

Version No. 045
Building Act 1993

Act No. 126/1993

Version incorporating amendments as at 1 January 2002

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Version No. 045
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Act No. 126/1993

Version incorporating amendments as at 1 January 2002

PART 1—PRELIMINARY

1. Purpose

The main purpose of this Act is to provide for the regulation of building and building standards.

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 sub-section (2) does not come into operation before 1 March 1995, it comes into operation on that date.

3. Definitions

- (1) In this Act—

"appointed day" in relation to a class or category of building practitioners, means a day appointed for that class or category under section 6;

"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;

"approved auditor" means a person holding a current certificate issued under section 75GB;

S. 3(1) def. of "approved auditor" inserted by No. 85/2000 s. 3.

"building" includes structure, temporary building, temporary structure and any part of a building or structure;

"Building Advisory Council" means the Building Advisory Council under Part 12;

"Building Appeals Board" means the Building Appeals Board under Part 10;

"Building Code of Australia" means the Building Code of Australia 1996 published by the Australian Building Codes Board—

S. 3(1) def. of "Building Code of Australia" inserted by No. 34/1997 s. 4.

(a) as amended or remade from time to time; and

(b) as amended by the Victoria Appendix 1996 to that Code published by that Board as that Appendix is amended or remade from time to time;

"Building Practitioners Board" means the Building Practitioners Board under Part 11;

"building practitioner" means—

S. 3(1) def. of "building practitioner" amended by No. 91/1995 s. 136(a) (i)–(iii).

(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 draftsman 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 except in Part 9 and sections 24(3) and 176(6); 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;

<p>"business day" means a day that is not—</p> <p>(a) a Saturday or Sunday; or</p> <p>(b) a day that is wholly or partly observed as a public holiday throughout Victoria;</p>	<p>S. 3(1) def. of "business day" inserted by No. 39/1996 s. 3.</p>
<p>"Commission" means the Building Commission under Part 12;</p>	<p>S. 3(1) def. of "Commission" amended by No. 68/2001 s. 3(1)(a).</p>
<p>"Commissioner" means the Commissioner of the Building Commission under Part 12;</p>	<p>S. 3(1) def. of "Commissioner" amended by No. 68/2001 s. 3(1)(b).</p>
<p>"conduct", in relation to a public entertainment, means to have a direct pecuniary interest in the proceeds or profits of the entertainment;</p>	
<p>"construct", in relation to a building, includes—</p> <p>(a) build, re-build, erect or re-erect the building; and</p> <p>(b) repair the building; and</p> <p>(c) make alterations to the building; and</p> <p>(d) enlarge or extend the building; and</p> <p>(e) place or relocate the building on land;</p>	
<p>"cooling tower" has the meaning set out in section 75A;</p>	<p>S. 3(1) def. of "cooling tower" inserted by No. 85/2000 s. 3.</p>
<p>"cooling tower system" has the meaning set out in section 75AB;</p>	<p>S. 3(1) def. of "cooling tower system" inserted by No. 85/2000 s. 3.</p>

"council" means a council within the meaning of the **Local Government Act 1989**²;

"decision", in relation to a matter in respect of which an appeal can be made to the Building Appeals Board, includes failure to decide;

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

"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).

"function" includes power, authority and duty;

"insurer" includes Housing Guarantee Fund Limited A.C.N. 006 258 233;

S. 3(1) def. of "insurer" inserted by No. 91/1995 s. 136(c).

"Legionella" means bacteria belonging to the genus *Legionella*;

S. 3(1) def. of "Legionella" inserted by No. 85/2000 s. 3.

"lot", in relation to land, means a piece of land that can, at the relevant time, be disposed of separately;

S. 3(1) def. of "lot" inserted by No. 85/2000 s. 3.

"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 Act³;

"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**

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

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 situated⁴;

"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;

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

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

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

- (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 building practitioner" means a building practitioner registered under Part 11;

"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 Commission of the functions of a municipal building surveyor or a function specified in section 199(5), means the Commission; 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;

"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.

"required insurance" means the insurance required by order under section 135;

S. 3(1) def. of "required insurance" inserted by No. 91/1995 s. 136(d).

S. 3(1) def. of
"risk
management
plan"
inserted by
No. 85/2000
s. 3.

"risk management plan" has the meaning set out
in section 75E;

S. 3(1) def. of
"risk
management
plan audit"
inserted by
No. 85/2000
s. 3.

"risk management plan audit" has the meaning
set out in section 75F;

"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.
- (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.

4. *Objects of Act*

The objects of this Act are—

- (a) to establish, maintain and improve standards for the construction and maintenance of buildings;
- (b) to facilitate—
 - (i) the adoption and efficient application of national uniform building standards; and
 - (ii) the accreditation of building products, construction methods, building designs, building components and building systems;

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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| (c) to enhance the amenity of buildings and to protect the safety and health of people who use buildings and places of public entertainment; | |
| (d) to facilitate and promote the cost effective construction of buildings and the construction of environmentally and energy efficient buildings; | |
| (e) 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; | |
| (f) to regulate building practitioners and plumbers; | S. 4(f) amended by No. 39/1996 s. 4(a). |
| (fa) to regulate plumbing work; | S. 4(fa) inserted by No. 39/1996 s. 4(b). |
| (g) to reform aspects of the law relating to legal liability in relation to building and plumbing matters; | S. 4(g) amended by No. 39/1996 s. 4(c). |
| (h) to aid the achievement of an efficient and competitive building and plumbing industry; | S. 4(h) amended by No. 39/1996 s. 4(d). |
| (i) to regulate cooling tower systems. | S. 4(i) inserted by No. 85/2000 s. 4. |

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.

6. *Appointed days—building practitioners*⁵

- (1) The Minister, by notice published in the Government Gazette, may appoint a day or days on which the provisions of this Act relating to building practitioners apply to all building practitioners or any specified class or category of building practitioners.
- (2) The day appointed for any class or category of building practitioners must not be later than 1 January 1996.
- (3) Despite anything to the contrary in this Act, a provision of this Act relating to building practitioners only applies to a class or category of building practitioners specified in a notice under sub-section (1) on and from the appointed day for that class or category.
- (4) This section does not apply to Part 9.

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 and maintenance 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 sub-section (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 sub-section (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.
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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 deemed to be a building regulation in force in relation to the municipal district.

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).

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

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**.

- (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 sub-section (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 sub-sections (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 sub-sections.

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 sub-paragraph (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 building*⁶

- (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 sub-section (2) is not a condition precedent to the making of the rule.
- (4) A failure to refer a statutory rule under sub-section (2) does not affect the validity or operation of the rule but the rule may be revoked under sub-section (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) Sub-section (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
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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.

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

15A. *Building regulations with respect to swimming pools and spas*

- (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 sub-section (1) may impose penalties not exceeding 50 penalty units for a contravention of those regulations.

PART 3—BUILDING PERMITS**Division 1—Building permit required****16. *Building permit required***

- (1) A person must not carry out building work unless a building permit in respect of the work has been issued and is in force under this Act and the work is carried out in accordance with this Act, the building regulations and the permit.

Penalty: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

- (2) Sub-section (1) does not apply to building work exempted by or under this Act or the regulations.

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.

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 deemed to have refused a building permit if the application is not decided within the prescribed time.

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 sub-section (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.

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 Commission—

- (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—

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

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

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 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 deemed 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 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.
- (3) The relevant building surveyor may consider an application for a building permit but must not issue the permit unless he or she is satisfied that—
- (a) each building practitioner to be engaged in the building work holds a building practitioner's certificate issued under Part 11 or is an architect registered under the **Architects Act 1991**; and
- S. 24(1)(b) amended by No. 28/2000 s. 13(a).**
- 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(3) substituted by No. 91/1995 s. 137(1).**

(b) in the case of domestic building work, each builder to be engaged in the work is covered by the required insurance.

(4) If a building permit has been issued in respect of building work and subsequently a new building practitioner is engaged for the building work, then within 14 days after that engagement is entered into, the owner of the building or land in respect of which the permit is issued must give the relevant building surveyor written notice of that engagement including details of any building practitioner's certificate issued to the building practitioner under Part 11.

(4A) As soon as practicable after a new builder has been engaged for domestic building work for which a building permit has been issued, the new builder must notify the relevant building surveyor giving written details of the required insurance by which the builder is covered.

S. 24(4A)
inserted by
No. 91/1995
s. 137(2).

(4B) A builder must comply with sub-section (4A) within 14 days after being engaged for the domestic building work.

S. 24(4B)
inserted by
No. 91/1995
s. 137(2).

Penalty: 50 penalty units.

(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 municipal council under that Part; or
- (b) an agreement to pay that amount of levy has been entered into under that Part.

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.

Division 4—Special provisions

S. 26
substituted by
No. 34/1997
s. 5.

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 Commission.

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—

S. 28(1)(a)
substituted by
No. 93/1995
s. 218(1)
(Sch. 2
item 1.1).

(a) a building included on the Heritage Register established under the **Heritage Act 1995**;

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 sub-section (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 1995** 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).

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

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- (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 sub-section (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.

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

29A. *Application for building permit for demolition*

- (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 sub-section (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.

29B. *Suspension of demolition permit pending amendment of planning scheme*

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

(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 sub-section (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 sub-section (1)(b); or
 - (b) the refusal of an application or request referred to in sub-section (1)(b); or
 - (c) the coming into operation of an amendment referred to in sub-section (1)(b); or
 - (d) the lapsing of an amendment referred to in sub-section (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 sub-section (1); and
 - (b) recommences to run only when notice affecting the application is received by the relevant building surveyor under sub-section (3).

- (5) If a notice of an amendment has been given to the relevant building surveyor under sub-section (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: 10 penalty units.

- (1A) In addition to the requirements of sub-section (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.

S. 30(1A)
inserted by
No. 34/1997
s. 6(1).

Penalty: 10 penalty units.

- (2) Any documents lodged with the relevant council under sub-section (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).

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.

PART 4—INSPECTION OF BUILDING WORK**33. Notification during building work**

- (1) A person who is in charge of the carrying out of building work for which a permit has been issued under Part 3, must notify the relevant building surveyor without delay after completion of each mandatory notification stage of that work.

Penalty: 10 penalty units.

- (2) A person who is carrying out building work for which a permit has been issued under Part 3 must stop 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: 10 penalty units.

34. Inspections at mandatory notification stages

On being notified that a mandatory notification stage has been completed, the relevant building surveyor must cause the building work concerned to be inspected.

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.

36. Powers in relation to inspections

The relevant building surveyor may cause any building work to be demolished, opened or cut into or tested if this is reasonably required to facilitate the carrying out of an inspection for the purposes of this Act or the regulations.

37. *Directions as to work*

- (1) After inspecting building work, the relevant building surveyor or a person acting on behalf of the relevant building surveyor may direct the person who is in charge of carrying out the building work to carry out work so that the building work complies fully or substantially with the building permit issued in respect of the work, this Act or the building regulations, as the case requires.
- (2) If a person fails to comply with a direction under this section, the relevant building surveyor may cause a building notice to be issued under Part 8 or may take any other action permitted by this Act or the building regulations.
- (3) A direction may be given orally or in writing.
- (4) If a direction is given orally, the person who gave the direction must confirm it in writing without delay to the person to whom the direction was given.

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.
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**PART 5—OCCUPATION OF BUILDINGS AND PLACES OF
PUBLIC ENTERTAINMENT****Division 1—Occupancy permits (Building work)****39. *Occupancy permit must be obtained***

- (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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

- (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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

40. *Occupation must be in accordance with permit*

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

Penalty: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

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

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

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

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 deemed to have refused an occupancy permit if the application is not decided within the prescribed time.

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.

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

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.

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- (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)

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

A person must not conduct⁷ 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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

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

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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

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

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: 100 penalty units, in the case of a natural person.
500 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 sub-section (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.
- (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 Commission by or on behalf of the owner of the place of public entertainment concerned⁸.
- (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 deemed to have refused an occupancy permit if the application is not decided within the prescribed time.

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.
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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: 10 penalty units.

- (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.

Penalty: 10 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 Commission may cause any place of public entertainment for which an occupancy permit has been issued by the Commission under this Division to be inspected from time to time to determine whether or not the permit is being complied with.

Division 3—Temporary occupation of buildings

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

64. *Temporary occupation of buildings*

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 use stated on the permit; or
- (c) the strength of the building has become less than required to carry the loads stated on the permit.

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.

Penalty: 10 penalty units.

- (1A) In addition to the requirements of sub-section (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).

Penalty: 10 penalty units.

- (2) Any documents lodged with the relevant council under sub-section (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.

PART 5A—REGISTRATION OF COOLING TOWER SYSTEMS

Pt 5A
(Headings
and ss 75A–
75DH)
inserted by
No. 85/2000
s. 5.

Division 1—Preliminary Matters

75A. *Meaning of "cooling tower"*

S. 75A
inserted by
No. 85/2000
s. 5.

- (1) A cooling tower is a device for lowering—
 - (a) the temperature of recirculated water by bringing the water into contact with fan forced, or fan induced, atmospheric air; or
 - (b) the temperature of water, a refrigerant or other fluid in a pipe or other container by bringing recirculated water and fan forced, or fan induced, atmospheric air into contact with the pipe or container.
- (2) An evaporative air cooler or evaporative air conditioner is not a cooling tower.

75AB. *Meaning of "cooling tower system"*

S. 75AB
inserted by
No. 85/2000
s. 5.

A cooling tower system is—

- (a) a cooling tower, or a number of interconnected cooling towers that use the same recirculating water; and
- (b) any machinery that is used to operate the tower or towers; and
- (c) any associated tanks, pipes, valves, pumps or controls.

Division 2—Provisions Applying to Existing Systems

75B. *Application of this Division*

S. 75B
inserted by
No. 85/2000
s. 5.

This Division only applies to a cooling tower system that was in working condition immediately before the date section 5 of the **Building (Legionella) Act 2000** came into operation.

S. 75BA
inserted by
No. 85/2000
s. 5.

75BA. Owner must apply to register cooling tower system within 6 months

The owner of any land on which there is a cooling tower system must apply to register the system with the Commission within 6 months after the date section 5 of the **Building (Legionella) Act 2000** came into operation.

Penalty: 120 penalty units.

S. 75BB
inserted by
No. 85/2000
s. 5.

75BB. Initial registration period

- (1) The initial registration of a cooling tower system to which this Division applies is valid for the period specified in the certificate of registration issued in respect of the system.
- (2) The Commission may specify a period of between 12 months and 18 months on an initial certificate of registration issued in respect of a cooling tower system to which this Division applies.

S. 75BC
inserted by
No. 85/2000
s. 5.

75BC. Owner must renew the registration of cooling tower systems

The owner of any land on which there is a registered cooling tower system must apply to renew the registration under this Division before the registration is due to expire.

Penalty: 60 penalty units.

S. 75BD
inserted by
No. 85/2000
s. 5.

75BD. Additional statement to be made in first renewal application

A person applying to renew the registration of a cooling tower system under this Division for the first time must include with the application form a statement as to whether or not a risk management plan has been prepared in respect of the system.

75BE. Additional fee payable for certain renewals

S. 75BE
inserted by
No. 85/2000
s. 5.

- (1) This section applies if an initial registration period of more than 12 months was granted under section 75BB in respect of a cooling tower system.
- (2) In addition to any other fee the owner is liable to pay in applying to renew the initial registration of the system, the owner must also pay an amount calculated as follows—

$$(RP - 365) \times F$$

365

where—

RP is the length of the initial registration period in days;

F is the fee paid for the initial registration.

75BF. Period of renewed registrations

S. 75BF
inserted by
No. 85/2000
s. 5.

A registration of a cooling tower system that is renewed under this Division expires on the day before the anniversary of the day the initial registration expired.

75BG. Second and subsequent renewals

S. 75BG
inserted by
No. 85/2000
s. 5.

A person applying for the second, and each subsequent, renewal of registration of a cooling tower system under this Division must include with the application form—

- (a) a statement that a risk management plan has, or has not, been prepared in respect of the system; and
- (b) if a risk management plan has been prepared in respect of the system, a statement that the plan—
 - (i) has, or has not, been reviewed in the 12 months before the statement was made; and

- (ii) was, or was not, the subject of a risk management plan audit in the 3 months before the registration was due to expire.

Division 3—Provisions Applying to All Other Cooling Tower Systems

S. 75C
inserted by
No. 85/2000
s. 5.

75C. Application of this Division

This Division applies to any cooling tower system to which Division 2 does not apply.

S. 75CA
inserted by
No. 85/2000
s. 5.

75CA. Owner must register cooling tower system

- (1) The owner of any land on which there is a cooling tower system must apply to register the system with the Commission before the system is brought into operation.

Penalty: 120 penalty units.

- (2) A reference to bringing a cooling tower system into operation in this section includes a reference to the conduct of tests associated with the installation or commissioning or re-commissioning of the system.

S. 75CB
inserted by
No. 85/2000
s. 5.

75CB. Additional statement to be included with application

A person applying to register a cooling tower system under this Division must include with the application form a statement as to whether or not a risk management plan has been prepared in respect of the system.

S. 75CC
inserted by
No. 85/2000
s. 5.

75CC. Registration to last for 1 year

The registration of a cooling tower system expires on the day before the anniversary of the date it was first registered.

75CD. *Owner must renew the registration of cooling tower systems annually*

S. 75CD
inserted by
No. 85/2000
s. 5.

The owner of any land on which there is a cooling tower system must apply to renew the registration of the system before the registration is due to expire.

Penalty: 60 penalty units.

75CE. *Additional statement to be included with renewal application*

S. 75CE
inserted by
No. 85/2000
s. 5.

A person applying to renew the registration of a cooling tower system under this Division must include with the application form—

- (a) a statement that a risk management plan has, or has not, been prepared in respect of the system; and
- (b) if a risk management plan has been prepared in respect of the system, a statement that the plan—
 - (i) has, or has not, been reviewed in the 12 months before the statement was made; and
 - (ii) was, or was not, the subject of a risk management plan audit in the 3 months before the registration was due to expire.

Division 4—Provisions Applying Generally

75D. *Requirements concerning the submission of application forms*

S. 75D
inserted by
No. 85/2000
s. 5.

- (1) If a person is required to apply to register, or to renew the registration of, a cooling tower system, the person must—
 - (a) submit the appropriate application form to the Commission; and
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- (b) submit with the form any relevant fee required under this Act.
 - (2) Any form or statement that is required under this Part—
 - (a) must be prepared in accordance with any requirements specified in the regulations; and
 - (b) must include all the details required by the regulations; and
 - (c) must be submitted in accordance with the regulations.

S. 75DA
inserted by
No. 85/2000
s. 5.

75DA. *Processing of applications*

- (1) The Commission must give a person who applies for the registration, or the renewal of registration, of a cooling tower system under this Part—
 - (a) a certificate of registration, or renewal of registration, for the system that states the date on which the registration or renewal occurred; or
 - (b) a written notice stating that the application has been deferred due to a failure to comply with one or more specified requirements of this Part.
- (2) If the Commission advises a person that an application has been deferred, the notice must also—
 - (a) give details of the failure that caused the deferral; and
 - (b) specify a date by which the person must remedy the failure.

- (3) Sub-section (1) applies to any information, statement or fee submitted in response to a notice given under sub-section (1)(b) as if it were an application for registration or renewal of registration.
- (4) If the Commission defers an application and the person who submitted the application does not remedy the failure that caused the deferral by the date specified under sub-section (2)(b) (or any later date allowed by the Commission in writing)—
 - (a) the application lapses and the person is not entitled to have any fee submitted in relation to the application refunded; and
 - (b) for the purposes of this Part, the person is to be treated as if the person had not submitted the application.

75DB. *Multiple cooling tower systems on same land*

- (1) This section applies if there are 2 or more cooling tower systems on a lot of land.
- (2) The owner of the land is only required to submit one application for registration in respect of the cooling tower systems, but must—
 - (a) give details of each system in the application; and
 - (b) make a separate statement under section 75BD, 75BG, 75CB or 75CE (as the case may be) in respect of each system.

S. 75DB
inserted by
No. 85/2000
s. 5.

75DC. *Commission to notify Department of Human Services of non-compliance*

- (1) The Commission must notify the Secretary to the Department of Human Services if a statement is made—

S. 75DC
inserted by
No. 85/2000
s. 5.

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- (a) under section 75BD, 75BG, 75CB or 75CE that a risk management plan has not been prepared; or
 - (b) under section 75BG(b)(i) or 75CE(b)(i) that a risk management plan has not been reviewed in the 12 months before the statement was made; or
 - (c) under section 75BG(b)(ii) or 75CE(b)(ii) that a risk management plan audit has not been conducted within the specified time.
- (2) A notification under this section need only be made after the application for registration, or renewal of registration, in respect of which the statement was made has been granted.

S. 75DD
inserted by
No. 85/2000
s. 5.

75DD. *Registration to continue pending renewal*

- (1) This section applies if a person applies for the renewal of the registration of a cooling tower system before the registration is due to expire.
- (2) Despite anything to the contrary in this Part, the registration is deemed to continue until—
 - (a) a certificate of the renewal of the registration is issued; or
 - (b) the application lapses or is withdrawn.

S. 75DE
inserted by
No. 85/2000
s. 5.

75DE. *Commission to be notified of change of ownership*

- (1) This section applies if the ownership of any land on which there is a cooling tower system changes.
- (2) Within 30 days after the date the ownership of the land changes, the new owner of the land must notify the Commission in writing of the change of ownership.

Penalty: 10 penalty units.

75DF. Commission to be notified of other changes

S. 75DF
inserted by
No. 85/2000
s. 5.

- (1) A person who holds a certificate of registration in respect of a cooling tower system must notify the Commission of any of the following events within 30 days after the completion of the event—
- (a) the addition or removal of a cooling tower to, or from, the system;
 - (b) the removal, or permanent decommissioning, of the system;
 - (c) the relocation of the system on the lot of land on which it stands.

Penalty: 10 penalty units.

- (2) A notification—
- (a) must be made in the form and manner required by the regulations; and
 - (b) must contain the details required by the regulations.

75DG. Offence to provide false information

S. 75DG
inserted by
No. 85/2000
s. 5.

A person must not make any false statement, or give any false information, in an application for the registration, or the renewal of registration, of a cooling tower system.

Penalty: 10 penalty units.

75DH. Cooling tower system register

S. 75DH
inserted by
No. 85/2000
s. 5.

- (1) The Commission must keep a register containing—
- (a) details of the location and type of each cooling tower system that the Commission has registered; and
 - (b) any other information in relation to those systems specified by the regulations.

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- (2) The Commission must ensure that the register is available for inspection by any person wishing to inspect it during the Commission's normal office hours.
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**PART 5B—RISK MANAGEMENT PLANS FOR COOLING
TOWER SYSTEMS**

Division 1—General Requirements

75E. *Meaning of "risk management plan"*

- (1) A risk management plan for a cooling tower system is a document that identifies risks associated with the use of the system and that sets out the steps to be taken—
 - (a) to manage the risks; and
 - (b) to ensure compliance with any requirements relating to the system imposed by, or under, this Act or the **Health Act 1958**.
- (2) A risk management plan must—
 - (a) address the risks specified in the regulations; and
 - (b) include any other matters required by the regulations.

75EA. *Owner must ensure risk management plan prepared*

The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that a risk management plan is prepared in respect of the system—

- (a) in the case of a system to which Division 2 of Part 5A applies—before the initial registration of the system is due to expire;
- (b) in the case of a system to which Division 3 of Part 5A applies—before the system is brought into operation within the meaning of section 75CA.

Penalty: 60 penalty units.

Pt 5B
(Headings
and ss 75E–
75H)
inserted by
No. 85/2000
s. 5.

S. 75E
inserted by
No. 85/2000
s. 5.

S. 75EA
inserted by
No. 85/2000
s. 5.

S. 75EB
inserted by
No. 85/2000
s. 5.

75EB. Owner must ensure risk management plan reviewed

- (1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that the risk management plan prepared in respect of the system is reviewed, and, if necessary, updated, at least once in every registration period.

Penalty: 60 penalty units.

- (2) Despite sub-section (1), in the case of a cooling tower system to which Division 2 of Part 5A applies, it is not necessary to review the risk management plan for the system in the initial registration period.

