

PARLIAMENT OF VICTORIA

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**Building Amendment (Registration of Building  
Trades and Other Matters) Bill 2018**

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# PARLIAMENT OF VICTORIA

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Introduced in the Assembly

## **Building Amendment (Registration of Building Trades and Other Matters) Bill 2018**

A Bill for an Act to amend the **Building Act 1993** to make it an offence for persons to carry out certain types of building work without being registered or licensed to do so, to provide for the provisional registration of builders and the licensing of building employees who carry out certain building work and related offences, to prohibit the use of certain wall cladding products, to amend certain disciplinary requirements for building practitioners, to provide further for the regulation of swimming pools and spas, to amend the **Local Government Act 1989** to provide for agreements to rectify defective cladding on buildings and charges to fund the rectification, to make minor and consequential amendments to the **Oaths and Affirmations Act 2018**, the **Domestic Building Contracts Act 1995** and the **Sale of Land Act 1962** and for other purposes.

**The Parliament of Victoria enacts:**

### **Part 1—Preliminary**

#### **1 Purposes**

The purposes of this Act are—

Building Amendment (Registration of Building Trades and Other Matters)  
Bill 2018

Part 1—Preliminary

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- 5
- 10
- 15
- 20
- 25
- 30
- (a) to amend the **Building Act 1993**—
    - (i) to make it an offence for persons to carry out certain types of building work without being registered or licensed to do so; and
    - (ii) to provide for the provisional registration of builders and the licensing of building employees who carry out certain building work and related offences; and
    - (iii) to make provision in relation to certain wall cladding products; and
    - (iv) to clarify the grounds for discipline of registered building practitioners in relation to breaches of dispute resolution orders; and
    - (v) to provide further for the regulation of swimming pools and spas; and
    - (vi) to make consequential and other miscellaneous amendments; and
  - (b) to amend the **Local Government Act 1989** to provide for—
    - (i) Councils to enter into agreements to rectify cladding on buildings; and
    - (ii) Councils to declare and levy a cladding charge to fund the rectification; and
  - (c) to make consequential amendments to the **Domestic Building Contracts Act 1995**; and
  - (d) to make minor amendments to the **Oaths and Affirmations Act 2018** and the **Sale of Land 1962**.

## 2 Commencement

- 5 (1) This Part and sections 30, 38 to 41, 45 to 56,  
58, 64 to 72, 73, 75 and Part 5 come into  
operation on the day after the day on which  
this Act receives the Royal Assent.
- (2) Part 6 comes into operation on 30 October 2018.
- (3) Subject to subsection (4), the remaining  
provisions of Part 4 come into operation  
on a day or days to be proclaimed.
- 10 (4) If a provision referred to in subsection (3) does  
not come into operation before 1 July 2019, it  
comes into operation on that day.
- (5) Subject to subsection (6), Part 3 comes into  
operation on a day or days to be proclaimed.
- 15 (6) If a provision referred to in subsection (5) does  
not come into operation before 1 December 2019,  
it comes into operation on that day.
- (7) Subject to subsection (8), Part 2 comes into  
operation on a day or days to be proclaimed.
- 20 (8) If a provision referred to in subsection (7) does  
not come into operation before 1 September 2020,  
it comes into operation on that day.

## 3 Principal Act

25 In this Act, the **Building Act 1993** is called the  
Principal Act.

## Part 2—Amendment of Building Act 1993— Registration of building trades

### Division 1—Definitions

#### 4 Definitions

- 5 (1) In section 3(1) of the Principal Act **insert** the following definition—
- "subcontractor means a person who enters into a contract with a builder to carry out all or part of the building work that is to be carried out by the builder under another contract;"
- 10
- (2) In section 3(1) of the Principal Act, in the definition of *Victorian Managed Insurance Authority*, for "1996." substitute "1996;"
- (3) In section 3(1) of the Principal Act, in the definition of *registered building practitioner*, after "Part 11" **insert** "including a building practitioner that is provisionally registered under that Part unless the contrary intention appears".
- 15
- (4) In section 3(1) of the Principal Act **insert** the following definitions—
- 20
- licensed building employee* means a person who holds a licence, including a provisional licence, under Part 11A;
- provisional licence* means a licence granted under
- 25
- section 187G;
- provisional registration* means registration granted under section 171(1)(ab);
- training contract* has the same meaning as in section 1.1.3(1) of the **Education and Training Reform Act 2006**;
- 30
-



***Victorian Registration and Qualifications***

*Authority* means the Victorian Registration and Qualifications Authority established under section 4.2.1 of the **Education and Training Reform Act 2006**."

5

**Division 2—Amendments relating to registration of builders**

**5 Specification of builders in relation to specific building work**

10

(1) In section 24B(3)(a) of the Principal Act, after "practitioner" **insert** "other than a provisionally registered building practitioner".

(2) After section 24B(3)(a) of the Principal Act **insert**—

15

"(ab) a provisionally registered building practitioner if their registration authorises the carrying out of all of the building work under the proposed permit; or".

20

(3) In section 24B(4)(b) of the Principal Act, after "registered" **insert** ", other than provisionally registered,".

**6 Restrictions on owner-builder**

25

(1) In section 25B(1)(b) of the Principal Act, after "registration" **insert** ", other than a provisional registration,".

(2) In section 25B(1A) of the Principal Act, after "registered" **insert** ", other than provisionally registered,".

30

**7 Prescribed temporary structures—special provisions**

In section 57(1)(b) of the Principal Act, after "practitioners" **insert** "other than provisionally registered building practitioners".

**8 Offence for owner-builder to sell building without report or insurance**

5 In section 137B(1)(a)(i) of the Principal Act, after "practitioner" **insert** "other than a provisionally registered building practitioner".

**9 Representation in relation to registration**

At the end of section 169 of the Principal Act **insert**—

10 "(2) A person who is provisionally registered under this Part in a class of builder must not represent or imply that the person is registered under section 171(1)(a) in that class of builder.

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

**10 New section 169EA inserted**

After section 169E of the Principal Act **insert**—

20 "**169EA Offence to carry out certain types of building work unless registered or licensed**

25 (1) A person must not carry out a type of building work that is prescribed for the purposes of this section unless the person—  
(a) is registered under this Part and that registration authorises the carrying out of that building work; or

- 5 (b) is licensed under Part 11A and that  
licence authorises the carrying out of  
that building work and the person is  
carrying out the building work in the  
course of the person's employment.
- Penalty: 500 penalty units, in the case of a  
natural person;  
2500 penalty units, in the case of a  
body corporate.
- 10 (2) A person does not commit an offence under  
subsection (1)(b) if the person is employed  
under a training contract to carry out a type  
of building work referred to in subsection (1)  
by an employer who has been approved  
15 under section 5.5.7 of the **Education and  
Training Reform Act 2006** by the Victorian  
Registration and Qualifications Authority to  
employ that person under the training  
contract."
- 20 **11 Offence for person to carry out certain domestic  
building work unless registered**
- (1) In the heading to section 169F of the Principal  
Act, after "**certain**" insert "**domestic**".
- 25 (2) In section 169F(1) of the Principal Act, for  
"building work" substitute "domestic building  
work".
- (3) At the foot of section 169F(2) of the Principal Act  
**insert—**
- "Note**
- 30 See section 169EA(1) for an offence against a person  
carrying out building work prescribed for the purposes of  
that section if the person is not registered under Part 11 or  
licensed under Part 11A to carry out that building work."
-

**12 New sections 169FA and 169FB inserted**

After section 169F of the Principal Act **insert**—

**"169FA Offence to engage an unregistered subcontractor**

- 5 (1) A person must not engage another person as a subcontractor (the *proposed subcontractor*) to carry out building work if the building work is or includes building work of a type prescribed for the purposes of section 169EA (the *relevant building work*), unless the proposed subcontractor is registered under this Part and that registration authorises the carrying out of the relevant building work.
- 10
- 15 Penalty: 500 penalty units, in the case of a natural person;  
2500 penalty units, in the case of a body corporate.
- 20 (2) Subsection (1) does not apply to a person if the person took reasonable steps to ensure that the proposed subcontractor was registered to carry out the relevant building work, including any of the following steps—
- 25 (a) the person provided a written statement to the proposed subcontractor setting out—
- 30 (i) the requirement that the proposed contractor be a registered builder and that the registration must authorise the carrying out of the relevant building work; and

- 5 (ii) the requirement that any person engaged by the proposed subcontractor to carry out the relevant building work be so registered;
- 10 (b) the person inspected the certificate of registration of the proposed subcontractor at the time of engaging the proposed subcontractor and the certificate of registration appeared to authorise the proposed subcontractor to carry out the relevant building work;
- 15 (c) the person, at the time of engaging the proposed subcontractor, checked whether the proposed subcontractor was listed on the Register of Building Practitioners;
- 20 (d) the contract between the person and the subcontractor contains a clause requiring the subcontractor—
- 25 (i) to be a registered builder and that the registration must authorise the carrying out of the relevant building work; and
- (ii) to ensure that any person engaged by the subcontractor to carry out the relevant building work is so registered.

