1) If the Authority has reassessed a building levy under section 205L and the reassessment is based on a ground under section 205L(1)(a) or (c), the Authority may impose an amount of penalty levy of up to twice the difference between the reassessed amount of levy and the amount of levy determined under section 205I if—
- (a) in the case of the ground under section 205L(1)(a), the person liable to pay the additional amount of levy under section 205LB failed to notify the Authority within the specified period under section 205KA about a variation to the building work that resulted in an increase in the cost of the building work by at least the prescribed amount; or
- (b) in the case of the ground under section 205L(1)(c), the Authority considers that the applicant for the building permit gave false or misleading information to the relevant building surveyor or the Authority about the cost of the building work.

(2) Despite subsection (1), the Authority may decide not to impose a penalty levy based on the ground under section 205L(1)(a) if the Authority is satisfied that the person liable to pay the additional amount of levy under section 205LB held an honest and reasonable belief that a variation to the building work did not increase the cost of the building work by at least the prescribed amount.

(3) In this section—

prescribed amount has the same meaning as in section 205KA.

205LD Person given notice must pay any additional levy and penalty levy

A person who is given a notice under section 205LB(1)(a) must pay the additional amount of building permit levy and any penalty levy to the Authority within 14 days after the notice is given to the person.

205LE Authority may recover additional levy assessed by Authority and penalty levy

The Authority may recover an amount of building permit levy and penalty levy from the person required to pay the levy and penalty levy under section 205LD in a court of competent jurisdiction as a debt due to the Authority.

205LF Review by VCAT

A person who is given a notice under section 205LB(1)(a) may apply to VCAT for review of the following decisions of the Authority—

- (a) the decision by the Authority to reassess an amount of building permit levy under section 205L;

- (b) the reassessment of the amount of building permit levy by the Authority under section 205L;
- (c) the decision by the Authority to impose penalty levy under section 205LC;
- (d) the amount of penalty levy imposed by the Authority under section 205LC, payable by the person.

**Subdivision 4B—Assessments of levy
by the Authority for unauthorised
building work**

**205LG Levy may be payable for work carried out
without a permit**

- (1) If a person is found guilty of an offence against section 16(1) or 16B(1), the Authority must assess an amount of building permit levy required to be paid in relation to the building work that was carried out in contravention of section 16(1) or 16B(1).
- (2) If the Authority believes on reasonable grounds that a person has carried out building work in contravention of section 16(1) or 16B(1), the Authority may decide to assess an amount of building permit levy required to be paid in relation to that building work.
- (3) The Authority must assess an amount of building permit levy under subsection (1) no later than 5 years after the finding of guilt for the offence against section 16(1) or 16B(1).
- (4) The Authority may assess an amount of building permit levy under subsection (2) no later than 5 years after the alleged contravention of section 16(1) or 16B(1).

- (5) An assessment of levy under this section must be in accordance with section 205LH.

205LH Assessment of levy

- (1) An amount of building permit levy assessed under section 205LG is to be calculated on the cost of the building work in accordance with section 205G.
- (2) In determining the cost of the building work the Authority—
- (a) may appoint an appropriately qualified registered building practitioner to investigate the building work and make a report to the Authority that includes an assessment of the cost of the building work; and
 - (b) must take into account any report under paragraph (a) and any representations and information provided by the person that owned the building or land at the time at which the building work was carried out in or on that building or land; and
 - (c) may otherwise inform itself as it considers appropriate.

205LI Authority may impose amount of penalty levy

If the Authority has made an assessment of building permit levy under section 205LG, the Authority may impose an amount of penalty levy of up to twice the amount of levy assessed.

205LJ Authority may charge costs of assessing levy

- (1) If the Authority has assessed a building permit levy under section 205LG, the Authority may charge the person that owned the building or land at the time at which the building work was carried out in or on that building or land the reasonable costs incurred by the Authority in determining the cost of the building work under section 205LH.
- (2) Costs charged under this section are not to be treated as a penalty under this Division and are not to be taken into account to reduce or offset any penalty levy imposed under section 205LI.

205LK Authority to give notice of assessment

- (1) After making an assessment of the amount of building permit levy under section 205LG, the Authority must give a notice of the levy, any penalty levy imposed and any costs charged by the Authority to the person that owned the building or land at the time at which the building work was carried out in or on that building or land.
- (2) A notice under subsection (1) must state that the person given the notice has the right to apply to VCAT for review of the decision by the Authority to assess the building permit levy, the amount of levy assessed by the Authority, any penalty levy imposed by the Authority or any costs charged by the Authority.

205LL Person given notice must pay levy, penalty levy and costs of Authority

A person who is given a notice under section 205LK must pay to the Authority, within 28 days after the notice is given, the amount of building permit levy assessed by the Authority, any penalty levy imposed by the Authority and any costs charged by the Authority.

205LM Authority may recover levy assessed by Authority, penalty levy and costs

The Authority may recover the amount of building permit levy, penalty levy or costs required to be paid under section 205LL in a court of competent jurisdiction as a debt due to the Authority.

205LN Review by VCAT

A person may apply to VCAT for review of the following decisions of the Authority—

- (a) the decision by the Authority to assess a building permit levy under section 205LG(2) for building work carried out in relation to a building or land owned by the person at the time at which the building work was carried out;
- (b) an assessment of building permit levy by the Authority under section 205LH, payable by the person;
- (c) the decision by the Authority to impose an amount of penalty levy under section 205LI;
- (d) an amount of penalty levy imposed by the Authority under section 205LI, payable by the person;

- (e) an amount of costs charged by the Authority under section 205LJ, payable by the person."

71 Application of Act to the Crown and public authorities

In section 217(1) of the **Building Act 1993**, for "Subdivision 4" substitute "Subdivisions 4, 4A and 4B".

Oaths and Affirmations Act 2018, No. 6/2018

Schedule 2—Further consequential amendments

16 Building Act 1993

- 16.1 In section 231B(2), after "oath" insert "or by affirmation".