S. 75EC
inserted by
No. 85/2000
s. 5.

75EC. Owner must ensure service records kept

The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure—

- (a) that a record is kept of all repair, maintenance and testing work that is carried out on the system; and
- (b) that the record is kept for at least 7 years after it was created.

Penalty: 60 penalty units.

S. 75ED
inserted by
No. 85/2000
s. 5.

75ED. Plan and records must be kept on site

The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that the risk management plan in respect of the system and any records required by section 75EC in relation to the system are kept—

- (a) at the building in which the system is in or on; or

- (b) if the system is not in or on a building, at a building on the lot of land on which the system is located.

Penalty: 60 penalty units.

Division 2—Audit

75F. Risk management plan audit

- (1) A risk management plan audit is an audit by an approved auditor in relation to the risk management plan prepared in respect of a cooling tower system to determine—
 - (a) whether the plan complies with section 75E(2); and
 - (b) whether the plan is being implemented.
- (2) In conducting a risk management plan audit, the auditor must inspect all the documents relating to the cooling tower system that are specified by the regulations for the purposes of this section.
- (3) A risk management plan audit does not require the auditor—
 - (a) to determine whether the plan has, in fact, adequately controlled the risks associated with the use of a cooling tower system; or
 - (b) to inspect the system.

S. 75F
inserted by
No. 85/2000
s. 5.

75FA. Owner must ensure audit conducted

- (1) The owner of any land on which there is a cooling tower system must take all reasonable steps to ensure that a risk management plan audit is conducted in relation to the risk management plan prepared in respect of the system in the 3 months before the registration of the system is due to expire.

Penalty: 60 penalty units.

S. 75FA
inserted by
No. 85/2000
s. 5.

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- (2) An owner of land is not excused from complying with this section merely because the carrying out of the audit can only be done at the owner's expense.
 - (3) Despite sub-section (1), in the case of a cooling tower system to which Division 2 of Part 5A applies, a risk management plan audit of the system's risk management plan need not be conducted in the initial registration period.

S. 75FB
inserted by
No. 85/2000
s. 5.

75FB. *Audit certificate to be given*

- (1) After conducting a risk management plan audit, an approved auditor must give the person who commissioned the audit a certificate stating the auditor's opinion on—
 - (a) whether the plan complies with section 75E(2); and
 - (b) whether the plan is being implemented.
- (2) The certificate must be in the form, and contain the details, required by the regulations.
- (3) If the auditor is of the opinion—
 - (a) that the plan does not comply with section 75E(2); or
 - (b) that the plan is not being implemented—he or she must also give a copy of the certificate to the Secretary to the Department of Human Services within 3 business days after forming that opinion.

Penalty: 60 penalty units.

- (4) If the auditor is of the opinion described in subsection (3), he or she must include in the certificate details of the reasons why he or she is of that opinion.

Division 3—Approved Auditors

75G. *Meaning of "certifying body"*

In this Division, "**certifying body**" means the Secretary to the Department of Human Services or any person or body who the regulations state is to be able to make certifications for the purposes of this Division.

S. 75G
inserted by
No. 85/2000
s. 5.

75GA. *Only approved auditors may conduct audits*

A person must not conduct a risk management plan audit unless he or she is an approved auditor.

Penalty: 60 penalty units for a first offence and 120 penalty units for a second or subsequent offence.

S. 75GA
inserted by
No. 85/2000
s. 5.

75GB. *Appointment of approved auditors*

- (1) A certifying body may certify in writing that a natural person is competent to conduct a risk management plan audit.
- (2) In certifying a person, the certifying body—
- (a) may impose any conditions on the certification that the certifying body considers to be appropriate; and
 - (b) may specify for how long the certificate remains current.
- (3) If the regulations provide for the payment of any fee in relation to a certification, the certifying body must not certify a person until the person has paid the fee.

S. 75GB
inserted by
No. 85/2000
s. 5.

S. 75GC
inserted by
No. 85/2000
s. 5.

75GC. Auditor must comply with conditions of certification

An approved auditor must comply with any condition imposed by the certifying body in certifying him or her to be an auditor.

Penalty: 60 penalty units for a first offence and 120 penalty units for a second or subsequent offence.

S. 75GD
inserted by
No. 85/2000
s. 5.

75GD. Offence to impersonate approved auditor

A person must not—

- (a) use or take the title "approved auditor" in relation to the conduct of a risk management plan audit; or
- (b) directly or indirectly represent that he or she is approved or authorised to conduct a risk management plan audit—

unless the person is an approved auditor.

Penalty: 60 penalty units for a first offence and 120 penalty units for a second or subsequent offence.

S. 75GE
inserted by
No. 85/2000
s. 5.

75GE. Conflict of interest to be avoided

(1) In this section "**interested person**", in relation to a cooling tower system, means all of the following—

- (a) a person who owns the system; and
- (b) the owner of the land on which the system stands; and
- (c) a person who has the management and control of the system; and
- (d) a person who was involved in the construction or installation of the system; and

- (e) a person who was involved in the maintenance or testing of the system during the period covered by an audit; and
 - (f) a person who has written, or has assisted in the writing of, a risk management plan for the system.
- (2) A person must not conduct a risk management plan audit of the risk management plan of a cooling tower system if the person is an interested person, or is an employee or officer of an interested person.
- Penalty: 60 penalty units for a first offence and 120 penalty units for a second or subsequent offence.
- (3) A person must not conduct a risk management plan audit of a risk management plan as an employee of another person if any other employee of that other person has written, or has assisted in preparing, that plan.
- Penalty: 60 penalty units for a first offence and 120 penalty units for a second or subsequent offence.

75GF. *Revocation of approval to act as an auditor*

A certifying body may, after giving a person a chance to be heard, revoke that person's certification as an approved auditor if the certifying body is satisfied that—

- (a) the certification was granted on the basis of fraud, misrepresentation or the concealment of facts; or
- (b) the person has failed to comply with any requirement imposed by this Act on approved auditors; or
- (c) the person is not sufficiently competent to carry out risk management plan audits; or

S. 75GF
inserted by
No. 85/2000
s. 5.

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- (d) the person has been guilty of any fraudulent conduct in carrying out an audit; or
 - (e) the person has not satisfactorily carried out 2 or more risk management plan audits.

Division 4—Regulations

S. 75H
inserted by
No. 85/2000
s. 5.

75H. Regulations

The Governor in Council may make regulations for or with respect to—

- (a) specifying the matters to be included in risk management plans;
- (b) specifying how risk management plans are to be reviewed and updated;
- (c) specifying the form and manner, and the matters to be included in, any records that are required to be kept under this Part;
- (d) prescribing fees in relation to the certification of approved auditors;
- (e) generally providing for any other matter or thing required or permitted by this Part to be prescribed or necessary to be prescribed to give effect to this Part.

PART 5C—ENFORCEMENT OF PARTS 5A AND 5B

Pt 5C
(Headings
and ss 75J–
75JE)
inserted by
No. 85/2000
s. 5.

75J. Meaning of "inspector"

In this Part, "**inspector**" means any person authorised by the Secretary to the Department of Human Services for the purposes of this Part.

S. 75J
inserted by
No. 85/2000
s. 5.

75JA. Identity cards

- (1) The Secretary to the Department of Human Services must issue an identity card to each inspector.
- (2) An identity card issued to a person—
 - (a) must contain a photograph of the person; and
 - (b) must contain the signature of the person; and
 - (c) must be signed by the Secretary.
- (3) An inspector must produce his or her identity card for inspection—
 - (a) before exercising a power under this Part other than a requirement made by post; and
 - (b) at any time during the exercise of a power under this Part, if asked to do so.

S. 75JA
inserted by
No. 85/2000
s. 5.

Penalty applying to this sub-section:
10 penalty units.

75JB. General powers of inspectors

For the purposes of this Part and Parts 5A and 5B, Division 2 (Powers of entry) of Part 13 (other than sections 228 and 231H) applies as if—

- (a) a reference to an authorised person was a reference to an inspector; and

S. 75JB
inserted by
No. 85/2000
s. 5.

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- (b) a reference in section 229 to "any inspection of a building or building work or plumbing work authorised or required under this Act or the regulations" was a reference to an inspection to determine whether or not this Part or Part 5A or 5B is being complied with; and
 - (c) a reference in sections 231, 231B, 231F and 234A to this Act or the regulations was a reference to this Part or Part 5A or 5B or any regulations made under, or in relation to, this Part or Part 5A or 5B; and
 - (d) a reference in section 231F(2) to building work or the work of a building practitioner or the carrying out of that work was a reference to any cooling tower system on the premises; and
 - (e) a reference to an identity card was a reference to an identity card issued under this Division.

S. 75JC
inserted by
No. 85/2000
s. 5.

75JC. *Protection against self-incrimination*

- (1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.
- (2) Despite sub-section (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 Part, if the production of the document would tend to incriminate the person.

75JD. Disclosure of information

(1) In this section—

"relevant function" means a function under an Act that relates—

- (a) to the registration or operation of cooling tower systems; or
 - (b) to the operation of any other device or equipment that may give rise to, harbour, propagate, or contribute to the spread of, *Legionella*; or
 - (c) to stopping, limiting or preventing the spread of *Legionella*.
- (2) An inspector who obtains information while acting as an inspector may disclose the information to any person carrying out a relevant function if the inspector reasonably believes that the information may assist that person in carrying out that function.
- (3) Despite anything to the contrary in any other Act, a person carrying out a relevant function who obtains information while carrying out that function may disclose the information to an inspector if the person reasonably believes that the information may assist the inspector in carrying out a relevant function.

S. 75JD
inserted by
No. 85/2000
s. 5.

75JE. Improvement notice

(1) This section applies if an inspector is satisfied that a person—

- (a) is contravening Part 5A or 5B; or
- (b) has contravened Part 5A or 5B in circumstances that make it likely that the contravention will occur again.

S. 75JE
inserted by
No. 85/2000
s. 5.

(2) The inspector may issue to the person an improvement notice requiring the person to take specified action within a specified period to stop the contravention, or failure to comply, from continuing or occurring again.

(3) The person must comply with the notice.

Penalty: 10 penalty units.

PART 6—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.
- (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.

Penalty: 100 penalty units, in the case of a natural person.

500 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.

79. *Circumstances in which private building surveyor may not act*

- (1) Subject to sub-section (2), a private building surveyor must not accept an appointment to carry out any functions set out in section 76 in relation to a building or building work if the private building surveyor—
 - (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: 100 penalty units.

- (2) The Commission, on the application of a private building surveyor, may exempt the private building surveyor from all or any of the requirements of sub-section (1) in respect of any particular building or building work. An exemption must be in writing.
- (2A) A private building surveyor must not accept an appointment to carry out any functions set out in section 76 in relation to a building or building work if the private building surveyor—
- (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.

S. 79(2A)
inserted by
No. 71/1995
s. 7(1).

Penalty: 100 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.

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.

81. *Termination of appointment*

- (1) Subject to sub-section (3), the appointment of a private building surveyor under this Part cannot be terminated without the written consent of the Commission.
- (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 Commission and the relevant municipal council of the termination of the building work.
- (3) On receipt by the Commission of a notice under sub-section (2), the appointment of the private building surveyor is deemed to be terminated.
- (4) If the appointment of a private building surveyor is terminated under sub-section (3), a private building surveyor or municipal building surveyor must not complete the first private building surveyor's functions in respect of the building work without the written consent of the Commission.
- (5) This section applies despite anything to the contrary in the terms of the appointment or in any other Act or rule of law.

82. *Directions of Commission*

- (1) If—
 - (a) the Commission 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

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

the Commission 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 sub-section (1).

Penalty: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

(3) A direction under sub-section (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, deemed to have been done by the second building surveyor.

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 be in the prescribed form and must include—
 - (a) details of the proposed building work as at the date of the notice; and
 - (b) details of the proposed protection work setting out the nature, location, time and duration of the protection work.

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 in the prescribed form agreeing to the proposed protection work; or
 - (b) give to the owner and the relevant building surveyor a notice in the prescribed form—
 - (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.

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

86. *Effect of agreement*

If the adjoining owner agrees or is deemed 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 sub-section (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—
- (a) the adjoining owner agrees or is deemed to agree to the protection work; or
 - (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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

- (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

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- (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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

89. *Emergency procedures*

- (1) The Commission, 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 sub-section (1).
- (3) The owner must carry out emergency protection work in accordance with—
- (a) the declaration under sub-section (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: 100 penalty units, in the case of a natural person.
500 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 commencing any protection work in respect of an adjoining property, an owner must enter into a contract of insurance, in accordance with this section, against damage by the proposed protection work to the adjoining property and against 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: 100 penalty units, in the case of a natural person.
500 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 the contract of insurance with the adjoining owner before the commencement of the protection work.
- (4) The contract of insurance must be 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.

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 deemed 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 sub-section (1).

Penalty: 10 penalty units.

(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

- (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.

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

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.

Penalty: 10 penalty units.

- (2) The relevant building surveyor, within 7 days after receiving plans, drawings and specifications under sub-section (1), must give a copy of those documents to the relevant council.

Penalty: 10 penalty units.

PART 8—ENFORCEMENT OF SAFETY AND BUILDING STANDARDS**Division 1—Emergencies****102. *Emergency orders***

- (1) A municipal building surveyor may make an emergency order under this Division, if he or she 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 building, the land on which building work is being or is proposed to be carried out or a place of public entertainment.
- (2) The municipal building surveyor must cause an emergency order under sub-section (1) to be served on the owner and the occupier of the building, land or place concerned without delay after it is made.

103. *Contents of emergency orders*

- (1) An emergency order may require the owner or occupier of a building or land or a place of public entertainment to do any one or more of the following things within a specified time or times—
 - (a) evacuate the building, land or place;
 - (b) not to conduct or not to allow the conduct of a public entertainment or immediately cease to conduct a public entertainment;
 - (c) to 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.

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- (2) An emergency order may also prohibit—
- (a) the occupation of a building or place of public entertainment; or
 - (b) the use of a building or place of public entertainment for a public entertainment—
- for the period set out in the order, which must not exceed 48 hours.
- (3) An emergency order must be in writing and must contain any matters required by the regulations.

S. 104
amended by
No. 71/1995
s. 8 (as
amended by
No. 34/1997
s. 32).

104. *Duration of order*

Subject to section 103(2), an emergency order remains in force until it is complied with or it is cancelled by the municipal building surveyor under section 105 or the Building Appeals Board under section 142.

105. *Cancellation of emergency order*

A municipal building surveyor may cancel an emergency order by written notice given to the owner and to the occupier of the building, place or land concerned 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;
- (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.

107. *Actions by private building surveyors*

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.

108. *Contents and form of building notice*

- (1) A building notice may require the owner of a building or place of public entertainment to show cause within a specified period—
 - (a) why occupation of the building or place or its use for public entertainment should not be prohibited; or
 - (b) why the owner should not do either or both of the following things—
 - (i) evacuate the building, land or place;

(ii) 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) prohibit the occupation of a building; or
 - (b) prohibit the occupation of a place of public entertainment or its use for public entertainment; or
 - (c) require the owner of a building, land on which building work is being or is proposed to be carried out or place of public entertainment to do either or both of the

following things within a specified time or times—

- (i) evacuate the building, land or place;
- (ii) carry out building work, protection work or other work required by the regulations or to carry out a program of that work as directed in the 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 building work carried out in compliance with an order under section 111 in respect of the building work.

113. *Building orders—minor work*

Subject to section 107, a municipal building surveyor or a private building surveyor may make a building order requiring 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.

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 Commission and must take no further action in respect of the matter under this Part.
- (2) A referral under sub-section (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.
- (3) The relevant building surveyor is deemed to have refused a request under this section if he or she has not decided the request within the prescribed time.

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.

Penalty: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

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- (2) A person must not occupy a building, land or place in contravention of an emergency order or building order.

Penalty: 100 penalty units, in the case of a natural person.
500 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 defendant satisfies the court that he or she was unaware and ought not reasonably to have been aware of the fact that the public entertainment was the subject of an emergency order under this Part.

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*

- (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: 10 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*

- (1) A municipal building surveyor may request the assistance of a member of the police force, and a member of the police force 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.
- (2) A member of the police force may use reasonable force in carrying out a function under subsection (1).

125. *Relevant building surveyor to notify council*

- (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: 10 penalty units.
- (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.
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PART 9—LIABILITY

Division 1—Immunity

127. *Immunity for Commissioner and staff of Commission and members of and persons employed, appointed or engaged by public authority*

- (1) The Commissioner or a member of a public authority (other than a council) or any person who is employed, appointed or engaged by the Commission or a public authority (other than a council) is not personally liable for anything necessarily or reasonably 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) If the Commissioner or a person employed, appointed or engaged by the Commission does or omits to do anything—
 - (a) negligently in the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the person is carrying out a function under this Act or the regulations—

and the act or omission is necessary or reasonable in the carrying out or intended carrying out of that function, any liability that would, but for subsection (1), attach to the person because of that act or omission attaches instead to the Commission.
- (3) If a person who is a member of or employed, appointed or engaged by a public authority (other than a council) does or omits to do anything—

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- (a) negligently in the carrying out of a function under this Act or the regulations; or
 - (b) in the reasonable belief that the person is carrying out a function under this Act or the regulations—

and the act or omission is necessary or reasonable in the carrying out or intended carrying out of that function, any liability that would, but for subsection (1), attach to the person because of that act or omission attaches instead to the public authority.

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 liability

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 work⁹.

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
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(b) affects the operation of any immunity given by Division 1.

131. *Limitations on liability of persons jointly or severally liable*

- (1) After determining an award of damages in a building action, the court must give judgment against each defendant to that action who is found to be jointly or severally liable for damages for such proportion of the total amount of damages as the court considers to be just and equitable having regard to the extent of that defendant's responsibility for the loss or damage.
- (2) Despite any Act or rule of law to the contrary, the liability for damages of a person found to be jointly or severally liable for damages in a building action is limited to the amount for which judgment is given against that person by the court.
- (3) In this section—
"court" includes the Victorian Civil and Administrative Tribunal.

S. 131(3)
inserted by
No. 2/1996
s. 9,
substituted by
No. 52/1998
s. 311(Sch. 1
item 10.3).

132. *Rights to contribution*

Despite anything to the contrary in the **Wrongs Act 1958**, a person found to be jointly or severally liable for damages in a building action cannot be required to contribute to the damages apportioned to any other person in the same action or to indemnify any such other person in respect of those damages.

133. *Operation of Wrongs Act 1958*

Except as provided in section 132, nothing in this Division affects the operation of Part IV of the **Wrongs Act 1958**.

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.

134A. *Limitation on time when plumbing action may be brought*

S. 134A
inserted by
No. 39/1996
s. 6.

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

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

S. 135
substituted by
No. 91/1995
s. 139.

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- (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 sub-section (1) 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 sub-section (1) if the Minister is satisfied that it is appropriate to do so.
- (4) The Minister may revoke an order made under sub-section (1).
- (5) The Minister may consult with the Building Practitioners Board 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
 - (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.
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- (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).

136. Offence to work as building practitioner without required insurance

S. 136
substituted by
No. 91/1995
s. 140.

- (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: 100 penalty units, in the case of a natural person.
500 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.

Penalty: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

S. 137
amended by
No. 91/1995
s. 141.

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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a body corporate.

S. 137A
inserted by
No. 91/1995
s. 142.

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—

S. 137A(1)(a)
amended by
No. 52/1998
s. 311(Sch. 1
item 10.4).

(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;

(c) non-completion of the domestic building work;

S. 137A(1)(d)
amended by
No. 17/1999
s. 22(1).

(d) conduct by the builder in connection with the major domestic building contract for that work which contravenes section 52, 53, 55A or 74 of the Trade Practices Act 1974 of the Commonwealth or section 9, 11 or 12 of the **Fair Trading Act 1999**.

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- (2) An order under section 135 may require insurance cover of a kind referred to in—
- (a) sub-section (1)(a) to extend to each person who is or may become entitled to the benefit of any of those warranties; or
 - (b) sub-section (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.

- (3) A builder who holds a HIH policy within the meaning of Part 6 of the **House Contracts Guarantee Act 1987** is deemed for the purposes of sections 136(2) and 137 to be covered by the required insurance in relation to any building work to which the indemnity under Part 6 of the **House Contracts Guarantee Act 1987** applies.

S. 137A(3)
inserted by
No. 26/2001
s. 9(1).

- (3) A reference—
- (a) in any order made under section 135; or
 - (b) in any instrument or agreement which is required insurance—

S. 137A(3)
inserted by
No. 17/1999
s. 22(2).

to "section 11, 12 or 17 of the **Fair Trading Act 1985**", is, to the extent that it relates to any period on or after the commencement of section 22 of the **Fair Trading (Inspectors Powers and Other Amendments) Act 1999**, deemed to include a reference to "section 9, 11 or 12 of the **Fair Trading Act 1999**".

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—

S. 137B(1)(c)
substituted by
No. 52/1998
s. 311(Sch. 1
item 10.5).

-
- (i) a registered building practitioner; or
 - (ii) an architect registered under the **Architects Act 1991**; or
 - (b) except as provided in sub-section (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 the Victorian Civil and Administrative Tribunal under the **Domestic Building Contracts Act 1995**; or
 - (d) a building to which section 137E applies; or
 - (e) a building to which Part 2 of the **House Contracts Guarantee Act 1987** applies.
- (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
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-
- (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 sub-section (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 and Business Affairs within the meaning of the **Fair Trading Act 1999** to exempt the builder from the requirement to be covered by the required insurance in respect of that building work.
- (5) If, on an application under sub-section (4), the Director of Consumer and Business Affairs, in writing, exempts a builder from the requirement to be covered by insurance in respect of building work—
 - (a) the builder is not required to be covered by the required insurance in respect of that building work; and
 - (b) this section (except sub-section (2)(a)) applies to the sale of a home constructed under that major domestic building contract.

S. 137B(4)
amended by
Nos 17/1999
s. 22(3),
35/2000 s. 42.

S. 137B(5)
amended by
Nos 17/1999
s. 22(4),
35/2000 s. 42.

S. 137B(5A)
inserted by
No. 26/2001
s. 9(2).

(5A) It is and is to be taken always to have been sufficient compliance with sub-section (2)(c) if a certificate is or was given evidencing the existence of required insurance in the form of a HIH policy (within the meaning of Part 6 of the **House Contracts Guarantee Act 1987**) applying to the residence.

(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—

"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—

S. 137B(7) def.
of "prescribed
period"
amended by
Nos 2/1996
s. 10(1),
75/1998 s. 19.

- (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, 7 years (or such longer period (not exceeding 10 years) as is prescribed) after the date of commencement of the building work for the construction of 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;

"prescribed building practitioner" means—

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).

- (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) 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 sub-section (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 sub-section (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 sub-section (1)(a) to extend to each person who is or may become entitled to the benefit of any of those warranties.

137E. *Insurance requirements for home sold before completion*

S. 137E
inserted by
No. 91/1995
s. 142.

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—

Building Act 1993

Act No. 126/1993

s. 137E

S. 137E(a)
amended by
No. 2/1996
s. 11 (as
amended by
No. 34/1997
s. 33(1)).

-
- (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; or
- (b) Part 2 of the **House Contracts Guarantee Act 1987** applies to the construction of that home.

Penalty: 100 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—

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- (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.

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 Commission's failure, within a reasonable time, or refusal to consent to the termination of the building surveyor's appointment.
- (2) If under Part 6—
- (a) an owner has notified the Commission 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—

that owner or building surveyor may appeal to the Building Appeals Board against the Commission'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 requirement under section 87 to give more information.
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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.

143. Appeals against decisions of Building Practitioners Board

- (1) A person to whom a decision of the Building Practitioners Board under Division 1 or 2 of Part 11 applies may appeal against the decision to the Building Appeals Board.
- (2) The Commission may appeal to the Building Appeals Board against—
 - (a) a failure by the Building Practitioners Board, within a reasonable time, to inquire into a matter referred to it by the Commission; or
 - (b) a refusal by the Building Practitioners Board to hold an inquiry into a matter so referred to it; or
 - (c) a decision by the Building Practitioners Board on an inquiry into a matter so referred to it.
- (3) A person who requested the Building Practitioners Board to hold an inquiry under Division 2 of Part 11 may appeal to the Building Appeals Board against—
 - (a) a failure by the Building Practitioners Board, within a reasonable time, to hold that inquiry; or
 - (b) a refusal by the Building Practitioners Board to hold that inquiry; or
 - (c) a decision by the Building Practitioners Board on that inquiry.