30 **169FB Offence to direct or require a person to carry out certain building work**

- 35 (1) A person must not direct or require another person (the *directed person*) to carry out a type of building work prescribed for the purposes of section 169EA (the *relevant building work*) unless the directed person—

- 5
- (a) is registered under this Part and that registration authorises the carrying out of the relevant building work; or
- (b) is licensed under Part 11A and that licence authorises the carrying out of the relevant building work and the person is carrying out the building work in the course of the person's employment.
- 10
- Penalty: 500 penalty units, in the case of a natural person;  
2500 penalty units, the case of a body corporate.
- 15
- (2) A person does not commit an offence under subsection (1) if—
- 20
- (a) the directed person is employed by a person under a training contract to carry out the relevant building work and the employer has been approved under section 5.5.7 of the **Education and Training Reform Act 2006** by the Victorian Registration and Qualifications Authority to employ the directed person under the training contract; and
- 25
- (b) the person directing the directed person is that employer or a person acting on behalf of that employer.
- 30
- (3) Subsection (1) does not apply to a person if the person took reasonable steps to ensure that the directed person was registered under Part 11 or licensed under this Part to carry out the relevant building work, including any of the following steps—

- 5
- (a) the person provided a written statement to the directed person setting out the requirement that the directed person—
- (i) be a registered builder whose registration authorises the carrying out of the relevant building work; or
- 10 (ii) be a licensed building employee whose licence authorises the carrying out of the relevant building work;
- 15 (b) the person inspected the certificate of registration or the licence certificate of the directed person before directing or requiring the directed person to carry out the relevant building work and the certificate of registration or the licence certificate appeared to authorise the directed person to carry out that
- 20 relevant building work;
- 25 (c) the person, before directing or requiring the directed person to carry out the relevant building work, checked whether the directed person was listed on the Register of Building Practitioners or the Register of Building Employees."

### 13 Who may apply for registration?

- 30 (1) In section 170 of the Principal Act, after "registration" **insert** ", including provisional registration,".
- (2) At the end of section 170 of the Principal Act **insert**—
- 35 "(2) An application for provisional registration may only be made in respect of a class of builder that authorises the carrying out of
-

a type of building work prescribed for the purposes of section 169EA."

#### 14 Registration

- 5 (1) In section 171(1)(a) of the Principal Act, for "if the applicant" **substitute** "in the case of registration other than provisional registration, if the applicant".
- (2) After section 171(1)(a) of the Principal Act **insert**—
- 10 "(ab) in the case of provisional registration in a class of builder that authorises the carrying out of a type of building work prescribed for the purposes of section 169EA—
- 15 (i) if the applicant is a natural person, the applicant has the prescribed knowledge or experience to carry out that type of building work; and
- 20 (ii) if the applicant is a body corporate, a nominee director of the body corporate referred to in section 171B(2)(a) or (b) has the prescribed knowledge or experience to carry out that type of building work; and".
- (3) After section 171(1) of the Principal Act **insert**—
- 25 "(1A) If the applicant is a body corporate that has applied for registration in a class of builder and a nominee director of the body corporate referred to in section 171B(2)(a) or (b) is provisionally registered as a builder in that
- 30 class, the body corporate can only be granted provisional registration in that class."



**15 Issue of certificate of registration**

After section 171G(2)(b) of the Principal Act  
**insert**—

5 '(ba) have the word "Provisional" prominently  
displayed on it if the registration is  
provisional; and'.

**16 Period of registration**

For section 171I(1) of the Principal Act  
**substitute**—

10 "(1) Registration under this Part lasts—  
(a) in the case of provisional registration,  
for 5 years; or  
(b) in any other case, for a period of  
up to 5 years as determined by the  
15 Authority."

**17 Renewal of registration**

(1) In the heading to section 173 of the Principal  
Act **omit "and surrender"**.  
(2) In section 173(1) of the Principal Act, after  
20 "registration" **insert** ", other than provisional  
registration,".

**18 Consequences of suspension of registration**

In section 183C(2) of the Principal Act, after  
"practitioner" **insert** ", other than a provisionally  
25 registered building practitioner,".

**19 Assessment of levy**

In section 205LH(2)(a) of the Principal Act, after  
"practitioner" **insert** ", other than a provisionally  
registered building practitioner,".

**20 Building surveyor may rely on certificate by other registered building practitioner**

After section 238(2) of the Principal Act **insert**—

5           "(3) In this section a *registered building practitioner* does not include a provisionally registered building practitioner."

**Division 3—Amendments relating to the licensing of building employees**

10       **21 New Part 11A inserted—Licensing of building employees**

After Part 11 of the Principal Act **insert**—

**'Part 11A—Licensing of building employees**

**Division 1—Building employee licence**

15                           **Subdivision 1—Application to be licensed**

**187A Natural person may apply for a licence**

20           A natural person may apply to the Authority to be licensed as a building employee in a class of building employee that authorises the carrying out of a type of building work prescribed for the purposes of section 169EA.

**Note**

25           Note, that in section 169EA(1) there is an offence against a person for carrying out building work prescribed for the purposes of that section if the person is not registered under Part 11 or licensed under this Part to carry out that building work.

**187B Application to be licensed**

An application to be licensed must—

- (a) be made to the Authority; and
- 5 (b) be in writing in a form approved by the Authority; and
- (c) state each class of licence sought; and
- (d) be accompanied by a recent photograph of the applicant that is of a size and form specified by the Authority; and
- 10 (e) be accompanied by the prescribed information (if any); and
- (f) be accompanied by the appropriate application fee determined—
  - 15 (i) in accordance with the guidelines under Division 1 of Part 12; or
  - (ii) prescribed by the regulations.

**187C Authority may conduct inquiries and require further information**

- 20 (1) In considering an application for a licence under this Division, the Authority may—
  - (a) conduct any inquiries in relation to the application that the Authority thinks fit; and
  - 25 (b) require an applicant to provide further information in relation to the application.
- 30 (2) The Authority may specify how any information provided to it under this Division is to be verified and, without limiting the scope of this power, may require that the information be provided in the form of, or be verified by, a statutory declaration.

- 5
- (3) The Authority may refuse an application for a licence if the applicant—
- (a) fails to comply with a requirement under subsection (1)(b) within a reasonable time after the requirement is made; or
  - (b) provides information that is not verified as required by the Authority under subsection (2).

10

**187D Consent to disclosure of information**

15

- (1) In considering an application for a licence, the Authority may ask the applicant to provide any consent to disclosure of information that the Authority requires to perform, or to have performed, a check on the applicant or on any information included with the applicant's application.
- (2) The Authority may refuse to consider an application for registration if the applicant fails to comply with a request under subsection (1) within 14 days after the request is made.

20

**187E Change to information in application**

25

- (1) An applicant for a licence must—
- (a) give the Authority notice of any material change during the relevant period to the information provided to the Authority by the applicant in support of the application for a licence; and

30

(b) provide the notice referred to in paragraph (a) within 14 days after becoming aware of the change.

Penalty: 60 penalty units, in the case of a natural person;

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

(2) In this section—

*material change* includes any change prescribed by the regulations;

*relevant period* means the period between the making of an application for a licence and the determination of the application by the Authority.

## **Subdivision 2—Licensing**

### **187F Licensing**

(1) The Authority must license an applicant as a building employee in a class of licence if the Authority is satisfied that—

(a) the applicant either—

(i) holds the prescribed qualification for the class of licence; or

(ii) holds a qualification that the Authority considers is, either alone or together with any further certificate, authority, experience or examination, equivalent to a prescribed qualification; and

- 5
- (b) the applicant has paid the appropriate application fee determined—
    - (i) in accordance with the guidelines under Division 1 of Part 12; or
    - (ii) prescribed by the regulations; and
  - (c) the applicant meets any other prescribed requirements.
- 10
- (2) The Authority must refuse an application for a licence if it is not satisfied of the matters specified in subsection (1).
  - (3) The Authority is not required to conduct a hearing to determine whether to grant a licence or refuse to grant a licence.

15

**187G Authority may provisionally license an applicant**

20

If the Authority refuses to grant a licence in a class to an applicant under section 187F solely on the ground that the Authority is not satisfied that the applicant meets the requirements in section 187F(1)(a), the Authority may provisionally license the applicant as a building employee in that class of licence if the Authority is satisfied that the applicant has the prescribed

25

knowledge or experience to carry out the type of building work that is authorised to be carried out by that class of licence.

**187H Conditions of licence**

- 30
- (1) The Authority—
    - (a) must impose on a licence any prescribed conditions; and
    - (b) may impose on a licence any other conditions that the Authority considers appropriate for the licence.

- (2) A person must comply with any conditions imposed on the person's licence.

Penalty: 50 penalty units.

**187I Period of licence granted under this Part**

- 5 (1) A licence granted under section 187F lasts until cancelled under this Part.
- (2) A provisional licence lasts for a period of 5 years.
- 10 (3) Subsection (1) and (2) do not take away from any provision about the suspension or cancellation of a licence.

**187J Issue or return of licence certificate**

- 15 (1) If the Authority licenses a person as a building employee, it must issue a licence certificate to that person.
- (2) The licence certificate must—
- (a) be in a form approved by the Authority; and
- 20 (b) specify the licence number of the licensed building employee; and
- (c) have the word "Provisional" prominently displayed on it if the licence is provisional; and
- 25 (d) contain a recent photograph of the person that is of a size and form specified by the Authority; and
- (e) contain the prescribed information.
- 30 (3) The Authority may ask a person who holds a licence under this Part for the return of the licence certificate—
- (a) for the purpose of altering the details on the licence certificate; or

- (b) if the licence is suspended or cancelled;  
or
- (c) for any purpose authorised by this Act  
or the regulations.
- 5 (4) A person who holds a licence under this  
Part must return the licence certificate to  
the Authority as soon as is practicable after  
being asked to do so by the Authority under  
subsection (3).
- 10 Penalty: 10 penalty units.