Building Amendment (Registration of Building Trades and Other Matters) Act 2018, No. 46/2018

4 Definitions

- (1) In section 3(1) of the Principal Act insert the following definition—
- "subcontractor* means a person who enters into a contract with a builder to carry out all or part of the building work that is to be carried out by the builder under another contract;"
- (2) In section 3(1) of the Principal Act, in the definition of *Victorian Managed Insurance Authority*, for "1996." substitute "1996;"
- (3) In section 3(1) of the Principal Act, in the definition of *registered building practitioner*, after "Part 11" insert "including a building

practitioner that is provisionally registered under that Part unless the contrary intention appears".

- (4) In section 3(1) of the Principal Act **insert** the following definitions—

"licensed building employee means a person who holds a licence, including a provisional licence, under Part 11A;

provisional licence means a licence granted under section 187G;

provisional registration means registration granted under section 171(1)(ab);

training contract has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;

Victorian Registration and Qualifications Authority means the Victorian Registration and Qualifications Authority established under section 4.2.1 of the **Education and Training Reform Act 2006**."

5 Specification of builders in relation to specific building work

- (1) In section 24B(3)(a) of the Principal Act, after "practitioner" **insert** "other than a provisionally registered building practitioner".

- (2) After section 24B(3)(a) of the Principal Act **insert**—

"(ab) a provisionally registered building practitioner if their registration authorises the carrying out of all of the building work under the proposed permit; or".

- (3) In section 24B(4)(b) of the Principal Act, after "registered" **insert** ", other than provisionally registered,".

6 Restrictions on owner-builder

- (1) In section 25B(1)(b) of the Principal Act, after "registration" **insert** ", other than a provisional registration,".
- (2) In section 25B(1A) of the Principal Act, after "registered" **insert** ", other than provisionally registered,".

7 Prescribed temporary structures—special provisions

In section 57(1)(b) of the Principal Act, after "practitioners" **insert** "other than provisionally registered building practitioners".

8 Offence for owner-builder to sell building without report or insurance

In section 137B(1)(a)(i) of the Principal Act, after "practitioner" **insert** "other than a provisionally registered building practitioner".

9 Representation in relation to registration

At the end of section 169 of the Principal Act **insert**—

- "(2) A person who is provisionally registered under this Part in a class of builder must not represent or imply that the person is registered under section 171(1)(a) in that class of builder.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate."

10 New section 169EA inserted

After section 169E of the Principal Act **insert**—

"169EA Offence to carry out certain types of building work unless registered or licensed

- (1) A person must not carry out a type of building work that is prescribed for the purposes of this section unless the person—
 - (a) is registered under this Part and that registration authorises the carrying out of that building work; or
 - (b) is licensed under Part 11A and that licence authorises the carrying out of that building work and the person is carrying out the building work in the course of the person's employment.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (2) A person does not commit an offence under subsection (1)(b) if the person is employed under a training contract to carry out a type of building work referred to in subsection (1) by an employer who has been approved under section 5.5.7 of the **Education and Training Reform Act 2006** by the Victorian Registration and Qualifications Authority to employ that person under the training contract."

11 Offence for person to carry out certain domestic building work unless registered

- (1) In the heading to section 169F of the Principal Act, after "**certain**" **insert** "**domestic**".

- (2) In section 169F(1) of the Principal Act, for "building work" **substitute** "domestic building work".
- (3) At the foot of section 169F(2) of the Principal Act **insert**—

"Note

See section 169EA(1) for an offence against a person carrying out building work prescribed for the purposes of that section if the person is not registered under Part 11 or licensed under Part 11A to carry out that building work."

12 New sections 169FA and 169FB inserted

After section 169F of the Principal Act **insert**—

"169FA Offence to engage an unregistered subcontractor

- (1) A person must not engage another person as a subcontractor (the *proposed subcontractor*) to carry out building work if the building work is or includes building work of a type prescribed for the purposes of section 169EA (the *relevant building work*), unless the proposed subcontractor is registered under this Part and that registration authorises the carrying out of the relevant building work.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate.

- (2) Subsection (1) does not apply to a person if the person took reasonable steps to ensure that the proposed subcontractor was registered to carry out the relevant building work, including any of the following steps—

- (a) the person provided a written statement to the proposed subcontractor setting out—
 - (i) the requirement that the proposed contractor be a registered builder and that the registration must authorise the carrying out of the relevant building work; and
 - (ii) the requirement that any person engaged by the proposed subcontractor to carry out the relevant building work be so registered;
- (b) the person inspected the certificate of registration of the proposed subcontractor at the time of engaging the proposed subcontractor and the certificate of registration appeared to authorise the proposed subcontractor to carry out the relevant building work;
- (c) the person, at the time of engaging the proposed subcontractor, checked whether the proposed subcontractor was listed on the Register of Building Practitioners;
- (d) the contract between the person and the subcontractor contains a clause requiring the subcontractor—
 - (i) to be a registered builder and that the registration must authorise the carrying out of the relevant building work; and
 - (ii) to ensure that any person engaged by the subcontractor to carry out the relevant building work is so registered.

169FB Offence to direct or require a person to carry out certain building work

- (1) A person must not direct or require another person (the *directed person*) to carry out a type of building work prescribed for the purposes of section 169EA (the *relevant building work*) unless the directed person—
- (a) is registered under this Part and that registration authorises the carrying out of the relevant building work; or
 - (b) is licensed under Part 11A and that licence authorises the carrying out of the relevant building work and the person is carrying out the building work in the course of the person's employment.

Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, the case of a body corporate.

- (2) A person does not commit an offence under subsection (1) if—
- (a) the directed person is employed by a person under a training contract to carry out the relevant building work and the employer has been approved under section 5.5.7 of the **Education and Training Reform Act 2006** by the Victorian Registration and Qualifications Authority to employ the directed person under the training contract; and
 - (b) the person directing the directed person is that employer or a person acting on behalf of that employer.

- (3) Subsection (1) does not apply to a person if the person took reasonable steps to ensure that the directed person was registered under Part 11 or licensed under this Part to carry out the relevant building work, including any of the following steps—
- (a) the person provided a written statement to the directed person setting out the requirement that the directed person—
 - (i) be a registered builder whose registration authorises the carrying out of the relevant building work;
or
 - (ii) be a licensed building employee whose licence authorises the carrying out of the relevant building work;
 - (b) the person inspected the certificate of registration or the licence certificate of the directed person before directing or requiring the directed person to carry out the relevant building work and the certificate of registration or the licence certificate appeared to authorise the directed person to carry out that relevant building work;
 - (c) the person, before directing or requiring the directed person to carry out the relevant building work, checked whether the directed person was listed on the Register of Building Practitioners or the Register of Building Employees."