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.

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
No. 71/1995
s. 11(1).

(1) Subject to sub-sections (2) 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.

S. 146(2)
amended by
No. 91/1995
s. 143.

(2) Unless the Building Appeals Board otherwise directs, an appeal under section 138, 139 or 174A, does not stay the operation of the decision under appeal.

S. 146(3)
inserted by
No. 71/1995
s. 11(2).

(3) An appeal under section 142(3) does not stay the operation of the emergency order to which the appeal relates.

147. *Fast track appeals*

(1) On an appeal under Division 1 (other than against a decision of the Building Practitioner's Board) 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.

- (2) A request under sub-section (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

S. 149(3A)
inserted by
No. 30/2001
s. 4.

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- (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 sub-section (2), on an appeal under section 140 the Building Appeals Board has the same powers as the Commission has under Part 6 to give directions concerning transitional and other arrangements following a consent given by the Commission.
- (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 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 36 either of them may refer the matter to the Building Appeals Board.

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 Commission; and
- (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) Sub-section (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
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- (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 Sector Management and Employment Act 1998**; or
 - (d) a public authority; or
 - (e) a municipal building surveyor.

S. 160(3)(c)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 160A
inserted by
No. 34/1997
s. 11.

160A. *Application for determination in respect of building design*

- (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 Commission.

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 Commission, 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

S. 162(1)(b)
amended by
No. 93/1995
s. 218(1)
(Sch. 2
item 1.2).

(b) if the application concerns a building included in the Heritage Register established under the **Heritage Act 1995**, must consider any recommendation received from the Heritage Council before the hearing of the application; and

S. 162(1)(c)
amended by
No. 71/1995
s. 12(1).

(c) may consult the municipal building surveyor; and

S. 162(1)(d)
inserted by
No. 71/1995
s. 12(1).

(d) may consult any other body or person.

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 sub-section (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—

S. 162(4)(a)
amended by
No. 71/1995
s. 13(1)(a).

(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

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- (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)(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.

S. 164(4)
amended by
No. 71/1995
s. 13(5).

(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—

- (a) grant approval; or
- (b) grant approval with conditions; or
- (c) refuse approval.

165. Lodging and recording of agreements

S. 165(1)
amended by
No. 71/1995
s. 13(6).

(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—

(a) lodge a copy of the agreement or variation with the Building Appeals Board or give notice of the termination to the Board; and

S. 165(1)(b)
substituted by
No. 85/1998
s. 24(Sch.
item 6.2).

(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)(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.
- (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.
- (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.

S. 165(3)
amended by
No. 85/1998
s. 24(Sch.
item 6.3).

S. 165(4)
inserted by
No. 85/1998
s. 24(Sch.
item 6.4).

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.

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- (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
 - (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) the Commissioner; or
 - (b) a member of the Building Practitioners Board; or
 - (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.

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—Registration

169. *Application for registration*

- (1) A natural person may apply to the Building Practitioners Board to be registered as a building practitioner.
- (2) The application must—
 - (a) be in writing; and
 - (b) state each category or class of registration sought; and
 - (c) be in accordance with the regulations; and
 - (d) be accompanied by the appropriate fee determined in accordance with the guidelines under Division 1 of Part 12; and
- (e) if, under Part 9 the applicant is required to be covered by insurance, include proof that—
 - (i) the applicant is covered by the required insurance; or
 - (ii) to the extent that a builder is engaged in domestic building work, the applicant is eligible to be covered by the required insurance.
- (3) The Board may ask the applicant 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. 169(2)(e)
substituted by
No. 91/1995
s. 144.

170. Registration

- (1) The Building Practitioners Board must register an applicant in each category or class applied for if it is satisfied that the applicant—
- (a) has complied with section 169; and
 - (b) either—
 - (i) holds an appropriate prescribed qualification; or
 - (ii) holds a qualification that the Board considers is, either alone or together with any further certificate, authority, experience or examination equivalent to a prescribed qualification; and
 - (c) is of good character; and
 - (d) has complied with any other condition prescribed for registration in that category or class.
- (2) The Building Practitioners Board may refuse to register an applicant if the requirements of sub-section (1) are not met.

* * * * *

S. 170(3)(4)
repealed by
No. 62/1998
s. 8(1).

- (5) In this section "**qualification**" means any degree, diploma, certificate, accreditation, authority, training, experience or examination (whether obtained inside or outside Victoria).

S. 170(5)
inserted by
No. 71/1995
s. 15.

171. Period of registration

- (1) Registration under this Part as a building practitioner lasts until cancelled under this Part.
- (2) Sub-section (1) does not take away from any provision about suspension of registration.

172. *Building practitioner's certificate*

(1) Without delay after a person is registered as a building practitioner, the Building Practitioners Board must cause a building practitioner's certificate to be issued and given to that person.

S. 172(2)
substituted by
No. 91/1995
s. 145(1).

(2) On each anniversary of his or her registration a registered building practitioner must—

S. 172(2)(a)
amended by
No. 18/1998
s. 4.

(a) pay to the Building Administration Fund the appropriate annual fee determined in accordance with guidelines under Division 1 of Part 12; and

(b) give written proof to the Board that—

(i) until the next anniversary of his or her registration or, subject to such conditions as the Board may impose, any lesser period approved by the Board, he or she will be covered by the required insurance; or

(ii) to the extent that a builder is engaged in domestic building work, he or she is eligible to be covered by the required insurance.

(3) The Board must suspend a person's registration under this Part if the person fails to comply with sub-section (2).

S. 172(4)
substituted by
No. 91/1995
s. 145(2).

(4) The suspension lasts until the person—

(a) pays the appropriate annual fee and any appropriate fee for late payment determined in accordance with guidelines under Division 1 of Part 12; and

-
- (b) gives the Board written proof that—
- (i) until the next anniversary of his or her registration or, subject to such conditions as the Board may impose, any lesser period approved by the Board, he or she will be covered by the required insurance (if any); or
 - (ii) to the extent that a builder is engaged in domestic building work, he or she is eligible to be covered by the required insurance (if any).

When that payment is made and that proof is given, the Board must revoke the suspension.

- (4A) Despite anything to the contrary in sub-section (4), the Board may decide not to revoke the suspension of a person who has been suspended for more than 3 years unless the Board is satisfied that the person—
- (a) is of good character; and
 - (b) had a satisfactory reason for the extended period of suspension.
- (5) As soon as possible after a registered building practitioner—
- (a) complies with sub-section (2); or
 - (b) has the suspension of his or her registration revoked under sub-section (4)—
- the Board must cause a new building practitioner's certificate to be issued and given to the person.
- (6) The building practitioner's certificate must—
- (a) state the person's name and category or class of registration; and

S. 172(4A)
inserted by
No. 71/1995
s. 16.

S. 172(8)
inserted by
No. 26/2001
s. 10(1).

S. 172(9)
inserted by
No. 26/2001
s. 10(1).

- (b) state that it is current for a specified period ending on the next anniversary of the practitioner's registration; and
 - (c) otherwise be in accordance with the regulations.
- (7) The Registrar may issue a duplicate building practitioner's certificate, if the registered building practitioner requests this, pays the appropriate prescribed fee, and satisfies the Registrar that the original certificate is lost or destroyed.
- (8) Despite sub-section (3), the Board may defer suspending a person's registration under this Part for failure to comply with sub-section (2) if the Board is satisfied that—
- (a) the person has applied for the required insurance; and
 - (b) the only reason for the failure is that the insurer has not made a decision on the application.
- (9) Sub-section (8) ceases to have effect on 31 July 2001.

173. *The Register*

- (1) The Registrar of the Building Practitioners Board must keep a Register, divided into the various prescribed categories and classes of building practitioners, of the names and categories or classes of registration of persons currently registered under this Part.
- (2) A registered building practitioner must notify the Board of any change in the information about the practitioner appearing in the Register without delay after the change occurs, and the Registrar must update the Register accordingly.

- (3) The Register must be in accordance with the regulations.

174. *Suspension where insurance ceases*

- (1) The Building Practitioners Board must suspend a person's registration under this Part if it becomes aware that the person has ceased to be covered under any insurance required under Part 9.
- (2) The Board must give the person written notice of the suspension of the person's registration under sub-section (1).
- (3) The suspension lasts until the person gives the Board written proof that he or she is covered by the required insurance and that the cover is provided until the next anniversary of his or her registration and, when that proof is given, the Board must revoke the suspension.
- (4) Despite sub-section (1), the Board may defer suspending a person's registration under that sub-section if the Board is satisfied that—
- (a) the person has applied for the required insurance; and
 - (b) the only reason for the person not being covered by the required insurance is that the insurer has not made a decision on the application.
- (5) Sub-section (4) ceases to have effect on 31 July 2001.

S. 174(4)
inserted by
No. 26/2001
s. 10(2).

S. 174(5)
inserted by
No. 26/2001
s. 10(2).

S. 174A
inserted by
No. 91/1995
s. 146.

S. 174A(1)
amended by
No. 26/2001
s. 11(1).

174A. *Suspension of registration where failure to comply with insurer's direction*

- (1) An insurer may apply to the Building Practitioners Board for the suspension of the registration of a domestic builder on the ground of a failure by the builder to comply with a reasonable direction of the insurer in respect of the completion or rectification of defective building work or any payment to be made to the insurer in respect of the completion or rectification of defective building work in accordance with required insurance or in accordance with a guarantee under the **House Contracts Guarantee Act 1987** or a failure by the builder to comply with a direction under section 44 of the **House Contracts Guarantee Act 1987**.
- (2) An application under sub-section (1) must—
 - (a) be in writing; and
 - (b) set out the terms of the direction to be complied with.
- (3) The Building Practitioners Board must notify the builder without delay of that application and advise the builder—
 - (a) that his or her registration under this Part may be suspended at the end of 28 days after the date of the notice unless the builder complies with the direction; and
 - (b) that he or she has a right to be heard by the Building Practitioners Board in respect of the application.
- (4) If a builder has not complied with the direction within 28 days after the date of the notice, the Building Practitioners Board, after giving the

builder an opportunity to be heard, may suspend the builder's registration under this Part.

- (5) The Board must give the builder written notice of the suspension of the builder's registration under sub-section (4).
- (6) The suspension lasts until—
 - (a) the Building Practitioners Board is satisfied that the builder has complied with the direction; or
 - (b) it is cancelled by the Building Appeals Board under section 143.

175. *Consequences of suspension of registration*

While a person's registration as a building practitioner is suspended under this Part, he or she is deemed not to be registered under this Part.

176. *Offences*

- (1) A person who is not registered in the appropriate category or class under this Part must not—
 - (a) take or use any of the following titles—
 - (i) building practitioner or registered building practitioner; or
 - (ii) building surveyor; or
 - (iii) building inspector; or
 - (iv) engineer, if the use of the title relates to the building industry; or
 - (v) draftsman, if the use of the title relates to the building industry; or
 - (vi) quantity surveyor; or
 - (vii) a prescribed title; or
 - (b) practise as a building inspector; or

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- (c) hold himself or herself out as being registered under this Part or in a particular category or class of registration; or
 - (d) hold himself or herself out as being qualified to practise as a building practitioner either generally or in a particular category or class of work.

Penalty: 50 penalty units.

- (2) A person who is not registered under this Part as a building surveyor must not practise as a building surveyor.

Penalty: 100 penalty units.

S. 176(2A)
inserted by
No. 91/1995
s. 147(1),
substituted by
No. 68/2001
s. 9.

- (2A) A builder must not carry out domestic building work of a particular category or class under a major domestic building contract unless the builder is registered by the Building Practitioners Board under this Part to carry out domestic building work of that category or class.

S. 176(3)
amended by
No. 91/1995
s. 147(2)(a).

- (3) Sub-sections (1), (2) and (2A) do not apply to the use by a partnership of a title that can only be used by a person registered under this Part or the carrying out by a partnership of work that can only be carried out by a person registered under this Part, if at least one of the partners is registered in the appropriate category or class under this Part.

S. 176(4)
amended by
No. 91/1995
s. 147(2)(a).

- (4) Sub-sections (1), (2) and (2A) do not apply to the use by a corporation of a title that can only be used by a person registered under this Part or the carrying out by a corporation of work that can only be carried out by a person so registered if at least one of the directors of the corporation is registered in the appropriate category or class under this Part.

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- (5) Sub-sections (1), (2) and (2A) do not apply to—
- (a) anything done in the course of official duties by—
- (i) an employee under Part 3 of the **Public Sector Management and Employment Act 1998**; 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 the law of the Commonwealth or a State or Territory of the Commonwealth other than Victoria; or
- (b) an organisation or member of staff of an organisation for the time being exempted by the Building Practitioners Board.
- (6) Despite anything to the contrary in this section, an architect registered under the **Architects Act 1991** may use the title "building practitioner" or "registered building practitioner".
- (7) If a person ("the first building practitioner") is registered as a building practitioner in a particular category or class and the work usually done by building practitioners in that category or class includes work also usually done by building practitioners registered in another category or class, the first building practitioner—
- (a) does not have to be registered in that other category or class; and
- (b) may do that work without being registered in that other category or class; and

S. 176(5)
amended by
No. 91/1995
s. 147(2)(a).

S. 176(5)(a)(i)
substituted by
No. 46/1998
s. 7(Sch. 1).

S. 176(7)(c)
amended by
No. 91/1995
s. 147(2)(b).

- (c) does not commit an offence under subsection (1) or (2A) because he or she does that work.

Division 2—Inquiries

177. Preliminary assessment

- (1) The Building Practitioners Board may appoint a person to report and make recommendations to it on whether or not it should hold an inquiry into the conduct or ability to practise of a registered building practitioner.
- (2) The appointment may be made on the initiative of the Board or after the Commission has referred a matter to the Board or a person has requested the Board to hold an inquiry.
- (3) The appointed person must investigate the matter referred by the Board, and report and make recommendations to the Board in accordance with the terms of the appointment.

178. Inquiries

- (1) The Building Practitioners Board may conduct an inquiry about the conduct or ability to practise of a registered building practitioner—
 - (a) on its own initiative; or
 - (b) on the recommendation of a person appointed under section 177; or
 - (c) on a referral by the Commission; or
- (ca) on a referral by the Victorian Civil and Administrative Tribunal; or

S. 178(1)(ca)
inserted by
No. 91/1995
s. 148,
substituted by
No. 52/1998
s. 311(Sch. 1
item 10.7).

(cb) on a referral by an insurer; or

S. 178(1)(cb)
inserted by
No. 91/1995
s. 148.

(d) at the request of any other person.

- (2) At least 7 days before the inquiry is to be conducted, the Board must cause to be served on the registered building practitioner written notice of the date, time and place of the inquiry, and whether it is to proceed by written submissions or hearing.
- (3) If the Board considers it in the interest of the safety of the public to do so then the Board may suspend the practitioner's registration pending the holding and determination of an inquiry.
- (4) Without delay after suspending a person's registration under sub-section (3), the Board must give the person written notice of the suspension.
- (5) The Board may at any time revoke a suspension under this section and must without delay give notice of the revocation to the registered building practitioner.

179. *Inquiry into conduct*

- (1) On an inquiry into the conduct of a registered building practitioner, the Building Practitioners Board may make any one or more of the decisions mentioned in sub-section (2) if it finds that the registered building practitioner—
 - (a) is guilty of unprofessional conduct; or
 - (b) has failed to comply with this Act or the regulations; or
 - (c) has failed to comply with a determination of the Building Appeals Board or a direction of the Commission; or

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- (d) has been guilty of conduct in relation to his or her practice as a building practitioner which—
- (i) is constituted by a pattern of conduct or by gross negligence or gross incompetence in a particular matter; and
 - (ii) shows that he or she is not a fit and proper person to practise as a building practitioner; or
- (e) has employed or engaged to do, on his or her behalf, work of a kind that can only be done by a person registered under this Part in a particular category or class, a person who is not so registered; or
- (f) has obtained his or her registration under this Part or any required insurance by fraud or misrepresentation; or
- (fa) has failed to comply with a reasonable direction of an insurer in respect of the completion or rectification of defective building work or any payment to be made to the insurer in respect of the completion or rectification of defective building work in accordance with required insurance or in accordance with a guarantee under the **House Contracts Guarantee Act 1987** or has failed to comply with a direction under section 44 of the **House Contracts Guarantee Act 1987**; or
- (g) has had his or her authority to practise as a building practitioner in a place outside Victoria cancelled or suspended otherwise than for failure to renew that authority; or
- (h) has failed to comply with an undertaking given to the Board under this Division.

S. 179(1)(f)
amended by
No. 91/1995
s. 149(a).

S. 179(1)(fa)
inserted by
No. 91/1995
s. 149(b),
amended by
No. 26/2001
s. 11(2).

- (2) The following are the decisions which the Board may make—
- (a) to reprimand the person;
 - (b) to require the person to pay the costs of or incidental to the inquiry;
 - (c) to require the person to give an undertaking not to do a specified thing;
 - (d) to impose a fine of not more than 50 penalty units;
 - (e) to suspend registration for not more than 3 years;
 - (f) to cancel registration.
- (3) If satisfied that there is good reason to do so, the Board may at any time revoke a suspension under this section, and must without delay give written notice of that revocation to the registered building practitioner.

S. 179(2)(d)
amended by
No. 34/1997
s. 12.

179A. *Inquiries into conduct of building practitioners who are no longer registered*

S. 179A
inserted by
No. 68/2001
s. 10.

- (1) A reference to a registered building practitioner in sections 177, 178 and 179 in relation to the holding of an inquiry into the conduct of a building practitioner includes a reference to any person who was a registered building practitioner at the time of the conduct, even though that person's registration is suspended at the time any action is taken under those sections.
- (2) Conduct that may be inquired into for the purposes of sections 177, 178 and 179 in relation to a person whose registration as a registered building practitioner has been suspended is limited to conduct that occurred during the 3 year period that immediately preceded the suspension.

180. *Inquiry into ability to practise*

- (1) On an inquiry into a registered building practitioner's ability to practise, if the Building Practitioners Board is satisfied that the practitioner is incapable of practising it may—
 - (a) suspend the person's registration for not more than 3 years; or
 - (b) cancel the person's registration.
- (2) The Board may at any time revoke the suspension of a person's registration under this section if it is satisfied that he or she is again capable of practising as a building practitioner and must without delay give written notice of the revocation to the building practitioner.

S. 180A
inserted by
No. 91/1995
s. 150.

180A. *Complaints concerning builders etc. are privileged*

If a person—

- (a) lodges a complaint with the Board or requests an inquiry under section 178; or
- (b) produces or gives a document or any information or evidence to the Board or a person conducting an investigation under section 177—

the person is not liable in any way for any loss, damage, or injury suffered by another person by reason only of the lodging of that complaint or the requesting of the inquiry or the production or giving of that document, information or evidence.

S. 181
amended by
No. 34/1997
s. 13.

181. *Costs*

If on an inquiry the Building Practitioners Board makes a finding favourable to a registered building practitioner, it may pay that practitioner's reasonable costs of and incidental to the inquiry.

182. Decisions

- (1) Without delay after the Building Practitioners Board makes a decision on an inquiry, the Registrar must give written notice of the decision to—
- (a) the registered building practitioner who is the subject of the inquiry; and
 - (b) the Commission, if it referred the matter to the Board; and
 - (ba) the Victorian Civil and Administrative Tribunal, if it referred the matter to the Board; and
 - (bb) an insurer, if the insurer referred the matter to the Board; and
 - (c) any person who requested the Board to hold the inquiry.
- (2) Any amount which the Board requires a registered building practitioner to pay by way of costs or a fine under this Division may be recovered as a debt due to the Board in any court of competent jurisdiction.
- (3) If the Board is aware that a registered building practitioner is a member of a professional association or is employed by a particular person, the Board must cause notice of any decision concerning the practitioner made under section 179 or 180 to be given to that association and employer as soon as possible after the decision takes effect or is confirmed on appeal.

S. 182(1)(ba)
inserted by
No. 91/1995
s. 151,
substituted by
No. 52/1998
s. 311(Sch. 1
item 10.8).

S. 182(1)(bb)
inserted by
No. 91/1995
s. 151.

Division 3—The Building Practitioners Board

183. *Establishment and functions of Board*

- (1) There is established by this Act a Board to be called the Building Practitioners Board.
- (2) The following are the functions of the Board—
 - (a) to administer a registration system for building practitioners;
 - (b) to supervise and monitor the conduct and ability to practise of registered building practitioners;
 - (c) to make recommendations to the Minister about the qualifications for registration;
 - (d) any other functions conferred by this Act or the regulations.

184. *Membership of the Board*

- (1) The members of the Building Practitioners Board are to be appointed by the Governor in Council on the Minister's recommendation.
- (2) Of the members of the Board—
 - (a) one is to be a person appointed as chairperson; and
 - (b) the other members are to be appointed in accordance with this section.
- (3) One member of the Board is to be appointed in respect of each category of registered building practitioner, and that member is to be chosen by the Minister from a list of three names submitted to the Minister by the organisation which, in the Minister's opinion, is the major professional association for that category.

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- (3A) An additional member may be appointed in respect of the category of builder, and that member is to be chosen by the Minister from a list of three names submitted to the Minister by an organisation which, in the Minister's opinion, is a major professional association for that category. **S. 184(3A) inserted by No. 2/1996 s. 12(1).**
- (4) If in the Minister's opinion there are two or more major professional associations for a category of registered building practitioner, the Minister may request each of them to submit a list in accordance with sub-section (3) or (3A), and may choose the member for that category from the lists given to the Minister. **S. 184(4) amended by No. 2/1996 s. 12(2)(a).**
- (5) If there is or is about to be a vacancy in the membership of the Board under sub-section (2)(b), the Minister may request an organisation referred to in sub-section (3) or (3A) or each organisation referred to in sub-section (4) (as the case requires) to submit a list of 3 names within a period specified in the request. **S. 184(5) amended by No. 2/1996 s. 12(2)(b).**
- (6) The Minister may nominate a person for appointment under sub-section (2)(b) without considering a list of names if an organisation requested to submit that list has not complied with the request.
- (7) A person cannot at the same time be a member of the Building Practitioners Board and be the Commissioner or a member of the Building Appeals Board.

185. Co-opted members

- (1) To assist in considering a particular matter, the Building Practitioners Board may co-opt any person to be a member of the Board.
- (2) The Board may at any time remove a co-opted member from office.

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- (3) The provisions of Schedule 3 applying to members of the Building Practitioners Board appointed by the Governor in Council also apply to co-opted members.

186. *Sub-committees*

- (1) The Building Practitioners Board may establish and dissolve sub-committees and define their functions, procedure and membership.
- (2) A member of a sub-committee does not have to be a member of the Board.
- (3) A member of a sub-committee is entitled to receive—
- (a) any remuneration; and
 - (b) any travelling or other allowances—
- fixed from time to time by the Minister in respect of that member.

S. 186A
inserted by
No. 34/1997
s. 14,
amended by
No. 18/1998
s. 5 (ILA
s. 39B(1)).

186A. *Delegation*

- (1) The Building Practitioners Board may, by instrument, delegate the Board's functions under section 172(3) and (4) to the chairperson or a member of the Board.
- (2) The Building Practitioners Board may, by instrument, delegate the Board's functions under section 170(1) to the Registrar of the Board.

S. 186A(2)
inserted by
No. 18/1998
s. 5.

187. *Membership and procedure—general*

- (1) Subject to sub-sections (2) and (3), Parts 1 and 2 of Schedule 3 apply to the membership and procedure of the Building Practitioners Board.
- (2) Clause 8 of Schedule 3 applies to the Building Practitioners Board—
- (a) only in respect of its functions under Division 2 of this Part; and

S. 187(2)
substituted by
No. 34/1997
s. 15.

- (b) as if that clause requires that one of the members of the panel is to be the member of the Board appointed in respect of the category of registered building practitioner to which the person who is the subject of the Board's inquiry belongs; and
 - (c) otherwise in the same way as it applies to the Building Appeals Board.
- (3) Clause 15 of Schedule 3 applies to the Building Practitioners Board in the same way as it applies to the Building Appeals Board.
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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 Commission; 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 Fire Officer of the Metropolitan Fire Brigades under the **Metropolitan Fire Brigades Act 1958**, the Chief Officer under the **Country Fire Authority Act 1958** 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.