**187K Issue of replacement licence certificate**

The Authority may issue a replacement  
licence certificate at the request of a licensed  
building employee if the licensed building  
employee—

- 15 (a) pays the appropriate fee (if any)—
- (i) determined in accordance with  
the guidelines under Division 1  
of Part 12; or
- 20 (ii) prescribed by the regulations; and
- (b) satisfies the Authority that the licence  
certificate issued has been lost,  
damaged or destroyed.

**Subdivision 3—Periodic licence fee  
and statement**

25 **187L Periodic licence fee and statement**

A licensed building employee must, at  
the end of each prescribed period after  
the granting of a licence to the licensed  
building employee under this Part—

30



- 5
- (a) pay to the Victorian Building Authority Fund the appropriate fee determined—
- (i) in accordance with the guidelines under Division 1 of Part 12; or
- (ii) prescribed by the regulations; and
- (b) provide to the Authority a statement in respect of the period up to the date that the fee is paid that—
- 10
- (i) is in a form approved by the Authority; and
- (ii) contains any information required by the Authority; and
- (iii) is signed by the licensed building employee; and
- 15
- (iv) is accompanied by any documents required by the Authority.

**187M Surrender of licence**

20

A licensed building employee may, with the consent of the Authority, surrender the licensed building employee's licence.

**Subdivision 4—General**

**187N Register of Building Employees**

- 25
- (1) The Authority must keep a Register of Building Employees.
- (2) The Register must—
- (a) be in the form (if any) and contain the information (if any) required by the regulations; and
- 30
- (b) include the names and classes of licence of persons licensed under this Part.

**187O Licensed building employee to produce licence certificate for inspection**

A licensed building employee must produce their licence certificate for inspection if asked to do so by—

- 5
- (a) the owner or occupier of any land or building on which building work is being carried out by the licensed building employee; or
  - 10 (b) a private building surveyor in relation to any land or building on which building work is being carried out by the licensed building employee; or
  - (c) a VBA inspector; or
  - 15 (d) a plumbing inspector; or
  - (e) a compliance auditor; or
  - (f) a municipal building surveyor or a person authorised by a municipal building surveyor; or
  - 20 (g) an Energy Safe inspector.

Penalty: 10 penalty units.

**Division 2—Disciplinary proceedings and actions**

**Subdivision 1—Preliminary**

**187P Meaning of *disciplinary action***

In this Division, *disciplinary action* in relation to a licensed building employee means one or more of the following—

- 25
- 30 (a) a reprimand or a warning given to the licensed building employee;

- 5
- (b) the imposition of a penalty of not more than 10 penalty units unless—
- (i) a charge has been filed in the Magistrates' Court in relation to the matter; or
- (ii) the matter has been dealt with by a court exercising its criminal jurisdiction; or
- 10
- (iii) the matter has been dealt with by the issue of an infringement notice;
- (c) a requirement for the licensed building employee to successfully complete a specified course of training within a specified period;
- 15
- (d) the variation of a condition (other than a prescribed condition), or the imposition of a condition, on the licence;
- 20
- (e) the suspension of the licence for not more than 3 years;
- (f) the cancellation of the licence.

**187Q Division applies to suspended building employees**

- 25
- (1) Subject to subsection (2), this Division applies to a person whose licence is suspended but who was licensed at the time the conduct that forms the ground for disciplinary action occurred as if the person were a licensed building employee.
- 30
- (2) The Authority must not give a show cause notice under Subdivision 3 in relation to a matter to a person whose licence is suspended after the end of the 3-year period

immediately following the suspension if the suspension relates to that matter.

**Subdivision 2—Grounds for disciplinary action**

5

**187R Grounds for disciplinary action**

- (1) Each of the following is a ground for which disciplinary action may be taken against a licensed building employee—
- (a) the licensed building employee has contravened—
- 10
- (i) this Act or the regulations under this Act; or
- (ii) a prescribed Act or law or a prescribed provision of a prescribed Act or law;
- 15
- (b) the licensed building employee has obtained the licence on the basis of information or a document that was false or misleading;
- 20
- (c) the licensed building employee has been guilty of, or was a party to, any negligence or incompetence in connection with the carrying out of any building work;
- 25
- (d) the licensed building employee has failed to comply with a condition of the licence;
- 30
- (e) the licensed building employee has not completed the relevant prescribed continuing professional development requirements (if any);

- 5
- (f) the licensed building employee has not—
- (i) paid a fee or other amount required to be paid under this Act or the regulations; or
- (ii) provided a periodic statement required to be provided under this Part.
- 10
- (2) The Authority may make inquiries to determine whether a ground exists for taking disciplinary action under this Division.

### **Subdivision 3—Show cause process**

#### **187S Show cause notice**

- 15
- (1) If the Authority reasonably believes a ground for taking disciplinary action against a licensed building employee exists and proposes to take that action, the Authority must give the licensed building employee a notice under this section (a *show cause notice*).
- 20
- (2) The show cause notice must state the following—
- 25
- (a) that the Authority proposes to take disciplinary action;
- (b) the disciplinary action proposed to be taken;
- (c) the licence in relation to which the proposed action is to be taken;
- 30
- (d) the ground for the proposed action;
- (e) an outline of the facts and circumstances forming the basis for the ground for the proposed action;
-

- (f) an invitation to the licensed building employee to show within a stated period (the *show cause period*) why the proposed action should not be taken.
- 5 (3) The show cause period must be a period ending at least 14 days after the show cause notice is given to the licensed building employee.
- 10 (4) The Authority, at the request of the licensed building employee, may extend the show cause period stated in the show cause notice and in that case the extended period becomes the show cause period.

**187T Representations about show cause notice**

- 15 (1) The licensed building employee may—
- (a) make written representations about the show cause notice to the Authority within the show cause period; or
- 20 (b) make oral representations about the show cause notice to the Authority at the time within the show cause period, and at the place, agreed by the Authority and the licensed building employee.
- 25 (2) The Authority must keep a record of oral representations made to it under subsection (1)(b).

**187U Decision about whether to take disciplinary action**

30 Within 28 days after the show cause period ends, the Authority must decide whether a ground exists to take disciplinary action against the licensed building employee.

**187V Ending show cause process without further action**

5 If the Authority no longer believes a ground exists to take disciplinary action against the licensed building employee, the Authority—

- 10 (a) must take no further action about the show cause notice; and
- (b) must, as soon as practicable after making its decision, give notice to the licensed building employee that no further action will be taken about the show cause notice.

**187W Disciplinary or other action by Authority on giving of undertaking**

15 If the Authority believes a ground exists to take disciplinary action against the licensed building employee, the Authority may—

- 20 (a) accept an undertaking from the licensed building employee under section 234B; and
- (b) do any of the following—
  - 25 (i) defer taking the proposed disciplinary action for a specified period;
  - (ii) take disciplinary action that the Authority considers to be less serious than the proposed disciplinary action;
  - (iii) take no further action.

**187X Taking disciplinary action after show cause notice**

- 30 (1) If the Authority believes a ground exists to take disciplinary action against the licensed building employee, the Authority may—
-

- 5
- (a) take the disciplinary action proposed in the show cause notice; or
- (b) on the basis of representations made or new evidence received, take disciplinary action that the Authority considers to be less serious than the disciplinary action referred to in paragraph (a).
- 10
- (2) The Authority must, as soon as practicable after making its decision, give a written notice about the decision to the licensed building employee.
- (3) The notice must state the following—
- 15
- (a) the decision;
- (b) the reasons for the decision;
- (c) that the licensed building employee may apply under Division 3 for review of the decision within 28 days.
- (4) The decision takes effect on the later of—
- 20
- (a) the day the notice is given to the licensed building employee; or
- (b) the day stated in the notice.

**Subdivision 4—General provisions relating to disciplinary action**

25 **187Y Notice of decisions**

- (1) The Authority must give notice of a decision under this Division in relation to a licensed building employee to any person who made a complaint to the Authority about the matter to which the decision relates.
- 30



- 5 (2) If the Authority is aware that a licensed building employee is employed by a particular person, the Authority must cause notice of any decision concerning the employee made under this Division to be given to that employer without delay after the decision takes effect.

**187Z Complaint privileged**

10 A person is not liable in any way for any loss, damage or injury suffered by another person solely because the first person in good faith—

- 15 (a) lodged a complaint with the Authority in relation to a licensed building employee; or
- (b) produced or gave a document or any information or evidence to the Authority in relation to a matter that constitutes or may constitute a contravention of—
- 20 (i) this Act or the regulations; or
- (ii) a prescribed Act or law or a prescribed provision of a prescribed Act or law.

25 **187ZA Consequences of suspension of licence**

While the licence of a person is suspended, the person is taken not to be licensed under this Part.

**187ZB Revocation of suspension**

- 30 (1) The Authority may at any time revoke a suspension under Subdivision 3 if satisfied that it is appropriate to do so.

- (2) The Authority must, without delay, give written notice of the revocation to the licensed building employee.

**Division 3—Review of decisions relating to licensed employees**

**Subdivision 1—Preliminary**

**187ZC Definitions**

In this Division—

*affected person* means a person directly affected by a reviewable decision;

*review decision* has the meaning set out in section 187ZG;

*reviewable decision* means any of the following decisions under this Act—

- (a) a decision to refuse to grant a licence under this Part;
- (b) a decision to take any form of disciplinary action within the meaning of section 187P;

*reviewer* means a person deciding an internal review under this Division.