13 Who may apply for registration?

- (1) In section 170 of the Principal Act, after "registration" **insert** ", including provisional registration,".
- (2) At the end of section 170 of the Principal Act **insert**—
 - "(2) An application for provisional registration may only be made in respect of a class of builder that authorises the carrying out of a type of building work prescribed for the purposes of section 169EA."

14 Registration

- (1) In section 171(1)(a) of the Principal Act, for "if the applicant" **substitute** "in the case of registration other than provisional registration, if the applicant".
- (2) After section 171(1)(a) of the Principal Act **insert**—
 - "(ab) in the case of provisional registration in a class of builder that authorises the carrying out of a type of building work prescribed for the purposes of section 169EA—
 - (i) if the applicant is a natural person, the applicant has the prescribed knowledge or experience to carry out that type of building work; and
 - (ii) if the applicant is a body corporate, a nominee director of the body corporate referred to in section 171B(2)(a) or (b) has the prescribed knowledge or experience to carry out that type of building work; and"

(3) After section 171(1) of the Principal Act **insert**—

"(1A) If the applicant is a body corporate that has applied for registration in a class of builder and a nominee director of the body corporate referred to in section 171B(2)(a) or (b) is provisionally registered as a builder in that class, the body corporate can only be granted provisional registration in that class."

15 Issue of certificate of registration

After section 171G(2)(b) of the Principal Act **insert**—

'(ba) have the word "Provisional" prominently displayed on it if the registration is provisional; and'.

16 Period of registration

For section 171I(1) of the Principal Act **substitute**—

"(1) Registration under this Part lasts—

- (a) in the case of provisional registration, for 5 years; or
- (b) in any other case, for a period of up to 5 years as determined by the Authority."

17 Renewal of registration

(1) In the heading to section 173 of the Principal Act **omit "and surrender"**.

(2) In section 173(1) of the Principal Act, after "registration" **insert** ", other than provisional registration,".

18 Consequences of suspension of registration

In section 183C(2) of the Principal Act, after "practitioner" **insert** ", other than a provisionally registered building practitioner,".

19 Assessment of levy

In section 205LH(2)(a) of the Principal Act, after "practitioner" **insert** ", other than a provisionally registered building practitioner,".

20 Building surveyor may rely on certificate by other registered building practitioner

After section 238(2) of the Principal Act **insert**—

"(3) In this section a *registered building practitioner* does not include a provisionally registered building practitioner."

21 New Part 11A inserted—Licensing of building employees

After Part 11 of the Principal Act **insert**—

Part 11A—Licensing of building employees

Division 1—Building employee licence

Subdivision 1—Application to be licensed

187A Natural person may apply for a licence

A natural person may apply to the Authority to be licensed as a building employee in a class of building employee that authorises the carrying out of a type of building work prescribed for the purposes of section 169EA.

Note

Note, that in section 169EA(1) there is an offence against a person for carrying out building work prescribed for the purposes of that section if the person is not registered under Part 11 or licensed under this Part to carry out that building work.

187B Application to be licensed

An application to be licensed must—

- (a) be made to the Authority; and
- (b) be in writing in a form approved by the Authority; and
- (c) state each class of licence sought; and
- (d) be accompanied by a recent photograph of the applicant that is of a size and form specified by the Authority; and
- (e) be accompanied by the prescribed information (if any); and
- (f) be accompanied by the appropriate application fee determined—
 - (i) in accordance with the guidelines under Division 1 of Part 12; or
 - (ii) prescribed by the regulations.

187C Authority may conduct inquiries and require further information

- (1) In considering an application for a licence under this Division, the Authority may—
 - (a) conduct any inquiries in relation to the application that the Authority thinks fit; and
 - (b) require an applicant to provide further information in relation to the application.
- (2) The Authority may specify how any information provided to it under this Division is to be verified and, without limiting the scope of this power, may require that the information be provided in the form of, or be verified by, a statutory declaration.

- (3) The Authority may refuse an application for a licence if the applicant—
- (a) fails to comply with a requirement under subsection (1)(b) within a reasonable time after the requirement is made; or
 - (b) provides information that is not verified as required by the Authority under subsection (2).

187D Consent to disclosure of information

- (1) In considering an application for a licence, the Authority may ask the applicant to provide any consent to disclosure of information that the Authority requires to perform, or to have performed, a check on the applicant or on any information included with the applicant's application.
- (2) The Authority may refuse to consider an application for registration if the applicant fails to comply with a request under subsection (1) within 14 days after the request is made.

187E Change to information in application

- (1) An applicant for a licence must—
- (a) give the Authority notice of any material change during the relevant period to the information provided to the Authority by the applicant in support of the application for a licence; and

(b) provide the notice referred to in paragraph (a) within 14 days after becoming aware of the change.

Penalty: 60 penalty units, in the case of a natural person;
300 penalty units, in the case of a body corporate.

(2) In this section—

material change includes any change prescribed by the regulations;

relevant period means the period between the making of an application for a licence and the determination of the application by the Authority.

Subdivision 2—Licensing

187F Licensing

(1) The Authority must license an applicant as a building employee in a class of licence if the Authority is satisfied that—

(a) the applicant either—

(i) holds the prescribed qualification for the class of licence; or

(ii) holds a qualification that the Authority considers is, either alone or together with any further certificate, authority, experience or examination, equivalent to a prescribed qualification; and

(b) the applicant has paid the appropriate application fee determined—

(i) in accordance with the guidelines under Division 1 of Part 12; or

- (ii) prescribed by the regulations; and
 - (c) the applicant meets any other prescribed requirements.
- (2) The Authority must refuse an application for a licence if it is not satisfied of the matters specified in subsection (1).
 - (3) The Authority is not required to conduct a hearing to determine whether to grant a licence or refuse to grant a licence.