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- (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.
- (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 sub-section (1)(a) about those fees.
- (5) The Building Practitioners Board, in determining fees under Division 1 of Part 11, must have regard to the guidelines under sub-section (1)(a) about those fees.
- (6) The Commission must have regard to the guidelines under sub-section (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 sub-section (1)(c) or (d) in carrying out a function under this Act or the regulations.

S. 188(2A)
inserted by
No. 91/1995
s. 152,
amended by
No. 52/1998
s. 311(Sch. 1
item 10.9).

188A. *Decision guidelines on design and siting of single dwellings*¹⁰

- (1) The Minister may from time to time issue guidelines relating to the design and siting of single dwellings.
- (2) Without limiting sub-section (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;

S. 188A
inserted by
No. 30/2001
s. 3.

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- (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.

189. Delegation

The Minister may by instrument delegate to the Commission any of the Minister's functions under this Act, other than this power of delegation.

190. Minister may require Commission 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 that for specified building work or a specified building or land, any or all of the functions of a municipal building surveyor under this Act and the regulations are to be carried out by the Commission¹¹.
- (2) A declaration under sub-section (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 sub-section (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 sub-section (1) as if—
 - (a) any reference to a council were a reference to the person or body specified in the declaration; and
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- (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 sub-section (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 sub-section (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

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- (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.

Division 2—The Building Commission, the Building Administration Fund and the Building Permit Levy

Pt 12 Div. 2
(Heading)
amended by
No. 68/2001
s. 3(2).

193. Establishment of the Commission

- (1) There is established by this Act a body to be called the Building Commission.
- (2) The Commission—
- (a) is a body corporate with perpetual succession; and
 - (b) shall have an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) may acquire, hold and dispose of real and personal property for the purpose of performing its functions; and
 - (e) may do and suffer all acts and things that bodies corporate may by law do and suffer and that are necessary or incidental for the performance of its functions.
- (3) The official seal of the Commission must be kept in the custody that the Commission directs and must not be used except as authorised by the Commission.
- (4) All courts must take judicial notice of the official seal of the Commission affixed to a document and must presume that it was duly affixed.

S. 193(1)
amended by
No. 68/2001
s. 3(3).

194. Constitution of the Commission

- (1) The Commission is constituted by a Commissioner who is to be appointed by the Governor in Council on the Minister's recommendation.
- (2) The Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's permission.
- (3) If the Commissioner was immediately before his or her appointment a member of a statutory superannuation scheme within the meaning of the **Superannuation (Public Sector) Act 1992**, he or she continues while so appointed, subject to the Act under which the statutory superannuation scheme is created, to be a member of that scheme.
- (4) Subject to sub-section (5), clauses 1 to 6 and 9 of Schedule 3 apply to the Commissioner in the same way as they apply to a chairperson or member of a Board.

S. 194(5)
repealed by
No. 42/1995
s. 224(Sch. 2
item 6).

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195. Accountability of the Commission

- (1) The Commission is subject to the direction and control of the Minister. Those directions may be general or specific.
- (2) In giving a direction under sub-section (1) the Minister may have regard to any advice of the Building Advisory Council.
- (3) The Commission must give the Minister any information and assistance that the Minister requires and the Commission is able to give.

196. Functions of the Commission

The following are the functions of the Commission—

- (a) to keep under regular review the administration and effectiveness of this Act and the regulations;
- (b) to advise the Minister on amendments to improve the administration and effectiveness of this Act and the regulations;
- (c) to advise the Minister on the impact on the building industry of other Acts and regulations;
- (d) to seek the views of the building industry and other interested groups on the effectiveness of this Act and the regulations;
- (e) to co-ordinate the preparation of draft proposals for regulations under this Act;
- (f) to conduct or promote research into matters relating to the regulation of the building industry;
- (g) to promote better building standards both nationally and internationally;
- (h) to liaise with any organisation established to promote national building standards;
- (i) to disseminate information on matters concerning building standards;
- (ia) to disseminate information on matters relating to the registration of cooling tower systems;
- (j) to provide information and training to assist persons and bodies in carrying out functions under this Act or the regulations;

S. 196(ia)
inserted by
No. 85/2000
s. 6.

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- (k) to monitor the system of collection of the building permit levy and advise the Minister about its effectiveness;
 - (l) to charge and collect fees (determined in accordance with this Act) for information and training services provided by it;
 - (m) to administer the Building Administration Fund;
 - (n) to accept any gifts or donations of money or other property by deed, will or otherwise;
 - (o) to advise the Minister on any matter referred to it by the Minister;
 - (p) any other function conferred by or under this or any other Act or under any agreement to which the State of Victoria is a party.

197. *Delegation*

The Commission may, by instrument, delegate any of its functions to any person, except this power of delegation, any power delegated to it by the Minister, or its powers under section 198.

198. *Supervision of building surveyors*

- (1) If a matter concerning a registered building surveyor comes to the notice of the Commission and it is within the jurisdiction of the Building Practitioners Board, the Commission may refer the matter to that Board.
- (2) If the Commission considers it necessary to do so for the proper administration of this Act or the regulations, it 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.
- (3) The Commission cannot under sub-section (2)(b) vary a time limit prescribed by this Act or the regulations.
- (4) If the Commission considers it necessary to do so for the proper administration of this Act or the regulations, it may recommend to the person who appointed a municipal building surveyor or private building surveyor that the person take action specified by the Commission.
- (5) Before making a direction or recommendation under this section, the Commission must give written notice of its intention to the municipal building surveyor or private building surveyor and give the building surveyor a reasonable opportunity to make submissions about the matter.
- (6) The Commission must give a copy of any direction or recommendation under this section to the municipal building surveyor or private building surveyor concerned.

199. *Special powers of the Commission as building surveyor*

- (1) In addition to any function of a municipal building surveyor conferred on the Commission under Division 1, the Commission may carry out the functions of a municipal building surveyor under this Act and the regulations—
- (a) in relation to any application made to the Commission under Part 3; and
 - (b) in relation to any matter referred to the Commission by a private building surveyor under Part 8; and

S. 199(1)(a)
amended by
No. 34/1997
s. 16.

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- (c) in relation to a place of public entertainment (other than a prescribed temporary structure) for which the Commission has issued an occupancy permit.
- (2) In carrying out a function of a municipal building surveyor conferred on the Commission under Division 1 or sub-section (1), the Commission has the same powers that the municipal building surveyor would have to carry out that function.
- (3) A determination of the Commission in carrying out a function of a municipal building surveyor must be given effect to as if it were the determination of a municipal building surveyor.
- (4) If, in carrying out any function of a municipal building surveyor, the Commission carries out any work or takes any action under Part 8, the Commission 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 Commission; and
 - (b) apply any sum or part of any sum for which a bond or undertaking is deposited with the Commission under a condition imposed on a permit under section 22 towards the costs of carrying out the work or taking the action.
- (5) The Commission is, and may carry out the functions of, the relevant building surveyor under Part 5 in relation to—
- (a) an application to the Commission for an occupancy permit under section 53(2); and
 - (b) the issue of that permit; and
 - (c) the amendment or cancellation of that permit.

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- (6) If, under this section, the Commission carries out any function in relation to building work or a building or land, a municipal building surveyor or private building surveyor must not carry out that function in respect of that building work, building or land.
- (7) If an application is made to the Commission under this Act for a permit or temporary approval or an amendment to a permit or approval, section 66 or clause 1 of Schedule 2 (as the case may be) applies as if any reference in that section or clause to the **Local Government Act 1989** were a reference to guidelines under section 188 of this Act.

200. Building Administration Fund

- (1) The Commission must establish a fund to be called the Building Administration Fund.
- (2) The fund is divided into—
- (a) the general account; and
 - (b) the building permit levy account; and
 - (c) the domestic building account; and
 - (d) the cooling tower systems account; and
 - (e) the domestic building (HIH) indemnity account.

S. 200(2)(b)
amended by
No. 91/1995
s. 153(1).

S. 200(2)(c)
inserted by
No. 91/1995
s. 153(1),
amended by
No. 85/2000
s. 7(1).

S. 200(2)(d)
inserted by
No. 85/2000
s. 7(1),
amended by
No. 26/2001
s. 12(1)(a).

S. 200(2)(e)
inserted by
No. 26/2001
s. 12(1)(b).

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- S. 200(3)
amended by
No. 26/2001
s. 12(2).
- (3) Amounts paid into the fund on account of the building permit levy payable under section 201(1) must be credited to the building permit levy account.
- S. 200(3A)
inserted by
No. 91/1995
s. 153(2).
- (3A) The following amounts paid into the fund must be credited to the domestic building account—
- (a) any fees or fines received or recovered by or on behalf of the Building Practitioners Board in respect of the registration or discipline of builders engaged in domestic building work; and
- (b) any costs or fees received by or on behalf of the Building Appeals Board in respect of any matter relating to the registration or discipline of builders engaged in domestic building work.
- S. 200(3B)
inserted by
No. 85/2000
s. 7(2).
- (3B) Any fees received by, or on behalf of, the Commission under Part 5A must, once they have been paid into the fund, be credited to the cooling tower systems account.
- S. 200(3C)
inserted by
No. 26/2001
s. 12(3).
- (3C) Amounts paid into the fund on account of the building permit levy payable under section 201(1A) must be credited to the domestic building (HIH) indemnity account.
- (4) Other amounts paid into the fund must be credited to the general account.
- S. 200(5)
substituted by
No. 91/1995
s. 153(3).
- (5) Amounts paid out of the fund may be paid—
- (a) out of the general account or the building permit levy account, as the Commission considers appropriate; or
- (b) out of the domestic building account in accordance with sub-section (7A), if authorised by the Minister and the Minister administering the **Domestic Building Contracts Act 1995**; or
- S. 200(5)(b)
amended by
Nos 52/1998
s. 311(Sch. 1
item 10.9),
85/2000
s. 7(3).
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- (c) out of the cooling tower systems account in accordance with sub-section (7B) or 7C; or
- S. 200(5)(c)
inserted by
No. 85/2000
s. 7(3),
amended by
No. 26/2001
s. 12(4)(a).
- (d) out of the domestic building (HHH) indemnity account in accordance with sub-section (7D).
- S. 200(5)(d)
inserted by
No. 26/2001
s. 12(4)(b).
- (6) There must be paid into the fund—
- (a) all money received or recovered by or on behalf of the Minister under this Act or the regulations; and
- (b) all money received or recovered by or on behalf of the Commission under any Act or regulations; and
- (c) any money received by a municipal building surveyor or private building surveyor on account of the building permit levy; and
- (d) any fees or fines received or recovered by or on behalf of the Building Practitioners Board; and
- (e) any costs or fees received by or on behalf of the Building Appeals Board; and
- (f) income from the investment of the fund; and
- (g) money appropriated by Parliament for the purposes of the fund; and
- (h) any other money required or authorised by or under this or any other Act to be paid into the fund.
- (7) There must be paid out of the fund—
- (a) any amounts required to carry out the functions of the Commission; and
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(b) any costs and expenses incurred in the administration and enforcement of this Act or the regulations, including, but not limited to—

(i) the remuneration and allowances of the Commissioner and members of the Building Appeals Board, the Building Practitioners Board, the Building Advisory Council and the Building Regulations Advisory Committee; and

(ii) the costs incurred in appointing or employing any person or using the services of any person for the purposes of this Act or the regulations; and

(ba) in accordance with sub-section (7A), 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 the Victorian Civil and Administrative Tribunal in respect of proceedings under that Act; and; and

(bb) in accordance with sub-section (7B)—

(i) any costs and expenses incurred by the Commission in the administration of Part 5A; and

(ii) any costs and expenses incurred by the Commission in carrying out its functions under section 196(ia); and

(c) any amounts authorised by the Minister to be paid out of the fund for a purpose relating to the building industry and approved by the Minister; and

(d) any other amounts authorised to be paid out of the fund by or under this or any other Act.

S. 200(7)(ba) inserted by No. 91/1995 s. 153(4), substituted by No. 52/1998 s. 311(Sch. 1 item 10.10), amended by No. 85/2000 s. 7(4).

S. 200(7)(bb) inserted by No. 85/2000 s. 7(4).

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| <p>(7A) Amounts may be paid out of the domestic building account towards—</p> <p style="margin-left: 40px;">(a) the costs and expenses referred to in sub-section (7)(b) to the extent that they relate to the registration and discipline of builders engaged in domestic building work; and</p> <p style="margin-left: 40px;">(b) the costs and expenses referred to in sub-section (7)(ba).</p> | <p>S. 200(7A)
inserted by
No. 91/1995
s. 153(5).</p> |
| <p>(7B) Amounts may be paid out of the cooling tower systems account towards the costs and expenses referred to in sub-section (7)(bb), if authorised by the Commission.</p> | <p>S. 200(7B)
inserted by
No. 85/2000
s. 7(5).</p> |
| <p>(7C) Amounts may be paid out of the cooling tower systems account to the Consolidated Fund, if authorised by the Minister and the Minister administering the Health Act 1958.</p> | <p>S. 200(7C)
inserted by
No. 85/2000
s. 7(5).</p> |
| <p>(7D) Any amount standing to the credit of the domestic building (HIH) indemnity account at the end of each month must be paid within 7 days to the Domestic Building (HIH) Indemnity Fund established under Part 6 of the House Contracts Guarantee Act 1987.</p> | <p>S. 200(7D)
inserted by
No. 26/2001
s. 12(5).</p> |
| <p>(8) The Commission may invest any part of the fund not immediately required for the purposes of the fund in any manner approved by the Treasurer.</p> | |
| <p>(9) The Commission 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 fund.</p> | <p>S. 200(9)
inserted by
No. 18/1998
s. 6.</p> |

201. *Building permit levy*

- (1) There is imposed by this Act a building permit levy of .064 cents in every dollar of the cost of building work for which a building permit is sought.

S. 201(1A)
inserted by
No. 71/1995
s. 17,
amended by
No. 34/1997
s. 17(1).
substituted by
No. 26/2001
s. 13(1).

(1A) There is imposed by this Act, in addition to the levy imposed by sub-section (1), a building permit levy of .032 cents in every dollar of the cost of domestic building work for which a building permit is sought.

S. 201(1B)
inserted by
No. 26/2001
s. 13(1).

(1B) A building permit levy is not payable under sub-section (1) or (1A) in relation to an application for a building permit if the cost of the building work is \$10 000 or less.

- (2) The levy is payable by the applicant for the building permit and must be paid before the building permit can be issued.
- (3) Sub-section (2) does not stop the application being considered pending payment of the levy.
- (4) In addition to anything else required to be stated in an application for a building permit, that application must state—
 - (a) 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, sufficient information to enable the relevant building surveyor to estimate the cost of the building work (including the cost of labour and materials).
- (5) The relevant building surveyor must estimate the cost of the building work for which the application is sought (including the cost of labour and materials), having regard to the information given under sub-section (4)(a) or (b), and must without delay give written notice of the estimate and the amount of levy payable to the applicant.

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- (6) Without limiting the other circumstances in which a relevant building surveyor can refuse application for a permit, the relevant building surveyor must refuse an application for a building permit if—
- (a) the levy is not paid at the end of 90 days after the building surveyor gives the applicant written notice of the estimated cost of the building work; or
 - (b) the building surveyor is satisfied that the contract price for the 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 does not comply with sub-section (4)(b) or contains statements about the cost of the building work that are false or misleading in a material respect.
- (7) 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 levy; and
 - (ii) amounts of levy forwarded to the Commission by the building surveyor; and
 - (b) make those records available to be inspected by or on behalf of the Commission; and
 - (c) pay the amounts received by the building surveyor into the Building Administration Fund; and

**S. 201(7)
substituted by
No. 34/1997
s. 17(2).**

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- (d) give to the Commission periodic returns setting out—
- (i) whether or not the building surveyor has received an amount of levy in the return period; and
 - (ii) if an amount has been received, the amounts received and the amounts forwarded to the Commission; and
 - (iii) any other prescribed information.

S. 201(7A)
inserted by
No. 34/1997
s. 17(2).

- (7A) On the application of a relevant building surveyor, the Commission may exempt the building surveyor from the requirements of sub-section (7)(d) for a specified period if the Commission is satisfied that due to illness or other reasonable cause the building surveyor will not be in receipt of any amount of levy during that period.

S. 201(7B)
inserted by
No. 34/1997
s. 17(2).

- (7B) An application and an exemption under sub-section (7A) must be in writing.

(8) The Commission may recover money payable to the Building Administration Fund under sub-section (7) as a debt due to the Commission in any court of competent jurisdiction.

(9) The levy is not payable in respect of an application for a building permit made before the commencement of this section.

S. 201(10)
inserted by
No. 26/2001
s. 13(2).

- (10) The additional levy imposed by sub-section (1A) is not payable in respect of an application for a building permit made before the commencement of section 13 of the **House Contracts Guarantee (HH) Act 2001**.

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Ss 202–204
repealed by
No. 31/1994
s. 4(Sch. 2
item 9).**205. Staff and other appointed persons**

- (1) There may be appointed or employed—
- (a) a Registrar of the Building Appeals Board;
and
 - (b) a Registrar of the Building Practitioners
Board; and
 - (c) any other staff and persons necessary for the
purposes of this Act.
- (2) A person appointed or employed under sub-
section (1) may at the discretion of the
Commission be appointed or employed—
- (a) under Part 3 of the **Public Sector
Management and Employment Act 1998**;
 - (b) as an employee of the Commission; or
 - (c) under contract with the Commission.
- (3) A person appointed or employed under sub-
section (1) to whom sub-section (2)(b) or (c)
applies is not subject to the **Public Sector
Management and Employment Act 1998** in
respect of that appointment or employment.

S. 205(2)(a)
substituted by
No. 46/1998
s. 7(Sch. 1).S. 205(3)
amended by
No. 46/1998
s. 7(Sch. 1).**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 procedure¹²

(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).

(aa) one is to be the Commissioner; and

S. 207(2)(ab)
inserted by
No. 75/1998
s. 4(1).

(ab) one is to be the Plumbing Industry Commissioner; and

(b) one is to be nominated by the Royal Australian Institute of Architects, Victorian Chapter; and

(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

S. 207(2)(e)
amended by
No. 34/1997
s. 18.

(e) one is to be nominated by the Property Council of Australia, Victoria Division; and

S. 207(2)(f)
amended by
No. 71/1995
s. 18(1).

(f) one is to be nominated by the Australian Institute of Building Surveyors, Victorian Chapter; and

S. 207(2)(g)
inserted 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.

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- (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.
- (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**.

S. 207(6)
inserted by
No. 18/1998
s. 7(2).

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*¹³

- (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 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**;
 - (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;

S. 210(2)(b)
amended by
No. 101/1994
s. 64.

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- (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; **S. 210(2)(h) amended by No. 34/1997 s. 30(a).**
- (i) one is to be chosen from a list of 3 names submitted by the Property Council of Australia, Victoria Division; **S. 210(2)(i) amended by No. 34/1997 s. 18.**
- (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. **S. 210(2)(l) inserted by No. 71/1995 s. 19(1).**
- (3) If there is or there is to be a vacancy in the membership of the Building Regulations Advisory Committee under sub-section (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.

211. *Functions of Committee*

The following are the functions of the Building Regulations Advisory Committee—

- (a) to advise the Minister on draft regulations prepared under this Act, and in particular the extent to which they promote the objects 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.

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.
- (2) Nothing in this section limits a council's powers to act outside its municipal district.

S. 213
repealed by
No. 76/1997
s. 23.

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214. *Agreements with other councils or the Commission*

- (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 Commission in respect of the carrying out by the Commission or the municipal building surveyor of the second council of any of the functions under this Act or the regulations of the municipal building surveyor of the first council.
- (2) If a council enters into an agreement with another council under sub-section (1) in respect of the carrying out of the functions of a municipal building surveyor, the municipal building surveyor of the second council is deemed, 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.
- (3) If the Commission enters into an agreement with a council under sub-section (1) in respect of the carrying out of the functions of a municipal building surveyor, the Commission is deemed, 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.
- (4) Nothing in this section prevents the Commission 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
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regulations of the municipal building surveyor of the council.

- (2) A private building surveyor who enters into an agreement with a council under sub-section (1)—
- (a) is deemed 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.

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) Sub-section (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.

S. 216A
inserted by
No. 18/1998
s. 8.

216A. Exemption from functions in relation to certain permits

- (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.

Division 6—The Crown and public authorities

217. *Application of Act to the Crown and public authorities*

- (1) Subject to sub-section (2), Parts 2, 3, 4, 5, 5A, 5B, 7, 9, 10, 11, and 12A and section 201 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(1)
amended by
Nos 39/1996
s. 7, 34/1997
s. 19(1),
85/2000 s. 8.

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.

(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 sub-sections (1) to (3) makes the Crown or a public authority liable for any offence under this Act or the regulations.

S. 217(5)
substituted by
No. 34/1997
s. 19(3).

(5) Nothing in sub-sections (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. 218
repealed by
No. 34/1997
s. 20.

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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 for Finance, after consulting the Minister administering this Act, may prepare and publish guidelines to promote better building standards for buildings owned by 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 sub-section (1).
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Pt 12A
(Headings
and ss 221A–
221ZZW)
inserted by
No. 39/1996
s. 5.

PART 12A—PLUMBING WORK¹⁴

Division 1—Preliminary Matters

S. 221A
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. By and large this Part operates separately from the rest of this Act.

S. 221B
inserted by
No. 39/1996
s. 5.

221B. Definitions applying to this Part

(1) In this Part—

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 "Comm-
ission"
inserted by
No. 75/1998
s. 5(a)(ii).

"Commission" means the Plumbing Industry Commission established by section 221ZZR;

"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;

"insolvent under administration" means a person who is a bankrupt in respect of a bankruptcy from which the person has not been discharged and includes—

- (a) a person who has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) where the terms of the deed have not been fully complied with; and
- (b) a person whose creditors have accepted a composition under Part X of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction) where a final payment has not been made under that composition;

"licensed plumber" means a person who is licensed by the Plumbing Industry Commission 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 "licensed plumber" amended by No. 75/1998 s. 5(a)(iii).

"plumbing apprentice" means an apprentice within the meaning of the **Vocational Education and Training Act 1990** in a plumbing trade;

S. 221B(1) def. of "plumbing apprentice" amended by No. 80/1997 s. 55(Sch. 1 item 1).

S. 221B(1) def. of "plumbing laws" amended by No. 99/1997 s. 121(1).

"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 the **Water Industry Act 1994**; and
- (d) any regulations made under this Part or any Act listed in paragraph (b) or (c);

"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;

S. 221B(1) def. of "registered plumber" amended by No. 75/1998 s. 5(a)(iii).

"registered plumber" means a person who is registered by the Plumbing Industry Commission 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 "Registrar" substituted by No. 75/1998 s. 5(a)(iv).

"Registrar" means any person appointed or employed to be the Registrar of the Commission under section 221ZZX;

"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;

"water authority" means—

- (a) a company that holds a water licence or a water and sewerage licence under the **Water Industry Act 1994**; or
- (b) an Authority that has a water district or a sewerage district under the **Water Act 1989**.

(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.

(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

S. 221B(3)
substituted by
No. 75/1998
s. 7(1).

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 to "him or her" is to be read as including a reference to "it", if the context permits.

S. 221C
inserted by
No. 39/1996
s. 5.

221C. Meaning of "plumbing work"

- (1) In this Part, "**plumbing work**" means any plumbing work that the regulations state is plumbing work to which this Part applies.
- (2) Any reference to plumbing 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.

Division 2—Restrictions Concerning the Carrying Out of Plumbing Work

S. 221D
inserted by
No. 39/1996
s. 5.

221D. Plumbing work only to be carried out by licensed or registered plumbers

S. 221D(1)
amended by
No. 75/1998
s. 5(b).

- (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 Commission to carry out work of that class or type.

Penalty: 50 penalty units.

S. 221D(2)
amended by
No. 75/1998
s. 5(b).

- (2) Despite sub-section (1), a person who is not licensed or registered by the Commission may—

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- (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.
- (3) Sub-section (2)(a) does not permit a person to repair any thermostatic mixing valve, tempering valve or backflow prevention device.
- (4) Despite sub-section (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 Commission if the work is carried out under the supervision of a person who is licensed to carry out that type of work.
- (5) Despite sub-section (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;
- * * * * *
- (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(4)
amended by
No. 75/1998
ss 5(b), 7(2).