**Subdivision 2—Internal review**

**187ZD Applying for internal review**

- (1) This section applies if a reviewable decision is made by a delegate of the Authority other than a Commissioner or the chief executive officer of the Authority.
- (2) A person who is directly affected by a reviewable decision may apply to the Authority for an internal review of the decision.

- 5
- (3) Subject to subsection (4), the application must be made within 28 days after the day the affected person is given notice of the reviewable decision.
- (4) The Authority may, at any time, extend the time for applying for an internal review.
- (5) An application for an internal review must be in writing and state fully the grounds of the application.
- 10
- (6) An application for an internal review stays the operation of the decision.

**187ZE Persons who may conduct an internal review**

- 15
- (1) The Authority must appoint an employee of the Authority to conduct an internal review.
- (2) An internal review must not be conducted by—
- (a) the person who made the reviewable decision; or
- 20
- (b) a person who was involved in the matters that gave rise to the reviewable decision; or
- (c) a person who holds a less senior position than a person referred to in paragraph (a) or (b).
- 25

**187ZF Internal review**

- (1) The reviewer must conduct the internal review on—
- 30
- (a) the material before the Authority that led to the reviewable decision; and
- (b) the reasons for the reviewable decision; and

- (c) any other material that was not available at the time of the reviewable decision that the reviewer is satisfied is relevant.
- 5 (2) For the review, the reviewer must give the affected person a reasonable opportunity to make written or oral representations to the reviewer.

**187ZG Review decisions**

- 10 (1) The reviewer must make a decision (the *review decision*) to—
- (a) affirm the reviewable decision; or
- (b) amend the reviewable decision; or
- 15 (c) substitute another decision for the reviewable decision.
- (2) If the review decision affirms the reviewable decision, for the purpose of an application for review by VCAT, the reviewable decision is taken to be the review decision.
- 20 (3) If the review decision amends the reviewable decision, the reviewable decision as amended is taken to be the review decision.
- (4) If the review decision substitutes another decision for the reviewable decision, the substituted decision is taken to be the review decision.
- 25

**187ZH Notice of review decision**

- 30 (1) The Authority must, as soon as practicable after the review decision is made, give the affected person notice (the *review notice*) of the review decision.

- 5
- (2) The review notice must state the following—
- (a) the reasons for the decision;
  - (b) that the affected person may apply to VCAT for review of the decision under this Division.
- 10
- (3) If the Authority does not give the review notice within the review period the reviewer is taken to have made a review decision affirming the reviewable decision.
- 15
- (4) In this section—
- review period* means the longer of—
- (a) the relevant period prescribed by the regulations (if any); or
  - (b) the period ending 28 days after the application is made.

### **Subdivision 3—Review by VCAT**

#### **187ZI Application for review by VCAT of reviewable decision**

- 20
- (1) An affected person who has applied for an internal review of a reviewable decision under Subdivision 2 and is dissatisfied with the review decision may apply to VCAT for review of the review decision.
- 25
- (2) An affected person who was not eligible to apply for an internal review of a reviewable decision may apply to VCAT for review of the reviewable decision.
- 30
- (3) An affected person may apply to VCAT (without applying for internal review) for review of a reviewable decision to suspend or cancel a licence.

(4) An application for review of a reviewable decision or review decision must be made within—

- 5
- (a) in the case of an application under subsection (1), 14 days after the end of the review period for internal review; or
  - (b) in any other case, 28 days after the reviewable decision or review decision is made.

10                   **187ZJ Proceedings and decision**

(1) After hearing the matter, VCAT may—

- 15
- (a) affirm the review decision or reviewable decision; or
  - (b) amend the review decision or reviewable decision; or
  - (c) substitute another decision for the review decision or reviewable decision.

(2) An application for review stays the operation of the decision.'

20                   **22 Functions of the Authority**

- 25
- (1) In section 197(ab) of the Principal Act, after "practitioners" **insert** "and the scheme under Part 11A for the licensing of building employees".
  - (2) In section 197(ac) of the Principal Act, after "practitioners" **insert** "and licensed building employees".
  - (3) In section 197(f)(ii) of the Principal Act, after "practitioners" **insert** "and licensed building employees".

### 23 Certificate of Registrar

At the end of section 239 of the Principal Act  
**insert—**

- 5                   "(2) A certificate of the Registrar of the Victorian  
Building Authority specifying that a person  
is or is not recorded in the Register of  
Building Employees or the class of licence  
of a person or that a licence certificate  
10                   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."

### Division 4—General amendments relating to the registration of building trades

#### 15                   24 General regulation-making powers

(1) After section 261(1)(eb) of the Principal Act  
**insert—**

"(ec) prescribing classes of building employee;"

20                   (2) For section 261(1)(f) of the Principal Act  
**substitute—**

"(f) the qualifications for registration in a  
category or class of the Register of Building  
Practitioners or the Register of Building  
Employees—

- 25                   (i) including but not limited to degrees,  
diplomas, certificates, accreditations,  
authorities, examinations and periods  
of training or experience; and
- 30                   (ii) whether the qualification, training or  
experience was obtained or completed  
inside or outside Victoria;"

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- 5
- (3) In section 261(1)(g) of the Principal Act, after "Building Practitioners" **insert** "and the Register of Building Employees".
- (4) In section 261(1)(hb) of the Principal Act, for "domestic building work" **substitute** "building work".
- (5) After section 261(1)(hb) of the Principal Act **insert**—
- 10 "hc) specifying the building work that a class of licence as a building employee authorises a person to carry out;"
- (6) For section 261(1)(i) of the Principal Act **substitute**—
- 15 "(i) the form and divisions of the Register of Building Practitioners and the Register of Building Employees and the information to be included in those Registers;"
- (7) In section 261(1)(s) of the Principal Act, after "registration" **insert** "and licence certificates".



## **Part 3—Amendment of Building Act 1993— Swimming pools and spas**

### **25 Definitions**

- 5 In section 3(1) of the Principal Act **insert** the following definitions—
- "*certificate of pool and spa barrier compliance* means a certificate that certifies that the barrier of a swimming pool or spa complies with this Act and the building regulations;
- 10 *certificate of pool and spa barrier non-compliance* means a certificate that certifies that the barrier of a swimming pool or spa does not comply with this Act and the building regulations;
- 15 *swimming pool and spa inspector* means any of the following persons who have been engaged by an owner of land to inspect a swimming pool or spa barrier located on that land for compliance with this Act and the building regulations—
- 20 (a) a registered building surveyor;
- (b) a registered building inspector;
- (c) any other registered building practitioner whose registration authorises the carrying out of inspections of swimming pools and spas including the barriers associated with those swimming pools and spas;
- 25
- 30 *swimming pool and spa register* means a register of swimming pools and spas established by a council under section 216D;".
-

**26 Building regulations with respect to swimming pools and spas**

- (1) In section 15A(1)(b)(ii) of the Principal Act, for "services." **substitute** "services; and".
- 5 (2) After section 15A(1)(b) of the Principal Act **insert**—
- "(c) requirements relating to the safety of swimming pools and spas, including signage."
- 10 (3) After section 15A(2) of the Principal Act **insert**—
- "(3) In addition to the regulations that may be made under subsection (1), the Governor in Council may make regulations for or with respect to—
- 15 (a) the registration of swimming pools and spas by councils for the purposes of a swimming pool and spa register including—
- 20 (i) the requirement for owners of land on which swimming pools and spas are located to register those swimming pools and spas with the relevant council; and
- 25 (ii) the procedures for applying for registration and the renewal of registration of swimming pools and spas; and
- 30 (iii) the procedures for the registration and the renewal of the registration of swimming pools and spas by councils; and
- (iv) the information to be recorded in swimming pool and spa registers by councils; and
-

- 5
- 10
- 15
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- 30
- 35
- (v) the procedures for maintenance by councils of swimming pool and spa registers; and
  - (b) the requirements on owners of land to arrange for mandatory inspections of swimming pool and spa barriers on the land for compliance with this Act and the building regulations, including the frequency and circumstances of those inspections; and
  - (c) the issuing of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance, and the performance of related functions, by—
    - (i) swimming pool and spa inspectors; or
    - (ii) relevant building surveyors; or
    - (iii) municipal building surveyors when carrying out functions under Part 8 or when acting as authorised persons within the meaning of section 228; and
  - (d) the lodgement with the relevant council of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance in relation to swimming pools and spas on certain land; and
  - (e) the requirements on owners of land to assess and report to councils on the compliance of swimming pool or spa barriers on the land with this Act and the building regulations and the frequency and circumstances of such assessment and reporting and
-

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- lodgement of those reports with the relevant council; and
- 5 (f) the procedures to be taken by councils in relation to swimming pool or spa barriers that do not comply with this Act and the building regulations and the requirements on owners of land on which these non-compliant swimming pools and spa barriers are located; and
- 10 (g) the requirements on owners of land on which swimming pools or spas are located to provide information and documents to the relevant council or any other specified person or body; and
- 15 (h) prescribing fees payable for—
- 20 (i) applications to the relevant council for the registration and the renewal of the registration of swimming pools and spas and periodical registration fees relating to swimming pools and spas; and
- 25 (ii) fees for searches by councils for information relating to swimming pools and spas located in their municipal districts; and
- 30 (iii) the inspection of swimming pool and spa barriers and the issue of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance; and

- 5 (iv) the lodgement of certificates of pool and spa barrier compliance and certificates of pool and spa barrier non-compliance with councils; and
- 10 (v) the lodgement of reports with councils by owners of land relating to whether swimming pool or spa barriers located on the land comply with this Act and the building regulations; and
- (i) forms for the purposes of this subsection.
- 15 (4) Regulations for or with respect to any fees referred to in subsection (3)(h) may provide for any of the following—
- (a) maximum fees;
- (b) differential fees;
- 20 (c) the reduction, waiver or refund, in whole or in part, of fees in specified circumstances.
- (5) Regulations made under subsection (3) may impose penalties not exceeding 20 penalty units for a contravention of those regulations.
- 25 (6) Nothing in this section affects the operation of section 261 or 262."