187G Authority may provisionally license an applicant

If the Authority refuses to grant a licence in a class to an applicant under section 187F solely on the ground that the Authority is not satisfied that the applicant meets the requirements in section 187F(1)(a), the Authority may provisionally license the applicant as a building employee in that class of licence if the Authority is satisfied that the applicant has the prescribed knowledge or experience to carry out the type of building work that is authorised to be carried out by that class of licence.

187H Conditions of licence

- (1) The Authority—
 - (a) must impose on a licence any prescribed conditions; and
 - (b) may impose on a licence any other conditions that the Authority considers appropriate for the licence.
- (2) A person must comply with any conditions imposed on the person's licence.

Penalty: 50 penalty units.

187I Period of licence granted under this Part

- (1) A licence granted under section 187F lasts until cancelled under this Part.
- (2) A provisional licence lasts for a period of 5 years.
- (3) Subsection (1) and (2) do not take away from any provision about the suspension or cancellation of a licence.

187J Issue or return of licence certificate

- (1) If the Authority licenses a person as a building employee, it must issue a licence certificate to that person.
- (2) The licence certificate must—
 - (a) be in a form approved by the Authority; and
 - (b) specify the licence number of the licensed building employee; and
 - (c) have the word "Provisional" prominently displayed on it if the licence is provisional; and
 - (d) contain a recent photograph of the person that is of a size and form specified by the Authority; and
 - (e) contain the prescribed information.
- (3) The Authority may ask a person who holds a licence under this Part for the return of the licence certificate—
 - (a) for the purpose of altering the details on the licence certificate; or
 - (b) if the licence is suspended or cancelled; or

- (c) for any purpose authorised by this Act or the regulations.
- (4) A person who holds a licence under this Part must return the licence certificate to the Authority as soon as is practicable after being asked to do so by the Authority under subsection (3).
- Penalty: 10 penalty units.

187K Issue of replacement licence certificate

The Authority may issue a replacement licence certificate at the request of a licensed building employee if the licensed building employee—

- (a) pays the appropriate fee (if any)—
- (i) determined in accordance with the guidelines under Division 1 of Part 12; or
 - (ii) prescribed by the regulations; and
- (b) satisfies the Authority that the licence certificate issued has been lost, damaged or destroyed.

Subdivision 3—Periodic licence fee and statement

187L Periodic licence fee and statement

A licensed building employee must, at the end of each prescribed period after the granting of a licence to the licensed building employee under this Part—

- (a) pay to the Victorian Building Authority Fund the appropriate fee determined—
- (i) in accordance with the guidelines under Division 1 of Part 12; or

- (ii) prescribed by the regulations; and
- (b) provide to the Authority a statement in respect of the period up to the date that the fee is paid that—
 - (i) is in a form approved by the Authority; and
 - (ii) contains any information required by the Authority; and
 - (iii) is signed by the licensed building employee; and
 - (iv) is accompanied by any documents required by the Authority.

187M Surrender of licence

A licensed building employee may, with the consent of the Authority, surrender the licensed building employee's licence.

Subdivision 4—General

187N Register of Building Employees

- (1) The Authority must keep a Register of Building Employees.
- (2) The Register must—
 - (a) be in the form (if any) and contain the information (if any) required by the regulations; and
 - (b) include the names and classes of licence of persons licensed under this Part.

187O Licensed building employee to produce licence certificate for inspection

A licensed building employee must produce their licence certificate for inspection if asked to do so by—

- (a) the owner or occupier of any land or building on which building work is being carried out by the licensed building employee; or
- (b) a private building surveyor in relation to any land or building on which building work is being carried out by the licensed building employee; or
- (c) a VBA inspector; or
- (d) a plumbing inspector; or
- (e) a compliance auditor; or
- (f) a municipal building surveyor or a person authorised by a municipal building surveyor; or
- (g) an Energy Safe inspector.

Penalty: 10 penalty units.

Division 2—Disciplinary proceedings and actions

Subdivision 1—Preliminary

187P Meaning of *disciplinary action*

In this Division, *disciplinary action* in relation to a licensed building employee means one or more of the following—

- (a) a reprimand or a warning given to the licensed building employee;
- (b) the imposition of a penalty of not more than 10 penalty units unless—
 - (i) a charge has been filed in the Magistrates' Court in relation to the matter; or

- (ii) the matter has been dealt with by a court exercising its criminal jurisdiction; or
- (iii) the matter has been dealt with by the issue of an infringement notice;
- (c) a requirement for the licensed building employee to successfully complete a specified course of training within a specified period;
- (d) the variation of a condition (other than a prescribed condition), or the imposition of a condition, on the licence;
- (e) the suspension of the licence for not more than 3 years;
- (f) the cancellation of the licence.

187Q Division applies to suspended building employees

- (1) Subject to subsection (2), this Division applies to a person whose licence is suspended but who was licensed at the time the conduct that forms the ground for disciplinary action occurred as if the person were a licensed building employee.
- (2) The Authority must not give a show cause notice under Subdivision 3 in relation to a matter to a person whose licence is suspended after the end of the 3-year period immediately following the suspension if the suspension relates to that matter.

Subdivision 2—Grounds for disciplinary action

187R Grounds for disciplinary action

- (1) Each of the following is a ground for which disciplinary action may be taken against a licensed building employee—
 - (a) the licensed building employee has contravened—
 - (i) this Act or the regulations under this Act; or
 - (ii) a prescribed Act or law or a prescribed provision of a prescribed Act or law;
 - (b) the licensed building employee has obtained the licence on the basis of information or a document that was false or misleading;
 - (c) the licensed building employee has been guilty of, or was a party to, any negligence or incompetence in connection with the carrying out of any building work;
 - (d) the licensed building employee has failed to comply with a condition of the licence;
 - (e) the licensed building employee has not completed the relevant prescribed continuing professional development requirements (if any);
 - (f) the licensed building employee has not—
 - (i) paid a fee or other amount required to be paid under this Act or the regulations; or

- (ii) provided a periodic statement required to be provided under this Part.
- (2) The Authority may make inquiries to determine whether a ground exists for taking disciplinary action under this Division.