S. 221D(5)
amended by
No. 75/1998
s. 5(b).

S. 221D(5)(c)
repealed by
No. 75/1998
s. 8(a).

S. 221D(5)(d)
substituted by
No. 75/1998
s. 8(b).

(e) a plumbing apprentice acting on behalf of, or at the direction of, a licensed plumber may carry out plumbing work—

without being licensed or registered by the Commission.

S. 221E inserted by No. 39/1996 s. 5.

221E. Restrictions concerning registered plumbers and unregistered people

(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.

Penalty: 50 penalty units.

S. 221E(2) amended by No. 75/1998 s. 7(2).

(2) However, a plumber who is registered to carry out a particular class or type of plumbing work, or a plumbing apprentice, 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(3) inserted by No. 99/1997 s. 121(2).

(3) Despite sub-section (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 Board.

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

(1) A person must not carry out any class or type of specialised plumbing work unless he or she is licensed by the Commission to carry out that class or type of work.

Penalty: 120 penalty units.

- (2) Despite sub-section (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 Board to carry out that class or type of work.

S. 221F(2)
inserted by
No. 99/1997
s. 121(3).

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, sub-section (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
No. 75/1998
s. 5(b).

- (2) A person may employ, or supply the services of, licensed and registered plumbers without being licensed or registered by the Commission .
- (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 applying to this sub-section: 50 penalty units.

S. 221I
inserted by
No. 39/1996
s. 5.

221I. *Person must not use the title "plumber" unless licensed or registered*

- (1) A person must not use or take the title "plumber" 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.

Penalty: 50 penalty units.

- (2) A person must not—
- (a) use or take the title "licensed plumber"; 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: 50 penalty units.

- (3) A person must not—
- (a) use or take the title "registered plumber"; 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: 50 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.

Penalty: 50 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.

Penalty: 50 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.

Penalty: 50 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.

Penalty: 50 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.

Penalty: 50 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.

Penalty: 50 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—

- (a) an organisation or member of staff of an organisation for the time being exempted from this section by the Commission ; 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.

S. 221L(1)(a)
amended by
No. 75/1998
s. 5(b).

Division 3—The Licensing and Registration of Plumbers
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 Commission 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 Commission 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 sub-section (1); and
 - (c) the person pays the licence fee set out in the regulations.
- (3) The Commission 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 Commission a written licence as evidence that the person is licensed to carry out a particular class, or particular classes, of plumbing work.

S. 221M
inserted by
No. 39/1996
s. 5.

S. 221M(1)
(b)(ii)
amended by
No. 75/1998
s. 5(b).

S. 221M(2)
amended by
No. 75/1998
s. 5(b).

S. 221M(3)
amended by
No. 75/1998
s. 5(b).

S. 221M(4)
amended by
No. 75/1998
s. 5(b).

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—

(a) be a licensed plumber; 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
No. 75/1998
s. 5(b).

(ii) satisfy the Commission that he or she has knowledge and competence at least equal to that that a person who has the qualifications and experience required by sub-paragraph (i) would have; and

(c) be covered by the required insurance.

S. 221N(2)
amended by
No. 75/1998
s. 5(b).

(2) The Commission 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 sub-section (1); and

(c) the person pays the endorsement fee set out in the regulations.

S. 221N(3)
amended by
No. 75/1998
s. 5(b).

(3) The Commission may license an eligible person to carry out 2 or more particular classes of specialised plumbing work.

S. 221N(4)
amended by
No. 75/1998
s. 5(b).

(4) If the Commission 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.

221O. Registration as a plumber

- (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 Commission 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.
- (2) The Commission 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.
- (3) The Commission may register an eligible person with respect to 2 or more particular classes of plumbing work.
- (4) The Registrar must give each person who is registered by the Commission a certificate of registration as evidence that the person is registered to carry out a particular class, or particular classes, of plumbing work.

S. 221O
inserted by
No. 39/1996
s. 5.

S. 221O(1)(b)
amended by
No. 75/1998
s. 5(b).

S. 221O(2)
amended by
No. 75/1998
s. 5(b).

S. 221O(3)
amended by
No. 75/1998
s. 5(b).

S. 221O(4)
amended by
No. 75/1998
s. 5(b).

221P. Provisional registration

S. 221P
inserted by
No. 39/1996
s. 5.

S. 221P(1)
amended by
No. 75/1998
s. 5(b).

- (1) The Commission 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 Commission is satisfied that the person—
 - (i) has sufficient knowledge and experience to carry out that class of work competently and safely; or
 - (ii) will be able to carry out that work competently and safely if the person complies with the conditions that the Commission imposes on the registration.

S. 221P(1)(b)
amended by
No. 75/1998
s. 5(b).

S. 221P(1)
(b)(ii)
amended by
No. 75/1998
s. 5(b).

S. 221P(2)
amended by
No. 75/1998
s. 5(b).

- (2) A person who is provisionally registered must not, unless otherwise exempted by the Commission, do any plumbing work or specialised plumbing work of the class to which the provisional registration applies unless that work is carried out on behalf of, or at the direction of, a person who is licensed to carry out work of that class.

Penalty: 20 penalty units.

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- (3) The Commission may provisionally register an eligible person with respect to 2 or more particular classes of plumbing work or specialised plumbing work. **S. 221P(3) amended by No. 75/1998 s. 5(b).**
- (4) On receiving any provisional registration fee required by the regulations, the Registrar must give each person who is provisionally registered by the Commission a certificate of provisional registration as evidence that the person is provisionally registered to carry out a particular class, or particular classes, of plumbing work or specialised plumbing work. **S. 221P(4) amended by No. 75/1998 s. 5(b).**
- (5) A provisional registration expires 1 year after it is granted, but may be renewed.

221Q. Restricted licences**S. 221Q inserted by No. 39/1996 s. 5.**

- (1) The Commission may license a person to carry out particular types of work that fall within a class of plumbing work or specialised plumbing work if— **S. 221Q(1) amended by No. 75/1998 s. 5(b).**
- (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.
- (2) On receiving any restricted licence fee required by the regulations, the Registrar must give each person who is licensed by the Commission under this section a written licence as evidence that the person is licensed to carry out a particular type of **S. 221Q(2) amended by No. 75/1998 s. 5(b).**
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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
No. 75/1998
s. 5(b).

(1) The Commission 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
No. 75/1998
s. 5(b).

(2) On receiving any restricted registration fee required by the regulations, the Registrar must give each person who is registered by the Commission under this section a certificate of registration 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 certificate and that the certificate states what work the holder of the certificate may carry out.

221S. Commission may refuse to license or register convicted people etc.

S. 221S
inserted by
No. 39/1996
s. 5.

- (1) Despite sections 221M(2), 221N(2) and 221O(2), the Commission 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 section 12, 16, 17, 18, 20 or 22 of the **Fair Trading Act 1985** or section 10, 11, 12, 17, 19 and 21 of the **Fair Trading Act 1999** or section 53, 55, 55A, 56, 58 or 60 of the Trade Practices Act 1974 of the Commonwealth.
- (2) Despite sections 221M(2), 221N(2) and 221O(2), the Commission 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).

S. 221S(1)
amended by
No. 75/1998
s. 5(b).

S. 221S(1)(e)
amended by
No. 17/1999
s. 22(5).

S. 221S(2)
amended by
No. 75/1998
s. 5(b).

- (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
No. 75/1998
s. 5(b).

- (1) A natural person may apply to the Commission to be licensed or registered under this Part.

S. 221T(2)(a)
amended by
No. 75/1998
s. 5(b).

- (2) The application must—

(a) be in the form required by the Commission;
and

S. 221T(2)(b)
amended by
No. 75/1998
s. 5(b).

(b) contain the information required by the Commission to enable it to decide whether to grant the application; and

(c) be accompanied by the relevant application fee set out in the regulations.

S. 221T(4)
inserted by
No. 75/1998
s. 9(1).

- (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 Commission, an application must also be accompanied by a photograph of the applicant that is of the size and in the form specified by the Commission.

S. 221U
inserted by
No. 39/1996
s. 5.

221U. Commission may require further information

S. 221U(1)
amended by
No. 75/1998
s. 5(b).

- (1) The Commission may ask a person applying to be licensed or registered for more information concerning the application if it is reasonably

necessary to help it to decide whether to grant the application.

- (2) The Commission may refuse to license or register a person if he or she does not give it the extra information asked for within a reasonable time of being asked for the information.

S. 221U(2)
amended by
No. 75/1998
s. 5(b).

221V. Offence to give false information

A person must not make any written or oral statement to the Commission 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.

S. 221V
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 5(b).

Penalty: 50 penalty units.

221W. Temporary licence or registration

- (1) The Registrar may temporarily license or register a person under this Part if—
- (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 Commission; and
 - (c) the person pays any temporary licence fee required by the regulations.
- (2) In exercising his or her powers under this section, the Registrar must comply with any directions of the Commission concerning the exercise of the powers.
- (3) The Registrar or the Commission may cancel a person's temporary licence or registration at any time, regardless of whether the Commission has considered the person's application.

S. 221W
inserted by
No. 39/1996
s. 5.

S. 221W(1)(b)
amended by
No. 75/1998
s. 5(b).

S. 221W(2)
amended by
No. 75/1998
s. 5(b).

S. 221W(3)
amended by
No. 75/1998
s. 5(b).

(4) A person's temporary licence or registration ends—

S. 221W(4)(b)
amended by
No. 75/1998
s. 5(b).

(a) 3 months after it is issued; or

(b) on the Commission approving or rejecting the person's application for licensing or registration; or

S. 221W(4)(c)
amended by
No. 75/1998
s. 5(b).

(c) on the Registrar or Commission cancelling the licence or registration under subsection (3)—

whichever happens first.

S. 221X
inserted by
No. 39/1996
s. 5.

221X. Commission may impose conditions on licensing or registering a person

S. 221X(1)
amended by
No. 75/1998
s. 5(b).

(1) The Commission 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
No. 75/1998
s. 5(b).

(3) The Registrar must ensure that a licence or certificate of registration states any conditions that the Commission has imposed with respect to the licence or certificate of registration.

S. 221Y
inserted by
No. 39/1996
s. 5.

221Y. Duplicate licences and certificates of registration

The Registrar may issue a duplicate licence or certificate of registration if—

(a) he or she is satisfied that the original licence or certificate of registration has been lost, mutilated or destroyed; and

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- (b) the person asking for the duplicate has paid the fee required by the regulations.

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 Commission).
- (2) A person who is registered to carry out a particular class of plumbing work remains registered to carry out that work for 3 years.
- (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.
- (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) Sub-sections (1), (2) and (3) do not apply if the Commission suspends or cancels a person's licence or registration under this Part.

S. 221Z(1)
amended by
No. 75/1998
s. 5(b).

S. 221Z(5)
amended by
No. 75/1998
s. 5(b).

S. 221ZA
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 5(b).

221ZA. Plumbers must notify Commission of changes of address etc.

A licensed or registered plumber must notify the Commission 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. 221ZB
inserted by
No. 39/1996
s. 5.

221ZB. Application for renewal of licence or registration as a plumber

S. 221ZB(1)
amended by
No. 75/1998
s. 5(b).

(1) A plumber wishing to renew his or her licence or registration must apply to the Commission for the renewal at least 2 months before the licence or registration expires.

S. 221ZB(2)(a)
amended by
No. 75/1998
s. 5(b).

(2) The application for renewal must—

(a) be in the form required by the Commission;
and

S. 221ZB(2)(b)
amended by
No. 75/1998
s. 5(b).

(b) contain the information required by the Commission to enable it to decide whether to grant the renewal.

S. 221ZB(3)
amended by
No. 75/1998
s. 5(b).

(3) In the case of an application for the renewal of a licence, the person applying must also include written proof to the Commission 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 Commission may impose, any lesser period approved by the Commission.

S. 221ZB(4)
inserted by
No. 75/1998
s. 9(2).

(4) If required by the Commission, 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 Commission.

221ZC. Commission may require further informationS. 221ZC
inserted by
No. 39/1996
s. 5.

- (1) The Commission 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.
- (2) The Commission 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. 221ZC(1)
amended by
No. 75/1998
s. 5(b).S. 221ZC(2)
amended by
No. 75/1998
s. 5(b).**221ZD. Renewal of licence or registration**S. 221ZD
inserted by
No. 39/1996
s. 5.

- (1) The Commission 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.
- (2) However, the Commission may refuse to renew the licence or registration of a person who has, since he or she was last licensed or registered by the Commission —
- (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

S. 221ZD(1)
amended by
No. 75/1998
s. 5(b).S. 221ZD(2)
amended by
No. 75/1998
s. 5(b).

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- (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
- S. 221ZD(2)(e) amended by No. 17/1999 s. 22(6). (e) been convicted of an offence against section 12, 16, 17, 18, 20 or 22 of the **Fair Trading Act 1985** or section 10, 11, 12, 17, 19 and 21 of the **Fair Trading Act 1999** or section 53, 55, 55A, 56, 58 or 60 of the Trade Practices Act 1974 of the Commonwealth.
- S. 221ZD(3) amended by No. 75/1998 s. 5(b). (3) Despite sub-section (1), the Commission 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) Sub-sections (2) and (3) apply regardless of where the conviction, suspension, cancellation, insolvency or disqualification occurred.
- S. 221ZD(5) amended by No. 75/1998 s. 5(b). (5) Despite sub-section (1), before renewing the licence or registration of a person, the Commission may require the person to pass to its satisfaction any examination specified by the Commission 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 No. 75/1998 s. 5(b). (6) However, the Commission 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.

- (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 Commission proof in writing of that fact.

S. 221ZD(7)
amended by
No. 75/1998
s. 5(b).

221ZE. Commission may permit late renewals

S. 221ZE
inserted by
No. 39/1996
s. 5.

- (1) The Commission 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).
- (2) However, the Commission 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.

S. 221ZE(1)
amended by
No. 75/1998
s. 5(b).

S. 221ZE(2)
amended by
No. 75/1998
s. 5(b).

221ZF. Information to be given to unsuccessful applicants

S. 221ZF
inserted by
No. 39/1996
s. 5.

- (1) If the Commission refuses to license or register a person or to renew a person's licence or registration, the Commission 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 Commission's reasons for refusing the application and must contain a copy of section 221ZZZP.

S. 221ZF(1)
amended by
No. 75/1998
s. 5(b).

S. 221ZF(2)
amended by
No. 28/2000
s. 20(a).

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.

-
- (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).
- (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 Commission, in the manner specified by the Commission, that the compliance certificate has been given.
- Penalty: 10 penalty units for a first offence;
15 penalty units for a second offence;
25 penalty units for a third or subsequent offence.
- (3) A document is not a compliance certificate unless the certificate form used is a form that has been supplied by the Commission or a person authorised by the Commission.
- (4) For the purposes of this section, plumbing work is completed when the appliance, tap, pipe, drain, meter or other object in respect of which the work was carried out is, in accordance with the relevant plumbing laws—
- (a) used (other than for the purposes of a test that is still part of the plumbing work); or
- (b) capable of being used within an existing system—
- whichever occurs first.
- S. 221ZH(1)(d)**
inserted by
No. 85/2000
s. 9.
- S. 221ZH(2)(b)**
amended by
No. 75/1998
s. 5(b).
- S. 221ZH(3)**
amended by
No. 75/1998
s. 5(b).
- S. 221ZH(4)**
inserted by
No. 75/1998
s. 10(2).

S. 221ZH(5)
inserted by
No. 75/1998
s. 10(2).

- (5) If a plumber carries out or supervises any plumbing work to which sub-section (1)(b), (ba) or (bb) applies, for the purposes of sub-section (2) 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.

S. 221ZI
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 11(2) (ILA
s. 39B(1)).

221ZI. Details that must appear on a compliance certificate

S. 221ZI(1)(b)
substituted by
No. 75/1998
s. 11(1).

- (1) A licensed plumber must not sign a compliance certificate in relation to any plumbing work unless the certificate—
- (a) describes the work; and
 - (b) states—
 - (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 only completed work that had been started by another licensed plumber, that he or she—
 - (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: 10 penalty units.

(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.

S. 221Z(2)
inserted by
No. 75/1998
s. 11(2).

Penalty: 10 penalty units.

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.

S. 221ZJ
inserted by
No. 39/1996
s. 5.

Penalty: 60 penalty units.

221ZK. *Only licensed plumbers may sign certificates*

A person must not—

S. 221ZK
inserted by
No. 39/1996
s. 5.

(a) sign a compliance certificate form issued by, or on behalf of, the Commission unless he or she is a licensed plumber; or

S. 221ZK(a)
amended by
No. 75/1998
s. 5(b).

(b) sign a document that has not been issued by, or on behalf of, the Commission and that purports to be a compliance certificate.

S. 221ZK(b)
amended by
No. 75/1998
s. 5(b).

Penalty: 60 penalty units.

221ZL. *Meaning of the total value of plumbing work*

For the purposes of this Division, the total value of plumbing work is the sum of—

S. 221ZL
inserted by
No. 39/1996
s. 5.

(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.

S. 221ZLA
inserted by
No. 75/1998
s. 12.

221ZLA. *Building practitioner must 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 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)—
 - (a) if an occupancy permit will be sought in respect of the premises or relevant part of the premises, within 5 days after the occupancy permit is issued; or
 - (b) in any other case, within 5 days after the day the building practitioner 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.

221ZN. Provisions concerning the supply of certificate forms

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| | S. 221ZN
inserted by
No. 39/1996
s. 5. |
| (1) The Commission may sell compliance certificate forms to licensed plumbers. | S. 221ZN(1)
amended by
No. 75/1998
s. 5(b). |
| (2) The Commission may authorise a person to sell compliance certificate forms to licensed plumbers. | S. 221ZN(2)
amended by
No. 75/1998
s. 5(b). |
| (3) In authorising a person, the Commission 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
No. 75/1998
s. 5(b). |
| (4) A person authorised by the Commission to sell compliance certificate forms— | S. 221ZN(4)
amended by
No. 75/1998
s. 5(b). |
| (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 Commission in granting its authorisation. | S. 221ZN(4)(c)
amended by
No. 75/1998
s. 5(b). |
| Penalty: 20 penalty units. | |
| (5) The Commission 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
No. 75/1998
s. 5(b). |

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- (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 sub-sections (1) to (5) includes a reference to any person duly authorised by a licensed plumber under sub-section (6).

S. 221ZO
inserted by
No. 39/1996
s. 5.

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—
 - (a) ensure that the plan is given 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.

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 Commission in the manner specified by the Commission of the time at which the work will be ready for inspection; and

S. 221ZP(2)(a)
amended by
No. 75/1998
s. 5(b).

(b) either—

(i) a person authorised by the Commission has inspected the work and authorised the plumber to cover the work; or

S. 221ZP(2)
(b)(i)
amended by
No. 75/1998
s. 5(b).

(ii) no person authorised by the Commission 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
No. 75/1998
s. 5(b).

Penalty: 10 penalty units.

(3) Unless he or she has a reasonable excuse for not doing so, the plumber—

(a) must ensure that the work is ready to be inspected at the time given to the Commission under sub-section (2)(a); and

S. 221ZP(3)
amended by
No. 75/1998
s. 5(b),
substituted by
No. 75/1998
s. 13.

(b) must be present at that time at the place where the work was carried out.

Penalty: 10 penalty units.

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,

S. 221ZPA
inserted by
No. 75/1998
s. 14.

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 sub-section (2) must be in a form approved by the Commission.

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 revoke an order.

- (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.
- (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.
- (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 sub-section (5B), unless a contrary intention expressly appears.
- (6) In this section "**insurance**" includes—
- (a) professional indemnity insurance;
 - (b) a performance bond;
 - (c) a guarantee;
 - (d) an indemnity;
 - (e) public liability insurance;

S. 221ZQ(5A)
inserted by
No. 34/1997
s. 21.

S. 221ZQ(5B)
inserted by
No. 34/1997
s. 21.

S. 221ZQ(5C)
inserted by
No. 34/1997
s. 21.

- (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.

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: 100 penalty units.

S. 221ZS
inserted by
No. 39/1996
s. 5.

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: 100 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 52, 53, 55A or 74 of the Trade Practices Act 1974 of the Commonwealth or

S. 221ZT(1)(c)
amended by
No. 17/1999
s. 22(7).

section 9, 11 or 12 of the **Fair Trading Act 1999**.

(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))—

to "section 11, 12 or 17 of the **Fair Trading Act 1985**", is, to the extent that it relates to any period on or after the commencement of section 22 of the **Fair Trading (Inspectors Powers and Other Amendments) Act 1999**, deemed to include a reference to "section 9, 11 or 12 of the **Fair Trading Act 1999**".

S. 221ZT(2)
inserted by
No. 17/1999
s. 22(8).

221ZU. *Suspension of licence if insurance ceases*

S. 221ZU
inserted by
No. 39/1996
s. 5.

- (1) The Commission 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 Commission suspends a person's licence under sub-section (1), it must give him or her written notice of the suspension.
- (3) A suspension imposed under this section lasts until the person suspended gives the Commission written proof that he or she is covered by the required insurance until the next anniversary of his or her licensing. When that proof is given, the Commission must revoke the suspension.

S. 221ZU(1)
amended by
No. 75/1998
s. 5(b).

S. 221ZU(2)
amended by
No. 75/1998
s. 5(b).

S. 221ZU(3)
amended by
No. 75/1998
s. 5(b).

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
No. 75/1998
s. 5(b).

(1) An insurer may apply to the Commission 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
No. 75/1998
s. 5(b).

(3) The Commission 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

S. 221ZV(3)(b)
amended by
No. 75/1998
s. 5(b).

(b) that he or she has a right to be heard by the Commission in respect of the application.

S. 221ZV(4)
amended by
No. 75/1998
s. 5(b).

(4) If a plumber has not complied with the direction within 28 days after the date of the notice, the Commission, after giving the plumber an opportunity to be heard, may suspend the plumber's licence.

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- (5) Clauses 12, 15, 16, 17 and 18(1) of Schedule 3 apply to a proceeding under sub-section (4) as if a reference in those clauses to the Building Appeals Board was a reference to the Plumbing Industry Commission.
- (6) If the Commission suspends a plumber's licence under this section, the suspension lasts until the Commission is satisfied that the plumber has complied with the direction. On being so satisfied, the Commission must revoke the suspension.

S. 221ZV(5)
amended by
Nos 75/1998
s. 5(b),
28/2000
s. 20(b).

S. 221ZV(6)
amended by
No. 75/1998
s. 5(b).

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.

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- (4) In requiring a copy of a new compliance certificate under sub-section (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 the Victorian Civil and Administrative Tribunal 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 the Tribunal has affirmed the rectification notice or dismissed the application.
- (8) For the purposes of sub-section (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,

S. 221ZW(7)
amended by
No. 28/2000
s. 20(c).

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 the Victorian Civil and Administrative Tribunal 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
No. 28/2000
s. 20(c).

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.

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- (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 Commission.

S. 221ZY(3)
amended by
No. 75/1998
s. 5(b).

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 Commission.
- (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
No. 75/1998
s. 5(b).

S. 221ZZB(4)
inserted by
No. 99/1997
s. 121(8).

221ZZC. *Owner/occupier must comply with plumbing order*

S. 221ZZC
inserted by
No. 39/1996
s. 5.

- (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: In the case of a natural person,
60 penalty units;
In the case of a body corporate,
120 penalty units.

- (2) Sub-section (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
No. 28/2000
s. 20(c).

- (1) A person who has been given a plumbing order may apply to the Victorian Civil and Administrative Tribunal 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.
- (3) If an owner or occupier applies to the Tribunal within the time allowed, he or she need not comply with section 221ZZC until the expiry of—

S. 221ZZE
(3)(a)
amended by
No. 75/1998
s. 5(b).

- (a) 15 business days after he or she receives written notice that the Commission has affirmed the plumbing order; or

S. 221ZZE
(3)(b)
amended by
No. 75/1998
s. 5(b).

- (b) 5 business days after he or she abandons the application or he or she receives written notice that the Commission has dismissed the application—

(whichever happens first).

- (4) In considering an application, the Tribunal may consider matters not raised before the plumbing order was made.

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 Commission has no power to cancel an order made under this section.