## **27 Appeals—Building regulations**

At the end of section 144 of the Principal Act  
**insert—**

- 30 "(2) The owner of land on which a swimming pool or spa is located may appeal to the Building Appeals Board against a determination by the relevant council of

the date of construction of the swimming pool or spa."

**28 New section 216D inserted**

After section 216C of the Principal Act **insert**—

5

**"216D Register of swimming pools and spas**

10

- (1) This section applies to a swimming pool or spa that is appurtenant to a Class 1, 2, 3 or 10 building or a Class 4 part of a building.
- (2) Each council must establish and maintain a register of swimming pools and spas located in the municipal district of the council.
- (3) The register must contain the prescribed information relating to any swimming pool or spa—
  - 15 (a) that is registered with the council; or
  - (b) any other swimming pool or spa located in the municipal district of the council of which the council is aware.
- (4) The register must be maintained in the form and manner prescribed by the regulations.
- 20 (5) A council must submit, on request, all or any part of the information recorded in the register in the prescribed manner to—
  - 25 (a) the Authority for the purposes of its function under subsection (6) or for the performance of any other function of the Authority if the information is necessary for the performance of that function; and
  - 30 (b) any other prescribed person, agency or body if the information is necessary for the performance of any function of that person, agency or body.

- 5
- (6) The Authority may publish information on its website regarding the number and types of swimming pools and spas that are located in any municipal district, but must not disclose details of any owner, or the specific location, of a swimming pool or spa.
- 10
- (7) The following persons, in accordance with the regulations (if any), may inspect a register kept by a council during normal office hours—
- 15
- (a) an owner of land in the municipal district of the council on which a swimming pool or spa is located, but only in relation to any information recorded in the register relating to that swimming pool or spa;
- 20
- (b) an occupier of land in the municipal district of the council on which a swimming pool or spa is located, but only in relation to any information recorded in the register relating to that swimming pool or spa;
- 25
- (c) a swimming pool and spa inspector in relation to a swimming pool or spa barrier located in the municipal district of the council, which the inspector has been engaged to inspect;
- 30
- (d) a prescribed person, agency or body if the inspection of the information is necessary for the performance of any function of the person, agency or body.
- 35
- (8) Subject to this section, a council must ensure that no information in the register is published or made available to any other person, agency or body."
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**29 Additional regulation-making powers**

- 5
- (1) In the heading to section 262 of the Principal Act, after "**Additional**" insert "**regulation-making**".
  - (2) In section 262(e) of the Principal Act, after "exempt" insert "any persons or classes of person or".



## Part 4—Other amendments to the Building Act 1993

### 30 Definitions

- 5 In section 3(1) of the Principal Act **insert** the following definitions—
- "*certificate of registration* means the certificate of registration issued to a building practitioner under section 171G;
- 10 "*destructive testing*, in relation to a building material or product used or to be used in the construction of a building, means testing of that material or product that will or is likely to cause the destruction of that material or product;
- 15 "*external wall cladding product* means any product or material that is, or could be, used on or in the external wall of a building (including an attachment or ancillary element), but excluding any product or material that the regulations state is not an external wall cladding product;
- 20 "*high risk external wall cladding product* means an external wall cladding product that is the subject of a declaration prohibiting its use under section 192B;
- 25 "*prescribed testing authority* means—
- 30 (a) an organisation accredited by the National Association of Testing Authorities ACN 004 379 748 to conduct the destructive testing of building materials or products; and

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- (b) any other person or body prescribed in the regulations to conduct destructive testing of building materials or products;

5                                    *registration card* means the registration card issued to a building practitioner under section 171GA;".

**31 Specification of builders in relation to specific building work**

10                                    In section 24B(3)(c) of the Principal Act, for "insured architect" **substitute** "architect registered under the **Architects Act 1991**".

**32 New section 25AA inserted**

After section 25 of the Principal Act **insert**—

15                                    "**25AA A person may notify relevant building surveyor if becomes owner of land subject to building permit**

20                                    (1) If a person becomes the owner of land that is subject to a building permit that has been suspended under section 25AE(1)(d) and the remaining building work under the building permit is to be carried out by an owner-builder, the person may notify the relevant building surveyor that the person is the new owner of the land.

25                                    (2) A notice under subsection (1) must include the following information—

30                                    (a) a request that the new owner under subsection (1) be named as the builder on the building permit;

35                                    (b) if a certificate of consent has been issued to a person to carry out the remaining building work under the building permit, a copy of the certificate of consent;

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- 5 (c) the name and address of the new owner  
and any person issued with a certificate  
of consent to carry out the remaining  
building work under the building  
permit if that person is not the new  
owner;
- 10 (d) any information or documents  
requested to be provided by the  
relevant building surveyor in order for  
the relevant building surveyor to decide  
whether the new owner may be named  
as the builder on the building permit;
- (e) any other prescribed information."

**33 Notice of ending of engagement of builder**

15 In section 25A(1)(a) of the Principal Act, for  
"insured architect" **substitute** "architect registered  
under the **Architects Act 1991**".

**34 Notice to relevant building surveyor of subsequent  
engagement of builder**

20 In section 25AB(1) of the Principal Act—

(a) in paragraph (a), after "building work" **insert**  
"and whether or not the building permit is  
suspended";

25 (b) in paragraph (b), for "insured architect"  
**substitute** "architect registered under the  
**Architects Act 1991**".

**35 Change of builder on building permit**

30 In section 25AC of the Principal Act, for  
"section 25AB" **substitute** "section 25AB  
or 25AA(2)".

### 36 Suspension of building permit

For section 25AE(1)(d) of the Principal Act  
**substitute—**

- 5           "(d) if the builder named on the building permit  
is the owner of land to which the building  
permit relates, the owner ceases to own the  
land; or".

### 37 Certificate of consent

- 10           (1) In section 25G(1)(b)(ii) of the Principal Act, for  
"period." **substitute** "period; or".

- (2) After section 25G(1)(b)(ii) of the Principal Act  
**insert—**

- 15           "(iii) on the day on which the owner of the land  
to which the certificate relates ceases to  
own the land.".

### 38 Repeal of section 36

Section 36 of the Principal Act is **repealed**.

### 39 Orders to owners, occupiers or builders

- 20           (1) In section 104(3) of the Principal Act, after  
"tested" **insert** "(other than destructively tested)".

- (2) After section 104(3) of the Principal Act **insert—**

- 25           "(4) An emergency order may require the  
owner of a building or a place of public  
entertainment that is a building, or a  
builder, to, in accordance with the  
regulations (if any), arrange for, within  
a specified time, a specified building  
product or material used in that building  
to be subjected to destructive testing  
30           conducted by a prescribed testing authority  
if the municipal building surveyor believes  
on reasonable grounds that the use of the  
building product or material is connected

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with a contravention of this Act or the regulations.

- 5 (5) An owner or builder referred to in subsection (4) must provide the results of the destructive testing of the building product or material to the municipal building surveyor or another person authorised by the municipal building surveyor to receive the results within the time specified in the emergency order."

10 **40 Actions by private building surveyors**

At the end of section 107 of the Principal Act **insert—**

- 15 "(2) The power for a private building surveyor to serve a building notice or make a building order in respect of a building, land or place under subsection (1) continues after a certificate of final inspection has been issued under Part 4, or an occupancy permit or temporary approval has been issued under  
20 Part 5, in relation to the building, land or place."

**41 Building orders—general**

- (1) In section 111(7) of the Principal Act, after "tested" **insert** "(other than destructively tested)".

- 25 (2) After section 111(7) of the Principal Act **insert—**

- 30 "(8) A building order may require the owner of a building or a place of public entertainment that is a building, or a builder, to, in accordance with the regulations (if any), arrange for, within a specified time, a specified building product or material used in that building to be subjected to destructive testing conducted by a prescribed testing authority if the relevant building surveyor  
35 believes on reasonable grounds that the use of the building product or material is
-

connected with a contravention of this Act or the regulations.

- 5 (9) An owner or builder referred to in subsection (8) must provide the results of the destructive testing of the building product or material to the relevant building surveyor or another person authorised by the relevant building surveyor to receive the results within the time specified in the building order."

10 **42 Application for registration—general**

After section 170A(d) of the Principal Act **insert—**

- 15 "(da) if the applicant is a natural person, be accompanied by a recent photograph of the applicant that is of a size and form specified by the Authority; and".

**43 New section 171GA inserted**

After section 171G of the Principal Act **insert—**

**"171GA Issue of registration card**

- 20 (1) If the Authority grants registration as a building practitioner to a natural person, it must issue a registration card to that person.
- (2) The registration card must—
- 25 (a) be in a form approved by the Authority; and
- (b) specify the registration number of the building practitioner; and
- 30 (c) include a recent photograph of the building practitioner that is of a size and form specified by the Authority; and
- (d) include any other prescribed information."
-

**44 Issue of replacement certificate of registration or registration card**

- 5
- (1) In the heading to section 171J of the Principal Act, after "**registration**" **insert "or registration card"**.
- (2) In section 171J of the Principal Act, after "registration" (where twice occurring) **insert "or registration card"**.