Subdivision 3—Show cause process

187S Show cause notice

- (1) If the Authority reasonably believes a ground for taking disciplinary action against a licensed building employee exists and proposes to take that action, the Authority must give the licensed building employee a notice under this section (a *show cause notice*).
- (2) The show cause notice must state the following—
 - (a) that the Authority proposes to take disciplinary action;
 - (b) the disciplinary action proposed to be taken;
 - (c) the licence in relation to which the proposed action is to be taken;
 - (d) the ground for the proposed action;
 - (e) an outline of the facts and circumstances forming the basis for the ground for the proposed action;
 - (f) an invitation to the licensed building employee to show within a stated period (the *show cause period*) why the proposed action should not be taken.

- (3) The show cause period must be a period ending at least 14 days after the show cause notice is given to the licensed building employee.
- (4) The Authority, at the request of the licensed building employee, may extend the show cause period stated in the show cause notice and in that case the extended period becomes the show cause period.

187T Representations about show cause notice

- (1) The licensed building employee may—
 - (a) make written representations about the show cause notice to the Authority within the show cause period; or
 - (b) make oral representations about the show cause notice to the Authority at the time within the show cause period, and at the place, agreed by the Authority and the licensed building employee.
- (2) The Authority must keep a record of oral representations made to it under subsection (1)(b).

187U Decision about whether to take disciplinary action

Within 28 days after the show cause period ends, the Authority must decide whether a ground exists to take disciplinary action against the licensed building employee.

187V Ending show cause process without further action

If the Authority no longer believes a ground exists to take disciplinary action against the licensed building employee, the Authority—

- (a) must take no further action about the show cause notice; and
- (b) must, as soon as practicable after making its decision, give notice to the licensed building employee that no further action will be taken about the show cause notice.

187W Disciplinary or other action by Authority on giving of undertaking

If the Authority believes a ground exists to take disciplinary action against the licensed building employee, the Authority may—

- (a) accept an undertaking from the licensed building employee under section 234B; and
- (b) do any of the following—
 - (i) defer taking the proposed disciplinary action for a specified period;
 - (ii) take disciplinary action that the Authority considers to be less serious than the proposed disciplinary action;
 - (iii) take no further action.

187X Taking disciplinary action after show cause notice

- (1) If the Authority believes a ground exists to take disciplinary action against the licensed building employee, the Authority may—
 - (a) take the disciplinary action proposed in the show cause notice; or
 - (b) on the basis of representations made or new evidence received, take disciplinary action that the Authority

considers to be less serious than the disciplinary action referred to in paragraph (a).

- (2) The Authority must, as soon as practicable after making its decision, give a written notice about the decision to the licensed building employee.
- (3) The notice must state the following—
 - (a) the decision;
 - (b) the reasons for the decision;
 - (c) that the licensed building employee may apply under Division 3 for review of the decision within 28 days.
- (4) The decision takes effect on the later of—
 - (a) the day the notice is given to the licensed building employee; or
 - (b) the day stated in the notice.

Subdivision 4—General provisions relating to disciplinary action

187Y Notice of decisions

- (1) The Authority must give notice of a decision under this Division in relation to a licensed building employee to any person who made a complaint to the Authority about the matter to which the decision relates.
- (2) If the Authority is aware that a licensed building employee is employed by a particular person, the Authority must cause notice of any decision concerning the employee made under this Division to be given to that employer without delay after the decision takes effect.

187Z Complaint privileged

A person is not liable in any way for any loss, damage or injury suffered by another person solely because the first person in good faith—

- (a) lodged a complaint with the Authority in relation to a licensed building employee; or
- (b) produced or gave a document or any information or evidence to the Authority in relation to a matter that constitutes or may constitute a contravention of—
 - (i) this Act or the regulations; or
 - (ii) a prescribed Act or law or a prescribed provision of a prescribed Act or law.

187ZA Consequences of suspension of licence

While the licence of a person is suspended, the person is taken not to be licensed under this Part.

187ZB Revocation of suspension

- (1) The Authority may at any time revoke a suspension under Subdivision 3 if satisfied that it is appropriate to do so.
- (2) The Authority must, without delay, give written notice of the revocation to the licensed building employee.

Division 3—Review of decisions relating to licensed employees

Subdivision 1—Preliminary

187ZC Definitions

In this Division—

affected person means a person directly affected by a reviewable decision;

review decision has the meaning set out in section 187ZG;

reviewable decision means any of the following decisions under this Act—

- (a) a decision to refuse to grant a licence under this Part;
- (b) a decision to take any form of disciplinary action within the meaning of section 187P;

reviewer means a person deciding an internal review under this Division.

Subdivision 2—Internal review

187ZD Applying for internal review

- (1) This section applies if a reviewable decision is made by a delegate of the Authority other than a Commissioner or the chief executive officer of the Authority.
- (2) A person who is directly affected by a reviewable decision may apply to the Authority for an internal review of the decision.

- (3) Subject to subsection (4), the application must be made within 28 days after the day the affected person is given notice of the reviewable decision.
- (4) The Authority may, at any time, extend the time for applying for an internal review.
- (5) An application for an internal review must be in writing and state fully the grounds of the application.
- (6) An application for an internal review stays the operation of the decision.

187ZE Persons who may conduct an internal review

- (1) The Authority must appoint an employee of the Authority to conduct an internal review.
- (2) An internal review must not be conducted by—
 - (a) the person who made the reviewable decision; or
 - (b) a person who was involved in the matters that gave rise to the reviewable decision; or
 - (c) a person who holds a less senior position than a person referred to in paragraph (a) or (b).

187ZF Internal review

- (1) The reviewer must conduct the internal review on—
 - (a) the material before the Authority that led to the reviewable decision; and
 - (b) the reasons for the reviewable decision; and

- (c) any other material that was not available at the time of the reviewable decision that the reviewer is satisfied is relevant.
- (2) For the review, the reviewer must give the affected person a reasonable opportunity to make written or oral representations to the reviewer.

187ZG Review decisions

- (1) The reviewer must make a decision (the *review decision*) to—
 - (a) affirm the reviewable decision; or
 - (b) amend the reviewable decision; or
 - (c) substitute another decision for the reviewable decision.
- (2) If the review decision affirms the reviewable decision, for the purpose of an application for review by VCAT, the reviewable decision is taken to be the review decision.
- (3) If the review decision amends the reviewable decision, the reviewable decision as amended is taken to be the review decision.
- (4) If the review decision substitutes another decision for the reviewable decision, the substituted decision is taken to be the review decision.