S. 221ZZF(5)
amended by
No. 75/1998
s. 5(b).

S. 221ZZF(6)
inserted by
No. 99/1997
s. 121(9).

- (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. 221ZZG
inserted by
No. 39/1996
s. 5.

221ZZG. Offence to not comply with emergency plumbing order

- (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: In the case of a natural person,
120 penalty units;
In the case of a body corporate,
360 penalty units.

- (2) A person must not occupy or use any land or building in contravention of an emergency plumbing order.

Penalty: In the case of a natural person,
120 penalty units;
In the case of a corporation,
360 penalty units.

- (3) This section does not apply if the owner, occupier or person has a reasonable excuse for failing to comply with the order.

S. 221ZZH
inserted by
No. 39/1996
s. 5.

221ZZH. Inspector may cancel emergency plumbing order

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.

S. 221ZZI
inserted by
No. 39/1996
s. 5.

221ZZI. Plumbing notices and orders to be last resort

- (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.

221ZZJ. Owner/occupier must report the completion of required work

S. 221ZZJ
inserted by
No. 39/1996
s. 5.

- (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.

221ZZK. Work may be carried out by plumbing inspector/Commission

S. 221ZZK
inserted by
No. 39/1996
s. 5.

- (1) If an owner or occupier fails to comply with a plumbing order or emergency plumbing order, the Commission or the plumbing inspector who

S. 221ZZK(1)
amended by
No. 75/1998
s. 5(b).

issued the order may cause the work required by the order to be carried out.

S. 221ZZK(2)
amended by
No. 75/1998
s. 5(b).

- (2) The Commission 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 Commission.

S. 221ZZL
inserted by
No. 39/1996
s. 5.

221ZZL. Police assistance

- (1) A plumbing inspector may ask for the help of a member of the police force, and a member of the police force may help—
- (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 Commission.

S. 221ZZL
(1)(b)
amended by
No. 75/1998
s. 5(b).

- (2) A member of the police force may use reasonable force in carrying out a function under sub-section (1).

Division 8—Interpretation and Modification of Plumbing Regulations

S. 221ZZM
inserted by
No. 39/1996
s. 5.

221ZZM. Meaning of "plumbing regulations"

In this Division, "**plumbing regulations**" means—

- (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).

221ZZN. Commission may resolve disputes concerning the interpretation of plumbing regulations

S. 221ZZN
inserted by
No. 39/1996
s. 5.

- (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 Commission 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 Commission.
- (4) After conducting a hearing on the application, the Commission must declare its opinion on the matter in dispute.

S. 221ZZN(2)
amended by
No. 75/1998
s. 5(b).

S. 221ZZN(3)
amended by
No. 75/1998
s. 5(b).

S. 221ZZN(4)
amended by
No. 75/1998
s. 5(b).

S. 221ZZN(5)
amended by
No. 75/1998
s. 5(b).

(5) Each party to the dispute is bound by the declaration of the Commission and must give effect to the declaration once the declaration takes effect.

S. 221ZZN(6)
amended by
No. 75/1998
s. 5(b).

(6) Each person who was given an opportunity to be heard by the Commission is a party to the dispute for the purposes of sub-section (5).

S. 221ZZN(7)
amended by
Nos 52/1998
s. 311(Sch. 1
item 10.11),
75/1998
s. 5(b).

(7) An application to the Victorian Civil and Administrative Tribunal for the review of a declaration of the Commission 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(8)
amended by
No. 28/2000
s. 20(c).

(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 the Victorian Civil and Administrative Tribunal dismissing the application or affirming the declaration.

S. 221ZZN(9)
amended by
Nos 75/1998
s. 5(b),
28/2000
s. 20(c).

(9) If a person applies to the Victorian Civil and Administrative Tribunal for the review of a declaration, the Commission must give the person its written reasons for the declaration as soon as possible after the application is lodged.

S. 221ZZO
inserted by
No. 39/1996
s. 5.

221ZZO. *Modification of plumbing regulations*

S. 221ZZO(1)
amended by
No. 75/1998
s. 5(b).

(1) The Commission 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 Sector Management and Employment Act 1998**;
 - (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.
- (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 Commission must consider before making a modification declaration

- (1) The Commission may only declare that a provision of the plumbing regulations does not

S. 221ZZO
(3)(d)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 221ZZP
inserted by
No. 39/1996
s. 5.

S. 221ZZP(1)
amended by
No. 75/1998
s. 5(b).

apply to specified plumbing work if it is satisfied that the provision is inappropriate in the particular circumstances.

S. 221ZZP(2)
amended by
No. 75/1998
s. 5(b).

- (2) The Commission may only declare that a provision of the plumbing regulations applies with the variations specified by the Commission to specified plumbing work if it is satisfied that it is reasonable to do so and is not detrimental to the public interest.

S. 221ZZP(3)
amended by
No. 75/1998
s. 5(b).

- (3) In making a declaration under section 221ZZO, the Commission may impose any conditions that it thinks appropriate in relation to how the declaration is to be given effect to.

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
No. 75/1998
s. 5(c).

- (a) the Building Appeals Board was a reference to the Plumbing Industry Commission; and

- (b) a determination was a reference to a declaration.

- (2) For the purposes of this Division, section 221ZZO 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.

Division 9—Plumbing Industry Commission

Pt 12A Div. 9
(Heading and
ss 221ZZR–
221ZZX)
inserted by
No. 39/1996
s. 5,
substituted by
No. 75/1998
s. 3.

221ZZR. *Establishment of the Commission*

There is established a Plumbing Industry Commission.

S. 221ZZR
substituted by
No. 75/1998
s. 3.

221ZZS. *The Commission is a body corporate*

- (1) The Commission—
 - (a) is a body corporate with perpetual succession; and
 - (b) has an official seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) may do and suffer all acts and things that bodies corporate may by law do and suffer and that are necessary for, or incidental to, the performance of its functions.
- (2) The official seal of the Commission must not be used except as authorised by the Commission.
- (3) All courts and people acting judicially must take judicial notice of the official seal of the Commission.

S. 221ZZS
substituted by
No. 75/1998
s. 3.

221ZZT. *Constitution*¹⁵

- (1) The Commission is constituted by a Commissioner who is to be appointed by the Governor in Council on the Minister's recommendation.

S. 221ZZT
substituted by
No. 75/1998
s. 3.

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- (2) For the purposes of sub-section (1), the Minister may only recommend a person who, in the opinion of the Minister, has substantial knowledge of, and experience in, the plumbing industry.
 - (3) The Commissioner must not engage in paid employment outside the duties of his or her office without the Minister's permission.
 - (4) If the Commissioner was immediately before his or her appointment a member of a statutory superannuation scheme within the meaning of the **Superannuation (Public Sector) Act 1992**, he or she continues while so appointed, subject to the Act under which the statutory superannuation scheme is created, to be a member of that scheme.
 - (5) Clauses 1 to 6 and 9 of Schedule 3 apply to the Commissioner in the same way as they apply to a chairperson or member of a Board.

S. 221ZZU
substituted by
No. 75/1998
s. 3.

221ZZU. *Accountability*¹⁶

- (1) The Commission is subject to the direction and control of the Minister. Those directions may be general or specific.
- (2) In giving a direction under sub-section (1), the Minister may have regard to any advice of the Plumbing Industry Advisory Council.
- (3) The Commission must give the Minister any information and assistance that the Minister requires and that the Commission is able to give.

S. 221ZZV
substituted by
No. 75/1998
s. 3.

221ZZV. *Functions*

- (1) The functions of the Commission are—
 - (a) to administer the plumber licensing and registration system created by this Part;
 - (b) to promote the maintenance of adequate levels of competence among plumbers;

- (c) to advise the Minister on the making of regulations under this Part and plumbing technical standards (other than regulations and technical standards relating to gasfitting work);
- (d) to advise the Minister on the impact on the plumbing industry of other Acts and regulations;
- (e) to monitor and enforce compliance with technical standards applying to the plumbing industry, including standards applying to materials, installations, construction and maintenance;
- (f) to promote plumbing practices which protect the health and safety of consumers and the integrity of water supply and waste water systems;
- (g) to hold, or cause to be held, examinations in plumbing work for the purposes of this Part and to appoint examiners to conduct those examinations;
- (h) to promote the resolution of consumer complaints about work carried out by plumbers;
- (i) to seek the views of the plumbing industry and other interested groups on the effectiveness of this Part and the regulations;
- (j) to co-ordinate the preparation of draft proposals for regulations under this Part;
- (k) to conduct or promote research into matters relating to the regulation of the plumbing industry;
- (l) to promote better plumbing standards both nationally and internationally;

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- (m) to liaise with any organisation established to promote national plumbing standards;
 - (n) to provide information and training to assist people and bodies in carrying out functions under this Part or the regulations;
 - (o) to provide an information service with respect to plumbing;
 - (p) to accept any gifts or donations of money or other property by deed, will or otherwise;
 - (q) to advise the Minister on any matter referred to it by the Minister;
 - (r) generally to carry out any other function or duty given to it, or imposed on it by this Act or any other Act.

S. 221ZZV(2)
amended by
No. 32/2001
s. 25(1).

- (2) The Minister administering the **Gas Safety Act 1997** may give the Commission written directions concerning the exercise of the Commission's functions as it affects gas safety and people carrying out gasfitting work, other than directions affecting one person only.
- (3) The Commission must comply with those directions.

S. 221ZZW
substituted by
No. 75/1998
s. 3.

221ZZW. Powers

- (1) The Commission may do all things that are necessary or convenient to enable it to perform its functions.
- (2) The Commission may, in writing, delegate to any of the following any of its powers or functions (other than this power of delegation)—
 - (a) any member of the Commission's staff;
 - (b) the Plumbing Industry Commissioner;
 - (c) any member of the Plumbing Industry Advisory Council.

221ZZX. Staff

The Commission may appoint or employ—

- (a) a Registrar of the Commission;
- (b) as many people as are required to enable it to carry out its functions.

S. 221ZZX substituted by No. 75/1998 s. 3.

Division 9A—The Plumbing Industry Advisory Council

Pt 12A Div. 9A (Heading and ss 221ZZXA–221ZZXD) inserted by No. 75/1998 s. 3.

221ZZXA. Establishment of Council

There is established a Plumbing Industry Advisory Council.

S. 221ZZXA inserted by No. 75/1998 s. 3.

221ZZXB. Constitution

(1) The Council consists of—

- (a) a Chairperson, who must be a person who, in the opinion of the Minister, has substantial knowledge of, and experience in, the plumbing industry; and
- (b) the Plumbing Industry Commissioner; and
- (c) the Commissioner of the Building Commission; and
- (d) a person nominated by the Minister administering the **Water Act 1989**; and
- (e) a person nominated by the Minister administering the **Gas Safety Act 1997**; and

S. 221ZZXB inserted by No. 75/1998 s. 3.

S. 221ZZXB (1)(c) substituted by No. 68/2001 s. 3(4).

S. 221ZZXB (1)(e) amended by No. 32/2001 s. 25(2).

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- (f) a person nominated by the Minister administering the **Vocational Education and Training Act 1990**; and
 - (g) a person chosen by the Minister; and
 - (h) 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
 - (i) a person nominated by a body that, in the opinion of the Minister, represents air-conditioning contractors in Victoria; and
 - (j) a person nominated by a body that, in the opinion of the Minister, represents fire protection contractors in Victoria; and
 - (k) up to 3 people nominated by any body or bodies that, in the opinion of the Minister, represents the industrial interests of employee plumbers; and
 - (l) a person chosen by the Minister to represent the interests of consumers.
- (2) The members of the Council are to be appointed by the Minister.
 - (3) If a body referred to in sub-section (1)(h), (i), (j) or (k) fails to 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.

S. 221ZZXC
inserted by
No. 75/1998
s. 3.

221ZZXC. Functions

- (1) The functions of the Council are—
 - (a) to provide advice to the Minister, either at the request of the Minister or on its own initiative, in relation to this Part and the plumbing industry;

- (b) to provide advice to the Plumbing Industry Commission either at the request of the Commission or on its own initiative, in relation to this Part and the plumbing industry.

221ZZXD. *Conditions of appointment and procedures*

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. 221ZZXD
inserted by
No. 75/1998
s. 3.

Division 10—Enforcement

221ZZY. *Enforcement staff*

- (1) The Commission may appoint or employ for the purposes of this Part—
- (a) plumbing inspectors; and
 - (b) compliance auditors.
- (2) The Commission must give every person that it appoints as a plumbing inspector an identity card that displays a photograph of the person and states the person's name and the fact that he or she is a plumbing inspector appointed by the Commission.
- (3) The Commission must give every person that it appoints as a compliance auditor an identity card that displays a photograph of the person and states the person's name and the fact that he or she is authorised to conduct compliance audits for the Commission.

S. 221ZZY
inserted by
No. 39/1996
s. 5.

S. 221ZZY(1)
amended by
No. 75/1998
s. 5(b).

S. 221ZZY(2)
amended by
No. 75/1998
s. 5(b).

S. 221ZZY(3)
amended by
No. 75/1998
s. 5(b).

221ZZZ. *Functions of compliance auditors*

- (1) The function of a compliance auditor is to examine plumbing work in respect of which a compliance certificate has been issued—

S. 221ZZZ
inserted by
No. 39/1996
s. 5.

-
- (a) to monitor the accuracy of the certificate; and
 - (b) to ensure that the work has been competently carried out and does not pose any risk of injury or damage to any person or property; and
 - (c) to ensure that the plumbing laws have been complied with.

S. 221ZZZ(2)
amended by
No. 75/1998
s. 5(b).

- (2) The Commission is to determine in its absolute discretion what plumbing work is to be examined by a compliance auditor.

S. 221ZZZA
inserted by
No. 39/1996
s. 5,
amended by
No. 34/1997
s. 22(2).

221ZZZA. Powers of compliance auditors

S. 221ZZZA(1)
inserted by
No. 34/1997
s. 22(1).

- (1) In carrying out his or her functions under this Part, a compliance auditor may—
 - (a) enter any residence or the land on which a residence is situated between the hours of 8 am and 6 pm; and
 - (b) enter any other building or land at any reasonable time.

S. 221ZZZA(2)
inserted by
No. 34/1997
s. 22(1).

- (2) A compliance auditor must give the occupier (if any) of a building or land not less than 24 hours notice, or such other notice as may be agreed with the occupier, before the compliance auditor enters the building or land under sub-section (1).
- (3) A compliance auditor may—
 - (a) require a person who is, or was, a licensed plumber to produce any document that relates to any work that the auditor is examining; and

(b) make copies of any document that relates to any work that the auditor is examining; and

(c) require a person who is, or was, a licensed plumber to supply any other information or document that relates to any work or compliance certificate that the auditor is examining; and

(d) report to the Commission, or a person authorised by the Commission, the results of any examination he or she conducts; and

S. 221ZZZA
(3)(d)
amended by
No. 75/1998
ss 5(b), 15(1).

(e) require a person who is, or was, a licensed plumber to attend any inspection of any work that the auditor is examining that was carried out or supervised by the person.

S. 221ZZZA
(3)(e)
inserted by
No. 75/1998
s. 15(1).

221ZZZB. *Plumber must give information to compliance auditor*

S. 221ZZZB
inserted by
No. 39/1996
s. 5.

(1) A person must comply with any requirement made by a compliance auditor under section 221ZZZA(3)(a) or (c).

S. 221ZZZB(1)
amended by
No. 75/1998
s. 15(2).

Penalty: 50 penalty units.

(2) However, a person need not answer any question put to him or her under section 221ZZZA(3)(c) if the answer might incriminate him or her.

S. 221ZZZB(2)
amended by
No. 75/1998
s. 15(3).

(3) A person must comply with any requirement made by a compliance auditor under section 221ZZZA(3)(e).

S. 221ZZZB(3)
inserted by
No. 75/1998
s. 15(4).

Penalty: 10 penalty units.

S. 221ZZZBA
inserted by
No. 75/1998
s. 16.

221ZZZBA. Inspector may require plumber to attend inspection

- (1) A plumbing inspector may require a person who is, or was, a licensed or registered plumber, to attend any inspection of any work that the inspector is examining that was carried out or supervised by the person.
- (2) The person must comply with the requirement.
Penalty: 10 penalty units.

S. 221ZZZC
inserted by
No. 39/1996
s. 5.

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;
 - (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.

221ZZZD. Compulsory inspections

- (1) This section applies if GASCOR 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) GASCOR or the water authority may ask the Commission in writing to inspect the work or drain, appliance or fixture.
- (3) On receiving such a request and a copy of the evidence, the Commission must cause an inspection to be made of the work or drain, appliance or fixture.

S. 221ZZZD
inserted by
No. 39/1996
s. 5.

S. 221ZZZD(2)
amended by
No. 75/1998
s. 5(b).

S. 221ZZZD(3)
amended by
No. 75/1998
s. 5(b).

221ZZZE. Plumbing infringement notices

- (1) An authorised officer may serve an infringement notice on any person that the authorised officer has reason to believe has committed an offence listed in column 1 of Schedule 5.
- (2) The notice must be in the form specified by the Plumbing Industry Commission and must—
- (a) state the provision of the Act in respect of which it is issued;

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)).

-
- (b) state the name and address of the person to whom it is issued;
 - (c) identify the plumbing work in respect of which the alleged offence was committed;
 - (d) briefly describe the alleged offence;
 - (e) set out the infringement penalty that applies to the offence;
 - (f) have a unique number;
 - (g) state the date on which it is issued;
 - (h) state when and where it should be paid;
 - (i) state what additional steps (if any) are required to expiate the offence and by when those steps must be taken;
 - (j) state how the offence may be expiated, and that if the offence is expiated the matter cannot be brought before the Magistrates' Court unless the notice is withdrawn within 28 days after it was served;
 - (k) set out the name of the authorised officer who issued it and be signed by her or him.
- (3) For the purposes of this section, sections 256, 257, 258 and 259 apply as if—
- (a) there were substituted for section 256(1) the following provision—
 - "(1) The additional steps that may be required to expiate an offence under section 221ZH are—
 - (a) the completion of a compliance certificate in respect of the plumbing work; and

- (b) the notification of the Plumbing Industry Commission that a compliance certificate has been given.";
 - (b) a reference in those sections to an authorised officer was a reference to an authorised officer under this section; and
 - (c) a reference to a building infringement notice was a reference to an infringement notice issued under this section; and
 - (d) there were substituted for section 258(4) the following provision—
 - "(4) An infringement penalty must be paid—
 - (a) by posting it to the business address of the authorised officer; or
 - (b) at the business office of the authorised officer during office hours."
- (4) In this section—
- "authorised officer"** means—
- (a) the Plumbing Industry Commissioner;
 - (b) a plumbing inspector;
 - (c) a compliance auditor;
 - (d) any other person authorised by the regulations to issue infringement notices under this section;
- "infringement penalty"**, in relation to an offence, means the penalty specified in column 2 of Schedule 5 that applies to the offence.

Division 11—Inquiries and Disciplinary Action

S. 221ZZZF
inserted by
No. 39/1996
s. 5.

221ZZZF. *Inquiry by Commission*

S. 221ZZZF(1)
amended by
No. 75/1998
s. 5(b).

(1) The Commission 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.

S. 221ZZZF(2)
amended by
No. 75/1998
s. 5(b).

(2) The Commission 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. 221ZZZG
inserted by
No. 39/1996
s. 5.

221ZZZG. *Grounds on which disciplinary action may be taken*

- (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;
 - (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;
- (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.
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S. 221ZZZH
inserted by
No. 39/1996
s. 5.

221ZZZH. Procedure concerning inquiries

S. 221ZZZH(1)
amended by
No. 75/1998
s. 5(b).

(1) To start an inquiry, the Commission must give the following details in writing to the person who is to be the subject of the inquiry—

- (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 Commission in relation to the inquiry; and

S. 221ZZZH
(1)(d)
amended by
No. 75/1998
s. 5(b).

(e) a copy of section 221ZZZJ.

S. 221ZZZH(2)
amended by
No. 75/1998
s. 5(b).

(2) The Commission 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. 221ZZZI
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 5(c).

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 Plumbing Industry Commission.

221ZZZJ. Disciplinary powers of the Commission

S. 221ZZZJ
inserted by
No. 39/1996
s. 5.

- (1) At the end of an inquiry, if the Commission is satisfied that proper cause for taking disciplinary action against a person exists, the Commission 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);
 - (f) order the person to pay the Commission a penalty of up to \$1000 (unless a charge has been filed in the Magistrates' Court in respect of the matter or the matter has been dealt with by a court exercising its criminal jurisdiction).

S. 221ZZZJ(1)
amended by
No. 75/1998
s. 5(b).

S. 221ZZZJ
(1)(f)
amended by
No. 75/1998
s. 5(b).

S. 221ZZZJ(2)
amended by
No. 75/1998
s. 5(b).

- (2) If the Commission 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
No. 75/1998
s. 5(b).

- (1) This section applies if the Commission 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
No. 75/1998
s. 5(b).

- (2) The Commission 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.

S. 221ZZZL
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 5(b).

221ZZZL. *Commission may revoke cancellation or suspension*

The Commission may at any time revoke any order it has made under section 221ZZZJ cancelling or suspending a person's licence or registration.

S. 221ZZZM
inserted by
No. 39/1996
s. 5,
amended by
No. 75/1998
s. 5(b).

221ZZZM. *Commission may compensate victims of unsatisfactory plumbing work*

If the Commission makes an order under section 221ZZZJ(1)(f), the Commission may pay an amount up to the amount referred to in the order to any person who, in the opinion of the Commission, has suffered loss as a result of any unsatisfactory work that was a reason for the making of the order.

221ZZZN. Procedural matters concerning Commission sub-committees conducting inquiry or taking disciplinary action

- (1) Clauses 8(3), (5) and (8) of Schedule 3 apply to any sub-committee of the Commission that is conducting an inquiry under this Division as if—
- (a) a reference to a panel was a reference to the sub-committee; and
- (b) a reference to the Building Appeals Board was a reference to the Plumbing Industry Commission.

S. 221ZZZN inserted by No. 39/1996 s. 5.

S. 221ZZZN(1) amended by No. 28/2000 s. 20(d).

S. 221ZZZN (1)(b) amended by No. 75/1998 s. 5(c).

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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

- (1) A person may apply to the Victorian Civil and Administrative Tribunal for the review of a decision by the Commission in relation to—
- (a) a refusal to license or register him or her or to renew his or her licence or registration;

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 No. 75/1998 s. 5(b).

S. 221ZZZP (1)(a) amended by No. 34/1997 s. 30(c).

Building Act 1993

Act No. 126/1993

s. 221ZZZP

S. 221ZZP
(1)(b)
amended by
No. 34/1997
s. 30(c).

(b) any conditions imposed on his or her licence
or registration;

S. 221ZZP
(1)(c)
amended by
No. 75/1998
s. 5(b).

(c) any disciplinary action taken against the
person by the Commission(including any
action taken under section 221ZV(4));

S. 221ZZP
(1)(d)
repealed by
No. 52/1998
s. 311(Sch. 1
item 10.12(b)).

* * * * *

S. 221ZZP(2)
inserted by
No. 52/1998
s. 311(Sch. 1
item 10.13),
amended by
No. 75/1998
s. 5(b).

(2) A party to a dispute under section 221ZZN may
apply to the Victorian Civil and Administrative
Tribunal for review of a declaration of the
Commission under that section.

S. 221ZZP(3)
inserted by
No. 52/1998
s. 311(Sch. 1
item 10.13),
amended by
No. 75/1998
s. 5(b).

(3) A person may apply to the Victorian Civil and
Administrative Tribunal for review of a
declaration of the Commission under section
221ZZO.

S. 221ZZQ
inserted by
No. 39/1996
s. 5,
repealed by
No. 52/1998
s. 311(Sch. 1
item 10.14).

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Division 13—Administrative Matters**221ZZZR.Plumbing fund**S. 221ZZZR
inserted by
No. 39/1996
s. 5.