**45 Meaning of disciplinary action**

10 For section 178(h) of the Principal Act **substitute—**

15 "(h) disqualify the practitioner for a specified period of up to 3 years from being registered in any category or class of building practitioner."

**46 Grounds for disciplinary action**

- (1) After section 179(1)(c) of the Principal Act **insert—**
- 20 "(ca) the practitioner has failed to comply with a Ministerial direction under section 188AA;"
- (2) After section 179(1)(da) of the Principal Act **insert—**
- 25 "(db) the practitioner has been issued with a breach of dispute resolution order notice under section 49U(5) of the **Domestic Building Contracts Act 1995** for failure to comply with a dispute resolution order under that Act and the chief dispute resolution officer has given written notice to the Authority accordingly;"
- 30 (3) In section 179(1)(g) of the Principal Act, for "no longer" **substitute "not"**.

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(4) After section 179(3) of the Principal Act **insert**—

5           "(4) For the avoidance of doubt, a disciplinary  
            action on the ground set out in subsection  
            (1)(da) or (db) may be commenced together  
            with or separately to any disciplinary action  
            relating to the building work that is the  
            subject of the dispute resolution order.

10           (5) If the breach of dispute resolution order  
            notice referred to in subsection (1)(db) is  
            cancelled by the chief dispute resolution  
            officer under section 49V of the **Domestic  
            Building Contracts Act 1995**—

            (a) the ground for disciplinary action under  
            subsection (1)(db) ceases to exist; and

15           (b) any suspension or partial suspension  
            imposed by the Authority or VCAT in  
            relation to that ground is terminated.

20           (6) A disciplinary action relating to the  
            building work that is the subject of the  
            dispute resolution order referred to in  
            subsection (5) is not terminated by reason  
            of the cancellation of the breach of dispute  
            resolution order notice.

25           (7) In this section—  
            *chief dispute resolution officer* has the same  
            meaning as in the **Domestic Building  
            Contracts Act 1995**."

**47 New section 179B inserted**

After section 179A of the Principal Act **insert**—

30           "**179B Mandatory cancellation of registration if  
            practitioner is not a fit and proper person**

            (1) If the Authority or VCAT makes a finding  
            in the course of disciplinary proceedings  
            that a registered building practitioner is

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not a fit and proper person, the Authority or VCAT must cancel the registered building practitioner's registration.

(2) A cancellation under subsection (1)—

5 (a) may be limited to cancellation of the registered building practitioner's registration in a specific category or class; or

10 (b) may relate to cancellation of all categories or classes of registration of the practitioner.

(3) The Authority or VCAT may take other disciplinary action in accordance with section 179 in addition to a cancellation of registration under subsection (1).".

15

**48 Immediate suspension of registration**

(1) After section 180A(2) of the Principal Act  
**insert—**

20 "(2A) The Authority must, by written notice given to a registered building practitioner, immediately suspend the registration of the registered building practitioner if the Authority considers it is in the interests of the public to do so pending the show cause process.

25

(2B) For the purpose of subsection (2A), matters that the Authority may have regard to in deciding whether it is in the interests of the public to immediately suspend the registration of a registered building practitioner include the following—

30

(a) whether the registered building practitioner is performing, has performed or has allowed others under the practitioner's control to

35

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perform building work that poses a serious risk to neighbouring properties;

5

- (b) whether the registered building practitioner is performing, has performed or has allowed others under the practitioner's control to perform building work that poses a risk to the health and safety of persons;

10

- (c) whether the registered building practitioner has been the subject of multiple adverse disciplinary actions by the Authority."

- (2) In section 180A(6) of the Principal Act, for "this section" **substitute** "subsection (1)".

15

**49 Show cause notice**

- (1) In section 182(1) of the Principal Act, for "If" **substitute** "Subject to subsection (6), if".

- (2) After section 182(1) of the Principal Act **insert**—

20

"(1A) In the case of disciplinary action on the ground set out in section 179(1)(db), the Authority must give a show cause notice by the later of the following—

25

- (a) within 28 days of receiving the breach of dispute resolution order notice from the chief dispute resolution officer;
- (b) within the prescribed period."

- (3) After section 182(4) of the Principal Act **insert**—

30

"(5) In the case of a show cause notice issued in relation to disciplinary action on the ground under section 179(1)(db), the disciplinary action proposed to be taken must include a suspension under section 178(1)(f).

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(6) The Authority is not required to give the registered building practitioner a show cause notice if—

- 5
- (a) the Authority has issued a notice of immediate suspension under section 180A(2); and
  - (b) the Authority does not propose to take any other disciplinary action."

10 **50 Disciplinary or other action by Authority on giving of undertaking**

(1) In section 182D of the Principal Act, after "practitioner" **insert** "(other than the ground under section 179(1)(db))".

15 (2) At the end of section 182D of the Principal Act **insert**—

"(2) Despite subsection (1), if the Authority believes that the ground under section 179(1)(db) exists to take disciplinary action against the registered building practitioner, and if the registered building practitioner demonstrates that there may be exceptional circumstances in relation to any failure by the practitioner to seek review of the breach of dispute resolution order notice within the time limit fixed under section 66 of the **Domestic Building Contracts Act 1995**, the Authority may—

- 20
- 25
- 30
- 35
- (a) accept an undertaking from the practitioner under section 234B that the practitioner will—
    - (i) make an application to VCAT as soon as possible for extension of the time limit to apply for review of the decision to issue a breach of dispute resolution order notice; and
-

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- 5
- (ii) inform the Authority—
- (A) when the application has been made; and
  - (B) as to the outcome of the application; and
  - (C) as to the date of any hearing relating to the application; and
- 10
- (b) defer taking the proposed disciplinary action for a specified period, which may be extended by the Authority if the practitioner's application to VCAT is successful.
- 15
- (3) For the avoidance of doubt—
- 15 (a) the Authority cannot accept an undertaking from the registered building practitioner in relation to subsection (2) other than the undertaking specified in
  - 20 subsection (2)(a); and
  - 25 (b) if the practitioner fails to comply with the undertaking, or if VCAT rejects the application for an extension of time, the Authority must proceed with the proposed disciplinary action on the ground under section 179(1)(db) that was deferred under subsection (2)(b); and
  - 30 (c) any exceptional circumstances referred to in subsection (2) cannot be taken into account by the Authority in deciding on the disciplinary action to be taken against the practitioner."
-

**51 Taking disciplinary action after show cause notice**

(1) In section 182E(1) of the Principal Act, for "If"  
**substitute** "Subject to subsection (1A), if".

(2) After section 182E(1) of the Principal Act  
**insert—**

"(1A) If the Authority believes the ground set  
out in section 178(1)(db) exists to take  
disciplinary action against the registered  
building practitioner, the Authority must  
take the disciplinary action proposed in the  
show cause notice."

**52 Applying for internal review**

For section 185(3A) of the Principal Act  
**substitute—**

"(3A) An application for an internal review of  
a reviewable decision made in relation to  
a ground for disciplinary action under  
section 178(1)(da) or (db) may be made  
at any time before any disciplinary action  
imposed by the reviewable decision ceases  
to have effect."

**53 New section 188AA inserted**

After section 188 of the Principal Act **insert—**

**"188AA Ministerial directions to building  
surveyors**

(1) The Minister may from time to time issue  
directions relating to the functions of  
municipal building surveyors and private  
building surveyors under this Act or the  
regulations that are not inconsistent with  
this Act or the regulations.

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- 5
- (2) A direction issued under subsection(1) must be published in the Government Gazette.
  - (3) A municipal building surveyor or private building surveyor must comply with any relevant direction issued under subsection (1) in carrying out a function under this Act or the regulations."

**54 Delegation of Minister's functions**

10 In section 189(2) of the Principal Act, after "192A(1)" **insert** "or 192B(1)".

**55 Minister may require Authority to act as building surveyor**

For section 190(1) of the Principal Act **substitute—**

- 15 "(1) If the Minister is of the opinion that it is in the public interest to do so, the Minister may declare any or all of the functions of a municipal building surveyor under this Act and the regulations are to be carried out by the Authority<sup>1</sup> in relation to the following—
- 20
- (a) specified building work or a class of building work situated within a municipal district or part of that district;
  - 25 (b) a specified building or class of building situated within a municipal district or part of that district;
  - (c) specified land or a class of land situated within a municipal district or part of that district."