187ZH Notice of review decision

- (1) The Authority must, as soon as practicable after the review decision is made, give the affected person notice (the *review notice*) of the review decision.
- (2) The review notice must state the following—
 - (a) the reasons for the decision;

- (b) that the affected person may apply to VCAT for review of the decision under this Division.
- (3) If the Authority does not give the review notice within the review period the reviewer is taken to have made a review decision affirming the reviewable decision.
- (4) In this section—
review period means the longer of—
- (a) the relevant period prescribed by the regulations (if any); or
 - (b) the period ending 28 days after the application is made.

Subdivision 3—Review by VCAT

187ZI Application for review by VCAT of reviewable decision

- (1) An affected person who has applied for an internal review of a reviewable decision under Subdivision 2 and is dissatisfied with the review decision may apply to VCAT for review of the review decision.
- (2) An affected person who was not eligible to apply for an internal review of a reviewable decision may apply to VCAT for review of the reviewable decision.
- (3) An affected person may apply to VCAT (without applying for internal review) for review of a reviewable decision to suspend or cancel a licence.
- (4) An application for review of a reviewable decision or review decision must be made within—

- (a) in the case of an application under subsection (1), 14 days after the end of the review period for internal review; or
- (b) in any other case, 28 days after the reviewable decision or review decision is made.

187ZJ Proceedings and decision

- (1) After hearing the matter, VCAT may—
 - (a) affirm the review decision or reviewable decision; or
 - (b) amend the review decision or reviewable decision; or
 - (c) substitute another decision for the review decision or reviewable decision.
- (2) An application for review stays the operation of the decision.'

22 Functions of the Authority

- (1) In section 197(ab) of the Principal Act, after "practitioners" **insert** "and the scheme under Part 11A for the licensing of building employees".
- (2) In section 197(ac) of the Principal Act, after "practitioners" **insert** "and licensed building employees".
- (3) In section 197(f)(ii) of the Principal Act, after "practitioners" **insert** "and licensed building employees".

23 Certificate of Registrar

At the end of section 239 of the Principal Act
insert—

- "(2) A certificate of the Registrar of the Victorian Building Authority specifying that a person is or is not recorded in the Register of Building Employees or the class of licence

of a person or that a licence certificate has been issued in respect of a person is evidence and, in the absence of evidence to the contrary, proof of the matters stated in the certificate."

24 General regulation-making powers

- (1) After section 261(1)(eb) of the Principal Act **insert**—
"(ec) prescribing classes of building employee;"
- (2) For section 261(1)(f) of the Principal Act **substitute**—
"(f) the qualifications for registration in a category or class of the Register of Building Practitioners or the Register of Building Employees—
 - (i) including but not limited to degrees, diplomas, certificates, accreditations, authorities, examinations and periods of training or experience; and
 - (ii) whether the qualification, training or experience was obtained or completed inside or outside Victoria;"
- (3) In section 261(1)(g) of the Principal Act, after "Building Practitioners" **insert** "and the Register of Building Employees".
- (4) In section 261(1)(hb) of the Principal Act, for "domestic building work" **substitute** "building work".
- (5) After section 261(1)(hb) of the Principal Act **insert**—
"(hc) specifying the building work that a class of licence as a building employee authorises a person to carry out;"

(6) For section 261(1)(i) of the Principal Act **substitute**—

"(i) the form and divisions of the Register of Building Practitioners and the Register of Building Employees and the information to be included in those Registers;"

(7) In section 261(1)(s) of the Principal Act, after "registration" **insert** "and licence certificates".

25 Definitions

In section 3(1) of the Principal Act **insert** the following definitions—

"certificate of pool and spa barrier compliance" means a certificate that certifies that the barrier of a swimming pool or spa complies with this Act and the building regulations;

certificate of pool and spa barrier non-compliance means a certificate that certifies that the barrier of a swimming pool or spa does not comply with this Act and the building regulations;

swimming pool and spa inspector means any of the following persons who have been engaged by an owner of land to inspect a swimming pool or spa barrier located on that land for compliance with this Act and the building regulations—

- (a) a registered building surveyor;
- (b) a registered building inspector;
- (c) any other registered building practitioner whose registration authorises the carrying out of inspections of swimming pools and spas including the barriers associated with those swimming pools and spas;

swimming pool and spa register means a register of swimming pools and spas established by a council under section 216D;".

26 Building regulations with respect to swimming pools and spas

- (1) In section 15A(1)(b)(ii) of the Principal Act, for "services." **substitute** "services; and".
- (2) After section 15A(1)(b) of the Principal Act **insert**—
 - "(c) requirements relating to the safety of swimming pools and spas, including signage."
- (3) After section 15A(2) of the Principal Act **insert**—
 - "(3) In addition to the regulations that may be made under subsection (1), the Governor in Council may make regulations for or with respect to—
 - (a) the registration of swimming pools and spas by councils for the purposes of a swimming pool and spa register including—
 - (i) the requirement for owners of land on which swimming pools and spas are located to register those swimming pools and spas with the relevant council; and
 - (ii) the procedures for applying for registration and the renewal of registration of swimming pools and spas; and
 - (iii) the procedures for the registration and the renewal of the registration of swimming pools and spas by councils; and

- (iv) the information to be recorded in swimming pool and spa registers by councils; and
- (v) the procedures for maintenance by councils of swimming pool and spa registers; and
- (b) the requirements on owners of land to arrange for mandatory inspections of swimming pool and spa barriers on the land for compliance with this Act and the building regulations, including the frequency and circumstances of those inspections; and
- (c) the issuing of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance, and the performance of related functions, by—
 - (i) swimming pool and spa inspectors; or
 - (ii) relevant building surveyors; or
 - (iii) municipal building surveyors when carrying out functions under Part 8 or when acting as authorised persons within the meaning of section 228; and
- (d) the lodgement with the relevant council of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance in relation to swimming pools and spas on certain land; and
- (e) the requirements on owners of land to assess and report to councils on the compliance of swimming pool or spa barriers on the land with this Act and

the building regulations and the frequency and circumstances of such assessment and reporting and lodgement of those reports with the relevant council; and