- (1) The Commission must establish a general fund. S. 221ZZZR(1)
amended by
No. 75/1998
s. 5(b).
- (2) The Commission must pay into the fund all money received or recovered by, or paid to, the Commission. S. 221ZZZR(2)
amended by
No. 75/1998
s. 5(b).
- (3) The Commission may pay out of the fund— S. 221ZZZR(3)
amended by
No. 75/1998
s. 5(b).
- (a) any money required to meet its costs and expenses in administering and enforcing this Part and in carrying out its functions;
- (b) any money required to refund any licence, registration or endorsement fee paid in respect of a licence, registration or endorsement that was not granted, renewed or made;
- (c) the remuneration and allowances of the Commissioner and members of the Plumbing Industry Advisory Council. S. 221ZZZR
(3)(c)
inserted by
No. 75/1998
s. 5(e).
- (4) The Commission may invest any part of the fund that is not immediately required for the purposes of the Commission in any manner approved by the Treasurer. S. 221ZZZR(4)
amended by
No. 75/1998
s. 5(b).

S. 221ZZZS
inserted by
No. 39/1996
s. 5,
repealed by
No. 75/1998
s. 5(d), new
s. 221ZZZS
inserted by
No. 85/2000
s. 10,
amended by
No. 68/2001
s. 3(3).

**221ZZZS. Commission may disclose cooling tower
information**

The Commission may disclose any information it obtains under this Part that relates to a cooling tower system to the Building Commission and the Secretary to the Department of Human Services.

S. 221ZZZT
inserted by
No. 39/1996
s. 5.

221ZZZT. Register of Plumbers

(1) The Registrar must keep a register that contains the details required by sub-section (2) in respect of all people who are—

(a) licensed by the Commission;

S. 221ZZZT
(1)(a)
amended by
No. 75/1998
s. 5(b).

(b) registered by the Commission;

S. 221ZZZT
(1)(b)
amended by
No. 75/1998
s. 5(b).

(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 Commission in respect of him or her;
 - (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. 221ZZZT
(2)(h)
amended by
No. 75/1998
s. 5(b).

221ZZZU. Minister may specify work to be specialised plumbing work

S. 221ZZZU
inserted by
No. 39/1996
s. 5.

- (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.
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S. 221ZZU(3)
amended by
No. 75/1998
s. 5(b).

- (3) In making a declaration, the Minister must specify what qualifications, knowledge or experience a person must have to be able to be licensed by the Commission to carry out the specialised plumbing work declared by the declaration.
- (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.

S. 221ZZV
inserted by
No. 39/1996
s. 5.

221ZZZV. Regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) prescribing standards (expressed in terms of performance, types of material, methods of construction 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;
 - (b) fees for the purposes of this Part (including fees for examinations conducted by, or on behalf of, the Commission);
 - (c) prescribing what constitutes specialised plumbing work;
 - (d) specifying classes of plumbing work (and if those classes differ from any classes previously specified, how the new classes relate to the old classes);

S. 221ZZV
(1)(b)
amended by
No. 75/1998
s. 5(b).

- (e) the qualifications or experience needed to be eligible to be licensed or registered with respect to a particular class of plumbing work;
 - (f) examinations 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;
 - (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;
 - (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.
- (2) Any regulation made under this Part may apply, adopt or incorporate any matter contained in any document whether—
- (a) wholly or partially or as amended by the regulation; or
 - (b) as in force at the time the regulation is made or at any time before then.
- (3) Despite section 262(f), regulations made under sub-section (1)(a) may impose a penalty not exceeding 20 penalty units for a contravention of the regulations.

S. 221ZZZV
(1)(ga)
inserted by
No. 85/2000
s. 11.

S. 221ZZZV
(1)(gb)
inserted by
No. 85/2000
s. 11.

Building Act 1993

Act No. 126/1993

s. 221ZZZW

S. 221ZZW
inserted by
No. 39/1996
s. 5,
repealed by
No. 39/1996
s. 29.

* * * * *

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 sub-section (2) is deemed to be the hearing of the council by the Minister for the purposes of sub-section (1).

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 sub-section (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 sub-section (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.

Division 1A—Performance audits

S. 227A
inserted by
No. 34/1997
s. 23.

227A. Performance auditors

- (1) The Commission may appoint performance auditors for the purposes of this Division.
- (2) The Commission must give every person that it appoints as a performance auditor an identity card that displays a photograph of the person and states the person's name and the fact that he or she is authorised to conduct performance audits for the Commission.
- (3) A performance auditor to whom an identity card has been issued must when on duty produce that card on demand.

Penalty: 1 penalty unit.

S. 227B
inserted by
No. 34/1997
s. 23.

227B. Functions of performance auditor

- (1) The function of a performance auditor is to examine work carried out by registered building practitioners—
 - (a) to ensure that the work has been competently carried out and does not pose any risk of injury or damage to any person; and
 - (b) to ensure that this Act and the building regulations have been complied with.
- (2) The Commission is to determine in its absolute discretion which work is to be examined by a performance auditor.

227C. Powers of performance auditors**S. 227C
inserted by
No. 34/1997
s. 23.**

- (1) In carrying out his or her functions under this Division, a performance auditor may—
 - (a) enter any residence or the land on which a residence is situated between the hours of 8 am and 6 pm; and
 - (b) enter any other building or land at any reasonable time.
- (2) A performance auditor must give the occupier (if any) of a building or land not less than 24 hours notice, or such other notice as may be agreed with the occupier, before the performance auditor enters the building or land under sub-section (1).
- (3) In carrying out his or her functions under this Division, a performance auditor may—
 - (a) require a person who is, or was, a registered building practitioner to produce any document that relates to any work that the auditor is examining; and
 - (b) make copies of any document that relates to any work that the auditor is examining; and
 - (c) require a person who is, or was, a registered building practitioner to supply any other information or document that relates to any work that the auditor is examining; and
 - (d) report to the Commission, or a person authorised by the Commission, the results of any examination he or she conducts.

S. 227D
inserted by
No. 34/1997
s. 23.

227D. Building practitioner must give information to performance auditor

- (1) A person must comply with any requirement made by a performance auditor under section 227C(3)(a) or (c).

Penalty: 50 penalty units.

- (2) However, a person need not answer any question put to him or her under section 227C(3)(c) if the answer might incriminate him or her.

Division 2—Powers of entry

228. Authorised persons

- (1) In this Division—

"authorised person" means—

- (a) a municipal building surveyor; or
- (b) a private building surveyor appointed under Part 6; or
- (c) the Commission; or
- (ca) the Plumbing Industry Commission;
- (d) a Minister, public authority or person who is authorised or required by this Act or the regulations to carry out any work or inspection or any other function other than the Building Practitioners Board; or
- (da) a plumbing inspector appointed under Part 12A;

S. 228(1)(ca)
inserted by
No. 39/1996
s. 8(1)(a),
substituted by
No. 75/1998
s. 5(f).

S. 228(1)(da)
inserted by
No. 39/1996
s. 8(1)(b).

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| (db) a compliance auditor appointed under Part 12A; | S. 228(1)(db) inserted by No. 39/1996 s. 8(1)(b). |
| (e) a person authorised under sub-section (2). | |
| (2) A person or body referred to in paragraphs (a) to (d) of the definition of "authorised person" may authorise in writing any person to exercise a power under this Division on its behalf. | S. 228(2) amended by No. 34/1997 s. 24(1). |
| (3) The person or body who or which authorises a person under sub-section (2) must give an identity card to that authorised person. | S. 228(3) substituted by No. 34/1997 s. 24(2). |
| (4) The identity card must display a photograph of the authorised person to whom it is issued and state the person's name and the fact that he or she is an authorised person. | S. 228(4) inserted by No. 34/1997 s. 24(2). |
| (5) An authorised person to whom an identity card has been issued must when on duty produce that card on demand. | S. 228(5) inserted by No. 34/1997 s. 24(2). |

Penalty: 1 penalty unit.

229. *Power of entry—inspections of building or plumbing work*

For the purpose of carrying out any inspection of a building or building work or plumbing work authorised or required by this Act or the regulations, an authorised person may—

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| (a) enter any residence or the land on which a residence is situated between the hours of 8 am and 6 pm; and | S. 229 substituted by No. 34/1997 s. 25, amended by No. 18/1998 s. 9. |
| (b) enter any other building or land at any reasonable time. | |

230. Notice of entry

An authorised person must give the occupier (if any) of a building or land not less than 24 hours notice, or such other notice as may be agreed with the occupier, before the authorised person enters the building or land under section 229.

S. 231
amended by
No. 39/1996
s. 8(2),
substituted by
No. 34/1997
s. 26.

231. Powers of entry—enforcement

- (1) If an authorised person has reasonable grounds for suspecting that there is on any building or land a particular thing that may be evidence of the commission of an offence against this Act or the regulations, the authorised person, with any assistants the authorised person considers necessary, may—
 - (a) enter the building or land; and
 - (b) search for the thing.
- (2) An authorised officer must not enter a building or land under this section except—
 - (a) with the written consent of the occupier of the building or land; or
 - (b) under the authority of a search warrant.

S. 231A
inserted by
No. 34/1997
s. 26.

231A. Occupier to be given copy of consent

- (1) An occupier who consents in writing to entry and search of his or her building or land under section 231 must be given a copy of the signed consent immediately.
- (2) If, in any proceeding, a written consent is not produced to the court, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search.

231B. Search warrant

S. 231B
inserted by
No. 34/1997
s. 26.

- (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 officer believes on reasonable grounds that there is, or may be within the next 72 hours, on the building or land a particular thing that may be evidence of the commission of an offence against this Act or the regulations.
- (2) A magistrate may issue a search warrant under this section if the magistrate is satisfied by the evidence on oath, whether oral or by affidavit, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, on a building or land a particular thing that may be evidence of the commission of an offence against this Act or the regulations.
- (3) The search warrant may authorise an authorised person named in the warrant and any assistants the authorised person considers necessary—
 - (a) to enter the building or land, or the part of building or land, named or described in the warrant; and
 - (b) to search for a thing named or described in the warrant.
- (4) In addition to any other requirement, a search warrant issued under this section must state—
 - (a) the offence suspected; and
 - (b) the building or land to be searched; and
 - (c) a description of the thing for which the search is to be made; and
 - (d) any conditions to which the warrant is subject; and

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- (e) whether entry is authorised to be made at any time or during stated hours; and
 - (f) a day, not later than 7 days after the issue of the warrant, on which the warrant ceases to have effect.
- (5) A search warrant must be issued in accordance with the **Magistrates' Court Act 1989** and in the form prescribed under that Act.
- (6) The rules to be observed with respect to search warrants mentioned in the **Magistrates' Court Act 1989** extend and apply to warrants under this section.

S. 231C
inserted by
No. 34/1997
s. 26.

231C. *Announcement before entry*

- (1) Before executing a search warrant, the authorised person named in the warrant or a person assisting the authorised person must announce that he or she is authorised by the warrant to enter the building or land and 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 need not comply with subsection (1) if he or she 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 search warrant is not frustrated.

S. 231D
inserted by
No. 34/1997
s. 26.

231D. *Copy of warrant to be given to occupier*

If the occupier or another person who apparently represents the occupier is present at a building or land when a search warrant is being executed, the authorised person must—

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- (a) identify himself or herself to that person by producing his or her identity card for inspection by that person; and
 - (b) give to that person a copy of the execution copy of the warrant.

231E. Powers of authorised persons on entry

- (1) An authorised person who exercises a power of entry of a building or land under section 231 or 231B may if the thing searched for is found during the search—
 - (a) inspect and take photographs (including video recordings), or make sketches, of the building or land or the thing; and
 - (b) inspect, and make copies of, or take extracts from, the thing if it is a document.
- (2) An authorised person who exercises a power of entry of a building or land under section 229 may inspect and take photographs (including video recordings), or make sketches of the building or land or the building work or plumbing work concerned.

S. 231E
inserted by
No. 34/1997
s. 26.

231F. Powers of authorised person to require information or documents

- (1) An authorised person who exercises a power of entry of a building or land under this Division 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; and
 - (b) to produce documents to the authorised person; and

S. 231F
inserted by
No. 34/1997
s. 26.

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- (c) to give reasonable assistance to the authorised person.
- (2) An authorised person who has reasonable grounds to believe that an offence has been committed under this Act or the regulations may, to the extent that it is reasonably necessary to determine compliance with this Act or the regulations, require a person—
- (a) to give information to the authorised person in relation to the carrying out of building work or the work of a building practitioner; and
- (b) to produce documents to the authorised person relating to building work or the work of a building practitioner.
- (3) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under sub-section (1) or (2).

Penalty: 50 penalty units.

- (4) A person must not—
- (a) give information that the person knows to be false or misleading in a material particular; or
- (b) produce a document that 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: 50 penalty units.

S. 231G
inserted by
No. 34/1997
s. 26.

231G. *Copy of documents*

If a person produces a document to an authorised person in accordance with a requirement under section 231F, the authorised person may make copies of, or take extracts from, the document.

231H. Protection against self-incrimination

A person may refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Division if the giving of the information, the production of the document or the doing of that other thing would tend to incriminate the person.

S. 231H
inserted by
No. 34/1997
s. 26.

232. Entry in emergency

Despite sections 229, 231 and 231B, an authorised person may enter a building or land without a search warrant at any time if the safety of the public or the occupants is at risk or an emergency order under Part 8 or an emergency plumbing order under section 221ZZF applies to the building or land.

S. 232
substituted by
No. 34/1997
s. 26.

233. Police to assist authorised persons

An authorised person may request the assistance of a member of the police force and a member of the police force may assist the authorised person to take any action authorised by this Division.

234. Impersonation of authorised person

A person must not impersonate an authorised person.

Penalty: 60 penalty units.

234A. Confidentiality

- (1) An authorised person must not, except to the extent necessary—
 - (a) to carry out functions or to exercise powers under this Act or the regulations; or
 - (b) in connection with the administration or enforcement of this Act or the regulations; or

S. 234A
inserted by
No. 34/1997
s. 27.

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- (c) 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—

give to any other person, whether directly or indirectly, any information gained in the exercise of the powers as an authorised person.

Penalty: 20 penalty units.

- (2) Sub-section (1) does not prevent the giving of information—
- (a) for the purpose of any legal proceedings arising out of this Act or the regulations, or of any report of those proceedings; or
- (b) with the consent of the Minister.

Division 3—Evidence and notices

235. Evidence of ownership of 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 sub-section (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.
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- (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 deemed to have been served on or given to the owner.
 - (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.

237. *Service on Boards*

- (1) A document to be served on the Building Practitioners Board must be taken to have been served if it is served on the Registrar of the Building Practitioners Board.
- (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.
- (3) A document to be served on the Plumbing Industry Commission must be taken to be served if it is served on the Registrar of the Plumbing Industry Commission.

S. 237(3)
inserted by
No. 39/1996
s. 8(3),
amended by
No. 75/1998
s. 5(g).

238. *Building surveyor may rely on certificate by other registered building practitioner*

- (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

S. 238(1)
substituted by
No. 18/1998
s. 10.

- (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 sub-section (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 Building Practitioner's Board 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 building practitioner's 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.

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**

- (1) Proceedings for an 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.

- (1A) Proceedings for an offence against Part 5A, 5B or 5C or any regulations relating to cooling tower systems (other than regulations made under Part 12A) may be brought by an inspector within the meaning Part 5C.
- (2) Proceedings for an offence against Part 11 or any regulations made for the purposes of that Part or to recover money payable under that Part may be brought by any person authorised in writing by the Building Practitioners Board.

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.

- (2A) Proceedings for an offence against Part 12A or any regulations made for the purpose of that Part may be brought by the Plumbing Industry Commission, the Office of Gas Safety or any person authorised by the Plumbing Industry Commission.

S. 241(2B)
inserted by
No. 91/2000
s. 38.

- (2B) Proceedings to recover money payable under Part 12A may be brought by the Plumbing Industry Commission or any person authorised by the Plumbing Industry Commission.
- (3) Proceedings for any offence against this Act or the regulations may be brought by—
- (a) the Commission; or
 - (b) any person authorised by the Minister or the Commission; or
 - (c) a member of the police force.
- (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.

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- (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 or the regulations may be commenced within the period of 3 years after the commission of the alleged offence.

241A. Additional penalties for unregistered builders carrying out domestic building work

S. 241A
inserted by
No. 91/1995
s. 154.

- (1) If a court finds an unregistered builder guilty of carrying out domestic building work in contravention of this Act 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) The Building Practitioners Board must comply with a direction under sub-section (1).

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 Commission or a person authorised by the Minister, the Commission or the Building Practitioners Board, all penalties recovered in relation to the offence must be paid into the Building Administration Fund.
- (3) If an offence has been prosecuted by, or on behalf of, the Plumbing Industry Commission, all penalties recovered in relation to the offence must be paid into the fund established under section 221ZZZR.

S. 242(3)
inserted by
No. 39/1996
s. 8(5),
amended by
No. 75/1998
s. 5(g).

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.

244. *Offence to obstruct*

A person must not without reasonable excuse 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: 5 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.

Penalty: 100 penalty units.

- (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—

- (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: 100 penalty units, in the case of a natural person.
500 penalty units, in the case of a corporation.

246. *Offence to make false or misleading statement*

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: 10 penalty units.

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*

- (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: 5 penalty units.

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- (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.

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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.

- (4) The occupier of the building or land must comply with the order.

Penalty: 10 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 sub-section (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 sub-section (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 sub-section (3)(b), the expenses are deemed to be added to the principal sum owing under the mortgage.
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- (5) If the mortgagor is not the owner the mortgagor may recover the amount deemed 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.

252. *Vacation of building or land*

- (1) The Commission 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—
 - (a) a specified member of the police force; or
 - (b) generally all members of the police force.
- (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. Additional orders that may be made by the court

- (1) The Commission or a municipal building surveyor or any other prescribed body or person may bring proceedings in any court of competent jurisdiction for an order under this section in the event of a breach, or threatened or apprehended breach, of this Act or the regulations or a notice, permit, order or determination issued or made under this Act (including a notice or order or determination of the Building Appeals Board).
- (2) The court, if it is satisfied that a breach, or threatened or apprehended breach, has been or will be committed or is likely to be committed, may make any one or more of the following orders—
 - (a) an order to restrain the breach or other conduct by the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed;
 - (b) an order requiring building work or protection work to be carried out;
 - (c) an order requiring the payment of money into court in respect of any building work carried out by, or to be carried out by, the municipal building surveyor;
 - (d) any necessary ancillary orders.
- (3) An application for an order under this section may be made during proceedings for an offence under this Act or the regulations and an order may be made instead of or in addition to any penalty imposed in those or any other proceedings.

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- (4) An application may not be made under this section as to a notice or order or other matter that is subject to a proceeding before the Building Appeals Board that has not been finally disposed of.

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) A building infringement notice must be in the prescribed form and include the following particulars—
- (a) the nature of the alleged offence;
 - (b) the prescribed penalty for the alleged offence;
 - (c) the additional steps (if any) required to expiate the offence;

- (d) the period within which the additional steps must be taken;
 - (e) any other prescribed particulars.
- (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.

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 sub-section (2) that additional steps have been taken is for all purposes conclusive proof of that fact.
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257. *Withdrawal of building infringement notice*

- (1) The authorised officer may withdraw a building infringement notice within 28 days after it was served by serving a withdrawal notice on the person on whom the building infringement notice was served.
- (2) Subject to sub-section (3) a building infringement notice may be withdrawn even if the appropriate penalty has been paid.
- (3) If a building infringement notice states that additional steps must be taken to expiate an offence and—
 - (a) the appropriate penalty has been paid; and
 - (b) those steps have been taken—the building infringement notice cannot be withdrawn.
- (4) Once a notice of withdrawal is served, the authorised officer must refund the amount of any penalty paid on a building infringement notice before it is withdrawn.

258. *Payment of penalty and taking of additional steps*

- (1) A person has expiated an offence if—
 - (a) a building infringement notice states that a penalty must be paid and the amount of the penalty is paid at the appropriate place before the end of the period for payment 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; or
 - (b) a building infringement notice states that a penalty must be paid and that additional steps must be taken to expiate an offence and—

- (i) the amount of the penalty is paid at the appropriate place before the end of the period for payment 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; and
 - (ii) those additional steps have been taken 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.
- (2) If an offence has been expiated under this section, no further proceedings may be taken in respect of the offence, and no conviction for the offence may be regarded as having been recorded.
- (3) Every penalty paid pursuant to this section must be applied in the same manner as if the person who committed the offence had been convicted of the offence in the Magistrates' Court on a charge filed by the authorised officer who served the building infringement notice.
- (4) Payment of any penalty under this section may be made in accordance with the regulations.

259. *Proceedings where building infringement notice served*

- (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—
- (a) if the notice states that a penalty must be paid, and the amount of the penalty is not paid before the end of the period for payment shown on the notice or of any further period allowed by the authorised officer; or

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- (b) if the notice states that a penalty must be paid and additional steps must be taken to expiate the offence, and—
- (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; or
- (c) if the notice is withdrawn.
- (2) In any proceedings for an offence, if the court is satisfied that a building infringement notice was served in respect of the offence, the conviction imposed by the court must not be taken to be a conviction for any purpose except in relation to—
- (a) the making of the conviction itself; and
 - (b) subsequent proceedings which may be taken in respect of the conviction itself including proceedings by way of appeal or order to review.
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PART 14—GENERAL

259A. *Improper use of information*

A member or former member of the Building Appeals Board, the Building Practitioners Board, the Building Advisory Council, the Building Regulations Advisory Committee, the Plumbing Industry Commission, the Plumbing Industry Advisory Council or a person employed or formerly employed for the purposes of this Act to assist any of these Boards, Committees or Commissions 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.

S. 259A
inserted by
No. 71/1995
s. 22,
amended by
Nos 39/1996
s. 8(6),
75/1998
s. 5(h)(i)(ii).

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

S. 261
amended by
No. 85/2000
s. 13(2) (ILA
s. 39B(1)).

(1) The Governor in Council may make regulations
for or with respect to—

S. 261(1)(a)
amended by
No. 34/1997
s. 28.

(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;

S. 261(1)(aa)
inserted by
No. 30/2001
s. 5.

(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;

S. 261(1)(ab)
inserted by
No. 30/2001
s. 5.

(ab) applying section 188A to specified classes of
applications for building permits;

S. 261(1)(b)
amended by
No. 71/1995
s. 23(1)(a).

- (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;
- (c) the making, keeping and production of
records of permits, 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,
approvals, notices and orders;
- (e) the issue of building certificates relating to
notices and orders under this Act and
regulations;

S. 261(1)(ea)
inserted by
No. 18/1998
s. 11.

(ea) the provision of certificates as to compliance
with conditions on permits and approvals;

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- (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; **S. 261(1)(f) amended by No. 71/1995 s. 23(1)(b).**
- (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;
- (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;
- (k) forms;
- (ka) fees payable for the registration or renewal of registration of cooling tower systems, including application fees; **S. 261(1)(ka) inserted by No. 85/2000 s. 13(1).**
- (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).**
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S. 261(1)(la)
inserted by
No. 28/2000
s. 16,
substituted by
No. 68/2001
s. 13(1)(a).

- (la) fees payable for consideration by reporting authorities of applications for permits referred to them under this Act or the regulations for consent and report;
- (m) the procedure for making applications, referrals, requests and appeals under this Act or the regulations;
- (n) the giving of copies of documents to specified persons and bodies and the manner and form in which copies of documents may be given under this Act or the regulations;
- (o) the proceedings of the Building Commission, the Building Advisory Council, the Building Appeals Board, the Building Practitioners Board and the Building Regulations Advisory Committee;
- (p) the circumstances in which refunds are payable out of the Building Administration 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) building practitioner's certificates;

S. 261(1)(o)
amended by
No. 68/2001
s. 3(3).

S. 261(1)(ra)
inserted by
No. 68/2001
s. 13(1)(b).

- (t) prescribing any office or position or class of offices or positions in—
 - (i) the police force; or
 - (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);
 - (w) prescribing particulars to be included in a building infringement notice under Division 5 of Part 13;
 - (x) prescribing the manner and place of payment of any penalty under Division 5 of Part 13;
 - (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.
- (2) Fees imposed by regulations made under section 261(1)(ka) may be imposed for any or all of the following purposes—
- (a) to cover the costs of administering and enforcing Parts 5A and 5B; and

S. 261(2)
inserted by
No. 85/2000
s. 13(2).

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- (b) to cover the costs incurred by the Commission in carrying out its functions under section 196(ia); and
 - (c) to cover the costs incurred by the Secretary to the Department of Human Services in carrying out any function conferred on the Secretary by or under any Act in relation to cooling tower systems or the eradication, prevention or control of Legionella; and
 - (d) to enable education and research activities relating to the eradication, prevention or control of Legionella to be undertaken.