30

**56 New section 192B inserted**

After section 192A of the Principal Act **insert—**

**"192B Declaration prohibiting use of high risk external wall cladding products**

- 5
- (1) The Minister may, by notice published in the Government Gazette, declare that an external wall cladding product is prohibited from being used by any person in the course of carrying out any building work in connection with the construction of a building.
- 10
- (2) A declaration under subsection (1) does not apply in relation to the use of an external wall cladding product under a permit in respect of which the application for the permit was made to the relevant building surveyor before the declaration took effect.
- 15
- (3) The Minister may make a declaration under subsection (1) if the Minister is satisfied that use of the external wall cladding product is or will likely cause—
- 20
- (a) occupants of the building to be at risk of death or serious injury; or
  - (b) occupants of neighbouring buildings to be at risk of death or serious injury; or
  - 25 (c) members of the public to be at risk of death or serious injury; or
  - (d) property to be at risk of severe damage.
- (4) A risk referred to in subsection (3) may arise from the use of the external wall cladding product in particular circumstances or because of a certain event including a fire.
- 30

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- 5
- (5) A declaration under this section may apply in relation to—
- (a) a specified use, a class of use or all uses of the external wall cladding product;  
or
  - (b) a specified building or a specified class of building; or
  - (c) specified persons or a specified class of persons.
- 10
- (6) A declaration under this section may be subject to conditions.
- (7) A declaration under this section must include the Minister's reasons for making the declaration.
- 15
- (8) At least 48 hours before publishing a declaration under this section in the Government Gazette, the Minister must publish a notice on the Internet that—
- (a) includes a draft of the proposed declaration; and
  - (b) a statement that the Minister intends to make the declaration in no less than 48 hours after the publication of the notice—
- 20
- 25
- unless the Minister believes that the risk of using the external wall cladding product is so serious that in the interests of public safety the declaration must be made immediately.
- 30
- (9) A declaration under this section takes effect on the later of the following—
- (a) the date the declaration is published in the Government Gazette;
  - (b) any later date specified in the declaration.
-



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- 5
- (10) Before a declaration is made under this section, the Minister may publish a draft of the proposed declaration on the Internet that includes—
- (a) the Minister's reasons for deciding to make the declaration; and
- (b) a statement that submissions may be made by any person within 28 days after the publication of the draft.
- 10
- (11) A person may make a submission to the Minister on the proposed declaration within 28 days after the publication of the draft of the proposed declaration.
- 15
- (12) The Minister must consider any submission on the proposed declaration received within 28 days after the draft of the proposed declaration is published.
- 20
- (13) The Minister may amend a declaration and in that case the procedures in this section apply as if the amendment were a declaration made under subsection (1).
- 25
- (14) The Minister must ensure that a current version of any amended declaration is published on the Internet for as long as the declaration is in force.
- (15) The Minister may, by a notice published in the Government Gazette, revoke a declaration under this section.
- 30
- (16) A revocation under subsection (15) takes effect on the day that the notice under subsection (15) is published in the Government Gazette."
-

**57 VBA inspector's identification**

(1) In section 204B(c) of the Principal Act, for "Authority." **substitute** "Authority; and".

5

(2) After section 204B(c) of the Principal Act **insert**—

"(d) state that the VBA inspector is an authorised person within the meaning of section 228.".

**58 Directions and recommendations in relation to building surveyors**

10

(1) In section 205M(4) of the Principal Act—

(a) for "Before giving" **substitute** "Subject to subsection (4B), before giving";

(b) for "14 days" **substitute** "7 days".

15

(2) In section 205M(4A) of the Principal Act, for "14 day" **substitute** "7 day".

(3) After section 205M(4A) of the Principal Act **insert**—

20

"(4B) If the Authority believes on reasonable grounds that a high risk external wall cladding product has been used in connection with any building work relating to a function of a municipal building surveyor or private building surveyor, the Authority does not have to give the building surveyor a notice under subsection (4).".

25

**59 Renewal of licence or registration**

After section 221ZD(2) of the Principal Act **insert**—

30

"(2A) Despite subsection (1), the Authority may refuse to renew the licence or the registration of a person if the Authority is satisfied that the person has not complied

with any prescribed continuing professional development requirements."

**60 Enforcement staff**

5 (1) In section 221ZZY(3)(c) and (4)(c) of the Principal Act, for "Authority." **substitute** "Authority; and".

(2) After section 221ZZY(3)(c) of the Principal Act **insert**—

10 "(d) state that the plumbing inspector is an authorised person within the meaning of section 228."

(3) After section 221ZZY(4)(c) of the Principal Act **insert**—

15 "(d) state that the compliance auditor is an authorised person within the meaning of section 228."

**61 Grounds on which disciplinary action may be taken**

After section 221ZZZG(1)(d) of the Principal Act **insert**—

20 "(da) he or she has not complied with any prescribed continuing professional development requirements;"

**62 Authorised person's identification**

25 (1) In section 228B(1), (2) and (3) of the Principal Act, for "identification" **substitute** "documentation that complies with subsection (4)".

30 (2) In section 228B(4) of the Principal Act, for "An identification issued to a person under this section must" **substitute** "For the purposes of subsections (1), (2), (3) and (7) the documentation must".

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- 5
- (3) In section 228B(4)(a) of the Principal Act, after "person" **insert** "unless the person has been issued with a registration card".
- (4) After section 228B(4) of the Principal Act **insert**—
- 10
- "(5) The identification of an authorised person who is acting on behalf of a municipal building surveyor, Energy Safe Victoria, a relevant building surveyor or the chief officer is—
- (a) documentation that complies with subsection (4); and
- (b) if the authorised person has been issued with a registration card, that card.
- 15
- (6) The identification of a municipal building surveyor or a relevant building surveyor when exercising a power as an authorised person under this Division is a registration card.
- 20
- (7) The identification of the chief officer when exercising a power as an authorised person under this Division must be in the form of documentation that complies with subsection (4).".

25 **63 Production of identification**

Section 228C(3) of the Principal Act is **repealed**.

**64 Power of entry—inspections required or authorised for the purposes of this Act or regulations**

- 30
- (1) After section 228D(6)(a) of the Principal Act **insert**—
- "(ab) for the purposes of an inspection under paragraph (a), cause any building work (including any building product or material) to be demolished, opened or cut into or
-

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tested if reasonably required to facilitate the inspection; and".

(2) After section 228D(7) of the Principal Act  
**insert—**

5                   "(7A) For the purposes of subsection (6)(ab)—

                  (a) testing of building work may include the destructive testing of any building product or material used in the building work if the authorised person believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations; and

                  (b) the authorised person—

15                   (i) may conduct testing, in accordance with the regulations (if any), of a building product or material used in the building work at the location of the building work being inspected; or

20                   (ii) may take a sample of the building product or material and arrange for destructive testing of that sample to be conducted by a prescribed testing authority."

25

**65 Entering for monitoring and other purposes**

After section 228E(4)(d) of the Principal Act  
**insert—**

30                   "(da) conduct, in accordance with the regulations (if any), destructive testing on a building product or material examined in or on the building or land, if the authorised person believes on reasonable grounds that the use of the building product or material is

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connected with a contravention of this Act  
or the regulations;

- 5 (db) arrange, in accordance with the regulations  
(if any), for destructive testing to be  
conducted by a prescribed testing authority  
on any building product or material seized  
or sampled from the building or land;"

**66 Entry in emergency**

- 10 (1) In section 228J(3)(d) of the Principal Act, for  
"thing." **substitute** "thing;"

- (2) After section 228J(3)(d) of the Principal Act  
**insert—**

15 "(e) conduct, in accordance with the regulations  
(if any), destructive testing on a building  
product or material examined in or on the  
building or land, if the authorised person  
believes on reasonable grounds that the  
use of the building product or material is  
connected with a contravention of this Act  
or the regulations;

- 20 (f) arrange, in accordance with the regulations  
(if any), for destructive testing to be  
conducted by a prescribed testing authority  
on a building product or material seized or  
sampled from the building or land."

**67 Form and content of warrant**

- (1) In section 228L(1)(d)(ii)(B) of the Principal Act,  
for "document." **substitute** "document; or"

- 30 (2) After section 228L(1)(d) of the Principal Act  
**insert—**

35 "(e) to conduct, in accordance with the  
regulations (if any), destructive testing on a  
building product or material examined in or  
on the building or land, if the authorised  
person believes on reasonable grounds that

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the use of the building product or material is connected with a contravention of this Act or the regulations; or

- 5 (f) to arrange, in accordance with the regulations (if any), for destructive testing to be conducted by a prescribed testing authority on a building product or material sampled from the building or land, if the  
10 authorised person believes on reasonable grounds that the use of the building product or material is connected with a contravention of this Act or the regulations."

#### **68 Form and content of search warrants**

- 15 (1) In section 228N(1)(a)(iv) of the Principal Act, for "thing;" **substitute** "thing; or".

- (2) After section 228N(1)(a)(iv) of the Principal Act **insert—**

20 "(v) conduct, in accordance with the regulations (if any), destructive testing on a building product or material examined in or on the building or land; or

25 (vi) arrange, in accordance with the regulations (if any), for destructive testing to be conducted by a prescribed testing authority on a building product or material seized or sampled from the building or land;".

#### **69 Seizure of things not mentioned in the warrant**

At the end of section 228O of the Principal Act **insert—**

- 30 "(2) If a thing seized or sampled by an authorised person under subsection (1) is a building product or material, the authorised person may—

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- 5
- (a) conduct, in accordance with the regulations (if any), destructive testing on the building product or material; or
  - (b) arrange, in accordance with the regulations (if any), for destructive testing to be conducted on the building product or material by a prescribed testing authority."

10           **70 Retention and return of seized documents or things**

For section 229C(3) of the Principal Act  
**substitute—**

- 15           "(3) This section does not apply to—
- (a) a sample taken by an authorised person in the exercise of a power under this Division; or
  - (b) a thing seized by an authorised person, and subjected to destructive testing, in the exercise of a power under this Division."
- 20

**71 Taking samples**

After section 229E(3) of the Principal Act  
**insert—**

- 25           "(4) Subsection (3) does not apply to a sample taken by an authorised person, and subjected to destructive testing, in the exercise of a power under this Division."