- (f) the procedures to be taken by councils in relation to swimming pool or spa barriers that do not comply with this Act and the building regulations and the requirements on owners of land on which these non-compliant swimming pools and spa barriers are located; and
- (g) the requirements on owners of land on which swimming pools or spas are located to provide information and documents to the relevant council or any other specified person or body; and
- (h) prescribing fees payable for—
 - (i) applications to the relevant council for the registration and the renewal of the registration of swimming pools and spas and periodical registration fees relating to swimming pools and spas; and
 - (ii) fees for searches by councils for information relating to swimming pools and spas located in their municipal districts; and
 - (iii) the inspection of swimming pool and spa barriers and the issue of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance; and

- (iv) the lodgement of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance with councils; and
 - (v) the lodgement of reports with councils by owners of land relating to whether swimming pool or spa barriers located on the land comply with this Act and the building regulations; and
 - (i) forms for the purposes of this subsection.
- (4) Regulations for or with respect to any fees referred to in subsection (3)(h) may provide for any of the following—
- (a) maximum fees;
 - (b) differential fees;
 - (c) the reduction, waiver or refund, in whole or in part, of fees in specified circumstances.
- (5) Regulations made under subsection (3) may impose penalties not exceeding 20 penalty units for a contravention of those regulations.
- (6) Nothing in this section affects the operation of section 261 or 262."

27 Appeals—Building regulations

At the end of section 144 of the Principal Act
insert—

- "(2) The owner of land on which a swimming pool or spa is located may appeal to the Building Appeals Board against a determination by the relevant council of

the date of construction of the swimming pool or spa."

28 New section 216D inserted

After section 216C of the Principal Act **insert—**

"216D Register of swimming pools and spas

- (1) This section applies to a swimming pool or spa that is appurtenant to a Class 1, 2, 3 or 10 building or a Class 4 part of a building.
- (2) Each council must establish and maintain a register of swimming pools and spas located in the municipal district of the council.
- (3) The register must contain the prescribed information relating to any swimming pool or spa—
 - (a) that is registered with the council; or
 - (b) any other swimming pool or spa located in the municipal district of the council of which the council is aware.
- (4) The register must be maintained in the form and manner prescribed by the regulations.
- (5) A council must submit, on request, all or any part of the information recorded in the register in the prescribed manner to—
 - (a) the Authority for the purposes of its function under subsection (6) or for the performance of any other function of the Authority if the information is necessary for the performance of that function; and
 - (b) any other prescribed person, agency or body if the information is necessary for the performance of any function of that person, agency or body.

- (6) The Authority may publish information on its website regarding the number and types of swimming pools and spas that are located in any municipal district, but must not disclose details of any owner, or the specific location, of a swimming pool or spa.
- (7) The following persons, in accordance with the regulations (if any), may inspect a register kept by a council during normal office hours—
 - (a) an owner of land in the municipal district of the council on which a swimming pool or spa is located, but only in relation to any information recorded in the register relating to that swimming pool or spa;
 - (b) an occupier of land in the municipal district of the council on which a swimming pool or spa is located, but only in relation to any information recorded in the register relating to that swimming pool or spa;
 - (c) a swimming pool and spa inspector in relation to a swimming pool or spa barrier located in the municipal district of the council, which the inspector has been engaged to inspect;
 - (d) a prescribed person, agency or body if the inspection of the information is necessary for the performance of any function of the person, agency or body.
- (8) Subject to this section, a council must ensure that no information in the register is published or made available to any other person, agency or body."

29 Additional regulation-making powers

- (1) In the heading to section 262 of the Principal Act, after "**Additional**" insert "**regulation-making**".
- (2) In section 262(e) of the Principal Act, after "exempt" insert "any persons or classes of person or".

31 Specification of builders in relation to specific building work

In section 24B(3)(c) of the Principal Act, for "insured architect" substitute "architect registered under the **Architects Act 1991**".

32 New section 25AA inserted

After section 25 of the Principal Act insert—

"25AA A person may notify relevant building surveyor if becomes owner of land subject to building permit

- (1) If a person becomes the owner of land that is subject to a building permit that has been suspended under section 25AE(1)(d) and the remaining building work under the building permit is to be carried out by an owner-builder, the person may notify the relevant building surveyor that the person is the new owner of the land.
- (2) A notice under subsection (1) must include the following information—
 - (a) a request that the new owner under subsection (1) be named as the builder on the building permit;
 - (b) if a certificate of consent has been issued to a person to carry out the remaining building work under the building permit, a copy of the certificate of consent;

- (c) the name and address of the new owner and any person issued with a certificate of consent to carry out the remaining building work under the building permit if that person is not the new owner;
- (d) any information or documents requested to be provided by the relevant building surveyor in order for the relevant building surveyor to decide whether the new owner may be named as the builder on the building permit;
- (e) any other prescribed information."

33 Notice of ending of engagement of builder

In section 25A(1)(a) of the Principal Act, for "insured architect" **substitute** "architect registered under the **Architects Act 1991**".

34 Notice to relevant building surveyor of subsequent engagement of builder

In section 25AB(1) of the Principal Act—

- (a) in paragraph (a), after "building work" **insert** "and whether or not the building permit is suspended";
- (b) in paragraph (b), for "insured architect" **substitute** "architect registered under the **Architects Act 1991**".

35 Change of builder on building permit

In section 25AC of the Principal Act, for "section 25AB" **substitute** "section 25AB or 25AA(2)".

36 Suspension of building permit

For section 25AE(1)(d) of the Principal Act
substitute—

"(d) if the builder named on the building permit is the owner of land to which the building permit relates, the owner ceases to own the land; or".

37 Certificate of consent

(1) In section 25G(1)(b)(ii) of the Principal Act, for "period." **substitute** "period; or".

(2) After section 25G(1)(b)(ii) of the Principal Act
insert—

"(iii) on the day on which the owner of the land to which the certificate relates ceases to own the land.".

42 Application for registration—general

After section 170A(d) of the Principal Act
insert—

"(da) if the applicant is a natural person, be accompanied by a recent photograph of the applicant that is of a size and form specified by the Authority; and".