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, from any or all of the provisions of this Act or the regulations including any fees prescribed under this Act or the regulations; and
- (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

S. 262(d)
amended by
Nos 71/1995
s. 23(2),
39/1996
s. 10(a).

building work from all or any of the requirements of the building regulations;

- (ea) may confer power on a compliance auditor or plumbing inspector to exempt any plumbing work from all or any of the requirements of regulations made under Part 12A;
- (f) may impose penalties not exceeding 10 penalty units for a contravention of the regulations.

S. 262(ea) inserted by No. 39/1996 s. 10(b).

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.
- (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.
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S. 265 inserted by No. 68/2001 s. 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.
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.
* * * * *
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.

**Sch. 1 Pt 1
cl. 19
repealed by
No. 68/2001
s. 16.**

Building Act 1993

Act No. 126/1993

Sch. 1

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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.
 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).

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SCHEDULE 2

Ss 18, 42, 54

**PROCEDURES FOR BUILDING PERMITS AND OCCUPANCY
PERMITS**

1. *Form of application*

An application must—

- (a) be in the prescribed form; and
- (b) contain any matters, and be accompanied by any documents, prescribed for the purposes of this clause; and
- (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
- (d) be accompanied by the appropriate prescribed lodgement fee (if any); and
- (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 prescribed fees (if any) for payment to the reporting authority.

Sch. 2 cl. 1(c)
amended by
No. 71/1995
s. 24.

Sch. 2 cl. 1(d)
inserted by
No. 71/1995
s. 24,
amended by
No. 28/2000
s. 17(1).

Sch. 2 cl. 1(e)
inserted by
No. 28/2000
s. 17(1),
amended by
No. 68/2001
s. 13(2)(a).

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 sub-clause (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 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.
- (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(1) amended by No. 28/2000 s. 17(2).

Sch. 2 cl. 4(3) inserted by No. 28/2000 s. 17(3).

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.

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- (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 prescribed fee (if any).

Sch. 2 cl.
5(1A)
inserted by
No. 28/2000
s. 17(4),
amended by
No. 68/2001
s. 13(2)(b)(i)
(ii).

- (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;
 - (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—
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- (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 deemed 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.
- (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 sub-clause (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.

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.

6A. What if the reporting authority is the responsible authority under the Planning and Environment Act 1987?

Sch. 2 cl. 6A
inserted by
No. 28/2000
s. 18.

- (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.
- (3) Subject to sub-clause (4), a reporting authority is deemed 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.
- (4) A reporting authority is deemed 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 sub-clause (2), the relevant building surveyor is not required to implement any of the recommendations in a report by a reporting authority.
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Sch. 2 cl. 7(4)
inserted by
No. 28/2000
s. 19.

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- (4) For the purposes of sub-clause (2) and without limiting that sub-clause—
- (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.
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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 bankrupt¹⁷; 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

Sch. 3 cl. 4
amended by
No. 46/1998
s. 7(Sch. 1).

(c) ceases to hold a position or qualification which made the member eligible for appointment as a member.

4. *Application of Public Sector Management Act*

A member of a Board, in respect of the office of member, is not subject to the **Public Sector Management and Employment Act 1998**.

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 sub-clause (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 sub-clause (1) or (2).
- (4) Sub-clause (3) does not prevent a member of a Board being removed from office because he or she has contravened sub-clause (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.
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- (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 sub-clause (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) Sub-clauses (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.

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
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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 a register under the **Historic Buildings Act 1981**, the Historic Buildings Council; and
 - (d) any other party concerned.

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 Act 1958** 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 fits; 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
 - (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
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- (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 sub-clause (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 sub-clause (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 sub-clause (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 sub-clause (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 sub-clause (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—

Building Act 1993

Act No. 126/1993

Sch. 4

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- (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
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- (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.

4. Former bodies

- (1) On the commencement of this clause each former body is abolished and its members go out of office.
- (2) Sub-clause (1) does not affect any other provision of this Schedule—
 - (a) dealing with proceedings before a former body; or
 - (b) providing for the former body to continue for certain purposes.
- (3) If under this Schedule a former body continues for certain purposes the provisions of the old Act relating to membership and procedure continue to apply for those purposes.

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.

6. Actions commenced by Director of Building Control

Any matter or thing of a continuing nature commenced under the old Act by the Director of Building Control may

be continued and completed on and after the commencement of this clause by the Commission—

- (a) under this Act, if by virtue of the **Interpretation of Legislation Act 1984** or this Schedule, this Act applies to that matter or thing; or
- (b) in any other case, under the old Act.

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 sub-clause (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 sub-clause (2) applies is,

on and from that commencement, deemed to have been done for the purposes of this Act.

- (4) Without limiting sub-clause (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 sub-clause (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 sub-clause (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 sub-clause (2) applies.

9. Requirements before a building can be constructed

- (1) Sections 21A and 21B of the old Act continue to apply to a building in respect of which application for building approval has been made but not determined or lapsed before the commencement of this clause.
 - (2) Section 21C of the old Act continues to apply to an application for review in respect of action taken under section 21A of that Act, whether the action is taken before or after the commencement of this clause, and the Building Appeals Board has no jurisdiction to hear those applications.
 - (3) Section 21C of the old Act continues to apply to an application for review in respect of action taken under section 21B of that Act, if the application was made before the commencement of this clause, and the Building Appeals Board has no jurisdiction in respect of those applications.
 - (4) The Building Appeals Board has jurisdiction to consider and determine an application for review in respect of action taken under section 21B of the old Act, whether the action is taken before or after the commencement of this clause, if the application for review was made on or after that commencement.
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- (5) The provisions of this Act relating to appeals against a refusal of a building permit apply, with any necessary modifications, to an application referred to in sub-clause (4).

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 sub-clause (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
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- (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.

15. *Health (Public Buildings) Regulations*

- (1) Until revoked under this Act or section 3A of the **Subordinate Legislation Act 1962**, or amended or revoked under section 228 of the **Health Act 1958**, the Health (Public Buildings) Regulations 1985 (as in force immediately before the commencement of this clause) continue to apply as if section 200 of the **Health Act 1958** had not been repealed by this Act.
- (2) Those regulations continue to so apply as if Divisions 1 to 3 of Part III and Part IX were omitted.
- (3) Nothing in this clause affects the operation of section 228 of the **Health Act 1958**.

16. *Building referees—proceedings*

- (1) If—

Building Act 1993

Act No. 126/1993

- (a) under a provision of the old Act continued by this Act or under the building regulations under the old Act, there is a right to commence a proceeding before a Building Referees Board; and
- (b) a Building Referees Board has not commenced to hear the matter at the date of commencement of this clause; and

- (c) at the date of commencement of this clause the time within which that proceeding may be commenced has not expired—

that proceeding may be commenced before the Building Appeals Board, which must conduct and determine the proceeding in accordance with the old Act and for that purpose has all the powers of a Building Referees Board.

- (2) If a person has a right to commence a proceeding referred to in sub-clause (1)(a) and, at the date of commencement of this clause, a Building Referees Board has commenced to hear the matter, the Board must continue and complete the proceeding in accordance with the old Act.
- (3) Any document lodged with a Building Referees Board in relation to a proceeding to which sub-clause (1) applies is deemed to have been lodged with the Building Appeals Board.
- (4) The old Act continues to apply in relation to the reservation of questions of law for the opinion of the Supreme Court in proceedings referred to in sub-clause (1) or (2).
- (5) A determination made on a proceeding referred to in sub-clause (1), (2) or (4) must, where appropriate, be expressed so that it can be given effect to under this Act, and must be given effect to accordingly.

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—
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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.
- (2) An application for accreditation pending before the Building Control Accreditation Authority immediately before the commencement of this clause is deemed to be an application for accreditation made to the Building Regulations Advisory Committee, and may be determined by that Committee accordingly.

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 sub-clause (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 sub-clause (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 sub-clause (6).
- (8) A building practitioner's certificate issued under sub-clause (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 sub-clause (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.

20. Proceedings—Building Control Qualification Board

- (1) If before the commencement of this clause the Building Control Qualification Board had begun to hear a proceeding but had not made its determination at that commencement, it may continue and complete the proceeding in accordance with the old Act.
- (2) If before the commencement of this clause a proceeding has been commenced before the Building Control Qualification Board but at that commencement the Board has not begun to hear it, the Building Practitioners Board may hear and determine the proceeding in accordance with the old Act.
- (3) If—
 - (a) before the commencement of this clause a person has appealed to the County Court against a decision of the Building Control Qualification Board and at that commencement that appeal has not been determined; or
 - (b) the time within which a person may appeal to the County Court against a decision of that Board has not expired at that commencement—

that appeal may be commenced, continued and completed in accordance with the old Act.

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- (4) In a proceeding to which this clause applies the determination must be expressed so that it can be given effect to in the Register of Building Practitioners, and the Registrar of the Building Practitioners Board must give effect to that determination accordingly.

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.

23. Arbitration

- (1) Part IX of the old Act continues to apply to—
- (a) an application made before the commencement of this clause for determination by the Director of Building Control; and
 - (b) the referral, on or after that commencement, of a determination or application for a determination under that Part to arbitrators appointed in accordance with that Part, if the application or determination was made before that commencement; and
 - (c) a matter which, before that commencement, has been referred to arbitrators under that Part; and
 - (d) any other proceeding before arbitrators under that Part begun before that commencement.
- (2) A proceeding or matter to which sub-clause (1) applies may be continued or completed in accordance with Part IX of the old Act.

24. Temporary public buildings

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- (1) An approval which, immediately before the commencement of this clause, is in force under Part XI of the **Health Act 1958** for a temporary public building is deemed to be an occupancy permit issued under Division 2 of Part 5 in respect of a temporary structure, and may be amended or cancelled accordingly.
 - (2) An occupancy permit deemed to be issued by sub-clause (1) lasts for five years from the date of commencement of this clause and is subject to the conditions set out in section 57 of this Act.
 - (3) A building notice or building order may be issued under this Act if, before the commencement of this clause, there has been a failure to comply with Part XI of the **Health Act 1958** or a regulation made for the purposes of that Part.

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

Sch. 4 cl. 27
inserted by
No. 2/1996
s. 13.

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.

SCHEDULE 5

INFRINGEMENT OFFENCES

Offences	Infringement Penalty
section 221ZH	5 penalty units
section 221ZLA	1 penalty unit
section 221ZP(3)	3 penalty units
section 221ZPA(1) or (2)	1 penalty unit
section 221ZZB(3)	3 penalty units
section 221ZZBA(2)	3 penalty units.

Sch. 5
repealed by
No. 34/1997
s. 30(f),
new Sch. 5
inserted by
No. 75/1998
s. 20.

Sch. 6
inserted by
No. 75/1998
s. 20.

SCHEDULE 6

TRANSITIONAL PROVISIONS RELATING TO THE BUILDING
(PLUMBING) ACT 1998

1. *Plumbing Industry Commission is the successor of the Plumbing Industry Board*

- (1) The members of the Plumbing Industry Board cease to hold office.
- (2) The Plumbing Industry Commission is the successor in law of the Plumbing Industry Board.
- (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.

2. *First Plumbing Industry Commissioner*

The person who is the Chairperson of the Plumbing Industry Board immediately before the date section 20 of the **Building (Plumbing) Act 1998** came into operation is to be the Plumbing Industry Commissioner until the date that person's appointment as Chairperson was due to expire and is to continue to have the same terms of employment.

3. *Transitional provision for refrigeration mechanics*

- (1) In this clause "**refrigeration work**" means the manufacture, installation, maintenance or repair of refrigeration, ventilation or air conditioning plant or equipment.
- (2) This clause applies to a person who carried out any refrigeration work at any time in the 12 months immediately before the date that section 8 of the **Building (Plumbing) Act 1998** came into operation.
- (3) Despite Part 12A (as amended by section 8 of the **Building (Plumbing) Act 1998**), a person to whom this clause applies may continue to carry out refrigeration work without being registered or licensed under that Part—
 - (a) for 12 months after the date section 8 came into operation; or

- (b) if the person applies before that 12 month period expires for registration or a licence that will enable her or him to carry out refrigeration work—
 - (i) until the Commission grants the registration or licence; or
 - (ii) if the Commission refuses to grant the registration or licence—
 - (A) if the person does not apply to the Victorian Civil and Administrative Tribunal for a review of the refusal, until 21 days after the person is given notice of the refusal in writing; or
 - (B) if the person applies to the Victorian Civil and Administrative Tribunal to have the refusal reviewed, until the Tribunal gives its decision to the person in writing or the person abandons the application for review.

4. *Building Advisory Council*

The Building Advisory Council is deemed to be the same body despite the change to its membership made by section 4(1) of the **Building (Plumbing) Act 1998**.

ENDNOTES

1. General 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).

2. Table of Amendments

This Version 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

Act No. 126/1993

Endnotes

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**

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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**

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Act No. 126/1993

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 (HH) Act 2001, No. 26/2001

Assent Date: 7.6.01
Commencement Date: Ss 9–13 on 8.6.01: s. 2(1)
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

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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)

Current State: This information relates only to the provision/s amending the **Building Act 1993**

3. 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 "council": If a council refers a function to a regional corporation pursuant to Part 12, references in this Act to a council will be construed as references to the regional corporation and references to the municipal building surveyor will be construed as references to the regional building surveyor.

³ S. 3(1) def. of "municipal building surveyor": See note 2.

⁴ S. 3(1) def. of "owner": 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.

⁵ S. 6: Government Gazette 16 June 1994 page 1590 reads as follows:

Building Act 1993

SECTION 6—APPOINTED DAY

I, Robert Maclellan, Minister for Planning, pursuant to section 6 of the **Building Act 1993**, appoint 1 July 1994, as the day on which the provisions of the Act relating to building practitioners shall apply to the Class of municipal building surveyors and Class of private building surveyor in the Category of building surveyor and the Class of municipal building inspector and the Class of private building inspector in the Category of building inspector.

Government Gazette 27 October 1994 page 2888 reads as follows:

Building Act 1993

SECTION 6—APPOINTED DAY

I, Robert Maclellan, Minister for Planning, pursuant to section 6 of the **Building Act 1993**, appoint 1 November 1994 as the day on which the provisions of the Act relating to building practitioners shall apply to the Category of quantity surveyor, an engineer engaged in the building industry in the Category of engineer, Class of Civil engineer, Class of Mechanical engineer, and Class of Electrical engineer and draftsman who carries on a business of preparing plans for building work or preparing

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documentation relating to permits or permit applications in the Category of draftsman.

Government Gazette 13 April 1995 page 882 reads as follows:

Building Act 1993

SECTION 6—APPOINTED DAY

I, Robert Maclellan, Minister for Planning, pursuant to section 6 of the **Building Act 1993**, appoint 5 May 1995 as the day on which the provisions of the Act relating to building practitioners shall apply to the Category of Builder—Class 1 Construction.

Special Gazette (No. 45) 31 May 1995 reads as follows:

Building Act 1993

SECTION 6—APPOINTED DAY

I, Robert Maclellan, Minister for Planning, pursuant to section 6 of the **Building Act 1993**, appoint 14 June 1995 as the day on which the provisions of the Act relating to building practitioners shall apply to:

- (a) the Category of Builder—
 - (i) Class 2—Demolition-single storey detached Class 1 and 10 buildings; and
 - (ii) Class 3—Demolition general; and
- (b) the Category of Supervisor (temporary structures)—
 - (i) Class 1—Stages, tiered seating stands, equipment platforms or towers fabricated on site from metal tubes and fittings or other scaffolding components and other materials; and
 - (ii) Class 2—Special structures—tents, marquees, safety barriers.

Government Gazette 16 November 1995 page 3201 reads as follows:

Building Act 1993

SECTION 6—APPOINTED DAY

I, Robert Maclellan, Minister for Planning, pursuant to section 6 of the **Building Act 1993**, appoint 31 December 1995 as the day on which the provisions of the Act relating to building practitioners shall apply to all building practitioners within the meaning of the Act (to the extent that it does not already apply).

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⁶ S. 12: 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.

⁷ S. 49: See section 3(1) definition of "conduct".

⁸ S. 53(2): See note 7.

⁹ S. 129 def. of "building work": See section 3(1) definition of "building work" in this Act.

¹⁰ 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.

¹¹ S. 190(1): See note 7.

¹² S. 207: Section 18(2) of the **Building (Amendment) Act 1995**, No. 71/1995 reads as follows:

18. *Building Advisory Council*

- (2) The Building Advisory Council is deemed to be the same body despite the change in its membership.

¹³ S. 210: Section 19(2) of the **Building (Amendment) Act 1995**, No. 71/1995 reads as follows:

19. *Building Regulations Advisory Committee*

- (2) The Building Regulations Advisory Committee is deemed to be the same body despite the change in its membership.

Building Act 1993
Act No. 126/1993

¹⁴ Pt 12A: Part 3 (ss 15–28) of the **Building (Amendment) Act 1996**, No. 39/1996 reads as follows:

PART 3—REPEAL, SAVINGS AND TRANSITIONAL PROVISIONS

15. *Definitions applying to this Part*

(1) In this Part—

"former Act" means the **Building Control (Plumbers Gasfitters and Drainers) Act 1981**;

"new Act" means the **Building Act 1993**.

(2) The definitions in section 221B of the new Act apply to this Part.

16. *Repeal of the Building Control (Plumbers Gasfitters and Drainers) Act 1981*

(1) The former Act is **repealed**.

(2) Any reference to the former Act 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 Part 12A of the new Act unless the contrary intention appears.

17. *Board is the successor of the Plumbers Gasfitters and Drainers Registration Board*

(1) The members of the Plumbers Gasfitters and Drainers Registration Board cease to hold office.

(2) The Plumbing Industry Board is the successor in law of the Plumbers Gasfitters and Drainers Registration Board established under the former Act.

- (3) Any reference to the Plumbers Gasfitters and Drainers Registration 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 Board, unless the contrary intention appears.
- (4) All money in the general fund established under section 91A of the former Act and all money invested under section 91A(6) of the former Act must be paid into the general fund established under section 221ZZZR of the new Act.

18. *All existing licences cease to have any effect on 31 December 1996*

- (1) An endorsement of the register under section 93 of the former Act ceases to have any effect on 23 March 1997.
- (2) Any person who was a licensed drainer or plumber within the meaning of section 85 of the former Act with respect to a class of plumbing work immediately before the commencement of this section is deemed to be registered to carry out that class of work under Part 12A of the new Act.

19. *Transitional provisions—existing licensed gasfitters*

- (1) The Board must provisionally license a person to carry out gasfitting work if the person—
 - (a) was a licensed plumber within the meaning of section 85 of the former Act with respect to Plumbing (Gasfitting) immediately before the commencement of this section; and

- (b) applies to be provisionally licensed under this section and returns the registration certificate issued to him or her under the former Act; and
 - (c) is covered by the required insurance.
- (2) Despite anything to the contrary in Part 12A of the new Act, a person who is provisionally licensed under this section need not comply with Division 4 (Compliance Certificates) of that Part in carrying out any gasfitting work.
- (3) A provisional licence under this section expires on 23 March 1998.

20. *Transitional provisions—all other existing licensed plumbers*

The Board must license a person to carry out a class of plumbing work if the person—

- (a) was a licensed drainer or plumber within the meaning of section 85 of the former Act with respect to that class of plumbing work immediately before the commencement of this section; and
- (b) applies to be licensed to carry out that class of plumbing work and returns the registration certificate issued to him or her under the former Act; and
- (c) is covered by the required insurance; and
- (d) pays any fee required by the Board.

21. *Special provisions concerning registered drainers, duct fixers and roofers*

- (1) This section only applies to the following classes of plumbing work—
 - (a) Draining work;
 - (b) Plumbing (Duct Fixing);
 - (c) Plumbing (Roofing).
- (2) The Board must license a person to carry out a class of plumbing work to which this section applies if the person—
 - (a) was registered to carry out that class of plumbing work immediately before the commencement of this section; and
 - (b) applies to be licensed under this section on or before 23 June 1997; and
 - (c) is covered by the required insurance; and
 - (d) has passed any additional training course specified by the Board.
- (3) A person who was registered to carry out a class of plumbing work to which this section applies immediately before the commencement of this section and who is covered by the required insurance is deemed to be licensed to carry out that class of plumbing work—
 - (a) until 23 June 1997; or
 - (b) if the person applies before that date for a licence to carry out that class of plumbing work—
 - (i) until the Board grants the licence; or

- (ii) if the Board refuses to grant the licence under section 221Q—
 - (A) if the person does not apply to the Administrative Appeals Tribunal for a review of the refusal, until 21 days after the person is given notice of the refusal in writing; or
 - (B) if the person applies to the Administrative Appeals Tribunal to have the refusal reviewed, until the Tribunal gives its decision to the person in writing or the person abandons the application for review.

22. *Transitional provisions—existing registered plumbers*

- (1) A person who was registered as a plumber in respect of a class of plumbing work under section 92 or 94 of the former Act immediately before the commencement of this section is deemed to be registered to carry out that class of work under Part 12A of the new Act until 23 March 1997.
- (2) Any condition or restriction that applied to the person's registration immediately before the commencement of this section continues to apply.

23. *Transitional provisions—existing permit holders*

- (1) A person who held a permit under the former Act in respect of a class of plumbing work immediately before the commencement of this section is deemed to be provisionally registered to carry out that class of work under Part 12A of the new Act until the next anniversary of the issue of the permit.

- (2) Any condition or restriction that applied to the permit immediately before the commencement of this section continues to apply.

24. Refunds for the former holders of contractors' authorities

With respect to each person or partnership that held a contractor's authority under the former Act immediately before the commencement of this section, the Board must either —

- (a) refund the person or partnership \$35; or
- (b) give the person a credit of \$35 against any future payment or payments the person makes to the Board.

25. Appeals under section 100J of the former Act

- (1) This section applies to any appeal under section 100J of the former Act in respect of which the County Court has not delivered a decision before the commencement of this section.
- (2) An appeal—
 - (a) under section 100J(1)(a) is to be treated as if it were an appeal against a refusal to register the person appealing under section 221O of the new Act;
 - (b) under section 100J(1)(b) or (c) lapses;
 - (c) under section 100J(1)(d) is to be treated as if it were an appeal against a refusal to license the person appealing under section 221M of the new Act;
 - (d) under section 100J(1)(e) is to be treated as if it were an appeal against a refusal to register the person appealing under section 221P of the new Act;

(e) against the removal of the name of the person appealing lapses.

(3) In making its decision on any appeal to which this section applies, the County Court must take into account the effect of any relevant changes made by this Act.

26. *Appeals under section 106 of the former Act*

(1) Sections 106(1), (2) and (3) of the former Act continue to apply to any order made by the Plumbers Gasfitters and Drainers Registration Board under the former Act as if the former Act had not been repealed.

(2) Despite sub-section (1), in making its decision on any appeal under section 106 of the former Act, the County Court must take into account the effect of any relevant changes made by this Act.

27. *Treatment of pending applications*

(1) This section applies to any application to the Plumbers Gasfitters and Drainers Registration Board that has not been finally dealt with by that Board.

(2) An application—

(a) for registration under section 92 or 94 of the former Act is to be treated as if were an application made for registration under section 221O of the new Act;

(b) for endorsement under section 93 or 94A of the former Act is to be treated as if were an application made for registration under section 221M of the new Act;

- (c) for a permit under the former Act is to be treated as if were an application made for provisional registration under section 221P of the new Act;
- (d) for a contractor's authority under the former Act lapses.

28. *Saving of existing Regulations*

- (1) The Victoria Water Supply and Sewerage Plumbing Regulations 1994 and the Plumbers Gasfitters and Drainers Registration Board Regulations 1988 are deemed to have been made under section 221ZZZV of the **Building Act 1993**.
- (2) The Plumbers Gasfitters and Drainers Registration Board Regulations 1988 are revoked on 29 November 1998, if they are not revoked before that date.

¹⁵ S. 221ZZT: The amendment proposed by section 121(6) of the **Gas Safety Act 1997**, No. 99/1997 is not included in this publication as section 221ZZT was substituted by section 3 of the **Building (Plumbing) Act 1998**, No. 75/1998.

¹⁶ S. 221ZZU: See note 15.

¹⁷ Sch. 3 cl. 3(2)(a): Section 56 of the **Interpretation of Legislation Act 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.