43 New section 171GA inserted

After section 171G of the Principal Act **insert—**

"171GA Issue of registration card

(1) If the Authority grants registration as a building practitioner to a natural person, it must issue a registration card to that person.

(2) The registration card must—

(a) be in a form approved by the Authority;
and

- (b) specify the registration number of the building practitioner; and
- (c) include a recent photograph of the building practitioner that is of a size and form specified by the Authority; and
- (d) include any other prescribed information."

44 Issue of replacement certificate of registration or registration card

- (1) In the heading to section 171J of the Principal Act, after "**registration**" **insert "or registration card"**.
- (2) In section 171J of the Principal Act, after "registration" (where twice occurring) **insert "or registration card"**.

57 VBA inspector's identification

- (1) In section 204B(c) of the Principal Act, for "Authority." **substitute "Authority; and"**.
- (2) After section 204B(c) of the Principal Act **insert—**
 - "(d) state that the VBA inspector is an authorised person within the meaning of section 228."

59 Renewal of licence or registration

After section 221ZD(2) of the Principal Act **insert—**

- "(2A) Despite subsection (1), the Authority may refuse to renew the licence or the registration of a person if the Authority is satisfied that the person has not complied with any prescribed continuing professional development requirements."

60 Enforcement staff

(1) In section 221ZZY(3)(c) and (4)(c) of the Principal Act, for "Authority." **substitute** "Authority; and".

(2) After section 221ZZY(3)(c) of the Principal Act **insert**—

"(d) state that the plumbing inspector is an authorised person within the meaning of section 228."

(3) After section 221ZZY(4)(c) of the Principal Act **insert**—

"(d) state that the compliance auditor is an authorised person within the meaning of section 228."

61 Grounds on which disciplinary action may be taken

After section 221ZZZG(1)(d) of the Principal Act **insert**—

"(da) he or she has not complied with any prescribed continuing professional development requirements;"

62 Authorised person's identification

(1) In section 228B(1), (2) and (3) of the Principal Act, for "identification" **substitute** "documentation that complies with subsection (4)".

(2) In section 228B(4) of the Principal Act, for "An identification issued to a person under this section must" **substitute** "For the purposes of subsections (1), (2), (3) and (7) the documentation must".

(3) In section 228B(4)(a) of the Principal Act, after "person" **insert** "unless the person has been issued with a registration card".

(4) After section 228B(4) of the Principal Act **insert**—

"(5) The identification of an authorised person who is acting on behalf of a municipal building surveyor, Energy Safe Victoria, a relevant building surveyor or the chief officer is—

(a) documentation that complies with subsection (4); and

(b) if the authorised person has been issued with a registration card, that card.

(6) The identification of a municipal building surveyor or a relevant building surveyor when exercising a power as an authorised person under this Division is a registration card.

(7) The identification of the chief officer when exercising a power as an authorised person under this Division must be in the form of documentation that complies with subsection (4)."

63 Production of identification

Section 228C(3) of the Principal Act is **repealed**.

74 Amendment to Part 1 of Schedule 1 to the Principal Act—Building regulations—Regulation-making powers

For item 6 of Part 1 of Schedule 1 to the Principal Act **substitute**—

"6. The use and testing (including the destructive testing) of specified building products and materials."

4 Explanatory details

¹ S. 3(1) def. of *building practitioner* para (j): See section 137B for responsibilities of owner builders.

² S. 3(1) def. of *owner* in relation to a building: The definition of *land* in section 38 of the **Interpretation of Legislation Act 1984**, No. 10096/1984 reads as follows:

38 Definitions

land includes buildings and other structures permanently affixed to land, land covered with water, and any estate, interest, easement, servitude, privilege or right in or over land;

³ S. 12: Section 62(4) of the **Planning and Environment Act 1987**, No. 45/1987 (as amended by this Act) provides that the responsible authority must not include in a planning permit a condition which is inconsistent with this Act or the building regulations under this Act or a relevant determination of the Building Appeals Board under this Act in respect of the land to which the permit applies.

⁴ S. 49: See section 3(1) definition of *conduct*.

⁵ S. 53(2): See sections 205N–205R of this Act for powers of Authority.

⁶ S. 129 def. of *building work*: See section 3(1) definition of *building work* in this Act.

⁷ S. 188A: Clause 4A of Schedule 2 requires the reporting authority, if required by the regulations, to give effect to the guidelines made under this section in considering an application for a building permit for a single dwelling that it is required to report on, or to consent to.

⁸ S. 190(1): See note 5.

⁹ Pt 12 Div. 2 (Heading and ss 193–205) amended by Nos 31/1994 s. 4(Sch. 2 item 9), 42/1995 s. 224(Sch. 2 item 6), 71/1995 s. 17, 91/1995 s. 153, 34/1997 ss 16, 17, 18/1998 s. 6, 46/1998 s. 7(Sch. 1), 52/1998 s. 311(Sch. 1 items 10.9, 10.10), 85/2000 ss 6, 7, 26/2001 ss 12–14 (as amended by No. 33/2010 s. 54), 68/2001 s. 3(2)(3), 11/2002 s. 3(Sch. 1 item 6.3), 36/2002 ss 12–14, 30/2003 s. 82(2)(3), 108/2004 s. 117(1)(Sch. 3 items 21.1, 21.2), 54/2007 ss 6, 7, 11(1), 46/2008 s. 248(4), (5), substituted as Pt 12 Div. 2 (Heading and ss 193–205R) by No. 34/2013 s. 4.

¹⁰ Sch. 3 cl. 3(2)(a): Section 56 of the **Interpretation of Legislation Act 1984**, No. 10096/1984, as it applies to the bankruptcy of a member of a Board to which Schedule 3 of this Act applies, has the effect that the office of a member of a Board becomes vacant if the member's property becomes subject to control under the law relating to bankruptcy.

¹¹ Table of Amendments: The amendment to Schedule 3A proposed by section 147(Schedule 2 item 5) of the **Inquiries Act 2014**, No. 67/2014 is not included in this publication as Schedule 3A was not part of this Act when section 147(Schedule 2 item 5) came into operation.

Schedule 2 item 5 reads as follows:

5 Building Act 1993

5.1 In clause 13(2) of Schedule 3A, after "**1958**" **insert** ", as in force immediately before their repeal,".