## 72 Injunctions

After section 234E(6)(b) of the Principal Act  
**insert—**

"(ba) in accordance with the regulations (if any)—

- 5
- (i) carry out testing, including the destructive testing, of a building product or material used in the construction of a building and to provide the results of such testing to the applicant; or
- 10
- (ii) arrange for the testing (including the destructive testing) of that building product or material by a prescribed testing authority and for that authority to provide the results of such testing to the applicant;".
- 15

## 73 New sections 275 and 276 inserted

After section 274 of the Principal Act **insert—**

20

**"275 General transitional and savings provisions—Building Amendment (Registration of Building Trades and Other Matters) Act 2018**

- 25
- (1) Section 169EA as inserted by section 10 of the amending Act does not apply to a person who carries out a type of building work prescribed for the purposes of section 169EA under a contract to carry out that building work, including a subcontract, if the person entered into that contract before that building work was prescribed.
- 30
- (2) Section 169EA as inserted by section 10 of the amending Act does not apply to a person who carries out, as a subcontractor or as an employee, a type of building work prescribed

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for the purposes of section 169EA during the following periods—

- (a) the period of 12 months after the relevant building work is prescribed;
- 5 (b) if the person applies for registration as a builder or for a licence as a building employee to carry out the relevant building work during that 12 month period but the Authority does not grant the registration or licence during that period, the longer of the following periods of time—
  - 10 (i) before the Authority decides to grant or not to grant the registration or the licence;
  - 15 (ii) if the person applies for an internal review under Part 11 or 11A of the Authority's decision to refuse to grant the registration or licence, before the Authority makes a review decision in relation to the reviewable decision;
  - 20 (iii) if the person applies to VCAT for review of the Authority's decision to refuse to grant the registration or licence or the review decision, before VCAT makes a decision in relation to the reviewable decision or the review decision.
- 25 (3) Section 169FA as inserted by section 12 of the amending Act does not apply to a person who engages an unregistered person as a subcontractor to carry out a type of building work prescribed for the purposes of section 169EA during the following periods—
  - 30
  - 35

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- (a) the period of 12 months after the relevant building work is prescribed;
  - (b) if the person to be engaged as a subcontractor applies for registration as a builder to carry out the relevant building work during that 12 month period but the Authority does not grant the registration during that period, the longer of the following periods of time—
    - (i) before the Authority decides to grant or not to grant the registration;
    - (ii) if the person applies for an internal review under Part 11 of the Authority's decision to refuse to grant the registration, before the Authority makes a review decision in relation to the reviewable decision;
    - (iii) if the person applies to VCAT for review of the Authority's decision to refuse to grant the registration or the review decision, before VCAT makes a decision in relation to the reviewable decision or the review decision.
- (4) Section 169FB as inserted by section 12 of the amending Act does not apply to a person who directs or requires a person to carry out a type of building work prescribed for the purposes of section 169EA during the following periods—
- (a) the period of 12 months after the relevant building work is prescribed;

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- (b) if the person directed or required to carry out the relevant building work applies for registration as a builder or for a licence as a building employee to carry out the relevant building work during that 12 month period but the Authority does not grant the registration or licence during that period, the longer of the following periods of time—
    - (i) before the Authority decides to grant or not to grant the registration or licence;
    - (ii) if the person applies for an internal review under Part 11 or Part 11A of the Authority's decision to refuse to grant the registration or licence, before the Authority makes a review decision in relation to the reviewable decision;
    - (iii) if the person applies to VCAT for review of the Authority's decision to refuse to grant the registration or licence or the review decision, before VCAT makes a decision in relation to the reviewable decision or the review decision.
  - (5) Section 25AA(1) as inserted by section 32 of the amending Act applies in relation to land that is the subject of a building permit issued between 1 July 2018 and immediately before the day on which section 32 comes into operation as well as to a building permit issued on or after that day.

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- 5 (6) A registration card issued by the Authority to a registered building practitioner who is a natural person immediately before the day on which section 43 of the amending Act comes into operation and which contains the following information, is taken on and after that day to be a registration card issued under section 171GA—
- 10 (a) the name of the building practitioner;
- (b) the registration number of the building practitioner;
- (c) a recent photo of the building practitioner.
- 15 (7) Section 179(1)(db) as inserted by section 46(2) of the amending Act only applies in relation to a breach of dispute resolution order notice issued on or after the day on which section 46(2) comes into operation.
- 20 (8) Section 179B as inserted by section 47 of the amending Act only applies in relation to a finding in respect of which a show cause notice is issued to the building practitioner on or after the day on which section 47
- 25 comes into operation.
- (9) In this section—
- 30 ***amending Act*** means the **Building Amendment (Registration of Building Trades and Other Matters) Act 2018**;
- relevant building work*** means a type of building work prescribed for the purposes of section 169EA;
-

*unregistered person* means a person who does not hold a registration under Part 11 that authorises the carrying out of the relevant building work.

5

**276 Transitional regulations**

10

(1) The Governor in Council may make regulations containing provisions of a transitional nature, including matters of an application or savings nature, arising as a result of the enactment of the amending Act, including any repeals and amendments made as a result of the enactment of that Act.

15

- (2) Regulations under this section may—
- (a) have a retrospective effect to a day that is not before the day on which the amending Act receives the Royal Assent; and
  - (b) be of limited or general application; and
  - (c) differ according to time, place or circumstance; and
  - (d) leave any matter or thing to be decided by a specified person or class of person.

20

25

(3) To the extent to which any provision of the regulations takes effect from a date that is earlier than the date of its making, the provision does not operate so as—

30

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its making; or

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- 5 (b) to impose liabilities on any person  
(other than the State or an authority of  
the State) in respect of anything done or  
omitted to be done before the date of its  
making.
- 10 (4) Regulations under this section have effect  
despite anything to the contrary in any Act  
(other than this Act or the **Charter of  
Human Rights and Responsibilities  
Act 2006**) or in any subordinate instrument.
- (5) Sections 6 and 7 of the **Subordinate  
Legislation Act 1994** do not apply to  
any regulations made under this section.
- (6) This section expires on 1 September 2022.
- 15 (7) In this section—  
*amending Act* means the **Building  
Amendment (Registration of  
Building Trades and Other Matters)  
Act 2018**."

20 **74 Amendment to Part 1 of Schedule 1 to the Principal  
Act—Building regulations—Regulation-making  
powers**

For item 6 of Part 1 of Schedule 1 to the Principal  
Act **substitute**—

- 25 "6. The use and testing (including the  
destructive testing) of specified  
building products and materials."

**75 Statute law revision and other amendments**

- 30 (1) In section 150 of the Principal Act, for "36"  
**substitute** "228D(6)(ab)".
- (2) In section 239 of the Principal Act,  
for "building practitioner's certificate"  
**substitute** "certificate of registration".

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(3) For section 261(1)(s) of the Principal Act  
**substitute—**

"(s) certificates of registration;"



## **Part 5—Amendment of other Acts**

### **Division 1—Amendment of the Oaths and Affirmations Act 2018**

#### **76 Amendment of the Oaths and Affirmations Act 2018**

5                   Item 16 of Schedule 2 to the **Oaths and  
Affirmation Act 2018** is repealed.

### **Division 2—Amendment of the Domestic Building Contracts Act 1995**

#### **77 Cancellation of breach of dispute resolution order notice**

10                   After section 49V(3) of the **Domestic Building  
Contracts Act 1995** insert—

15                   "(4) The chief dispute resolution officer must  
give the Authority notice in writing of  
the cancellation of the breach of dispute  
resolution order notice."

### **Division 3—Amendment of the Sale of Land Act 1962**

#### **78 Matters relating to land use to be disclosed in section 32 statement**

20                   For section 32C(b) of the **Sale of Land Act 1962**  
substitute—

25                   "(b) if the land is in an area that is designated as  
a bushfire prone area under section 192A of  
the **Building Act 1993**, a statement that the  
land is in such an area;"

## **Part 6—Amendment of the Local Government Act 1989**

### **79 New Part 8B inserted**

5 Before Part 9 of the **Local Government Act 1989**  
insert—

### **"Part 8B—Cladding rectification agreements**

#### **185H Definitions**

In this Part—

10 *building* has the same meaning as it has in  
the **Owners Corporations Act 2006**;

*cladding rectification agreement* means an  
agreement entered into in accordance  
with section 185I;

15 *cladding rectification charge* means a  
charge declared under section 185L;

*common property* has the same meaning  
as it has in the **Owners Corporations  
Act 2006**;

20 *existing mortgagee*, in respect of rateable  
land to which a cladding rectification  
agreement will apply, means any  
holder of a mortgage for that land,  
whether registered or unregistered;

25 *lot* has the same meaning as it has in the  
**Subdivision Act 1988**;

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

**185I Cladding rectification agreement**

- 5
- (1) Subject to section 185J, a Council may enter into a cladding rectification agreement in respect of rateable land with an existing building on it, to fund works that rectify cladding on buildings with—
- 10
- (a) the owner of the rateable land or, in the case of rateable land that is managed by an owners corporation, the owners corporation; and
- (b) a lending body, unless the Council is the lending body; and
- 15
- (c) any other person that the other parties to the agreement agree should be a party to the agreement and agrees to be a party to the agreement.
- 20
- (2) Sections 185J(1)(b) and 185M(1) and (2) do not apply to a cladding rectification agreement in respect of rateable land that is used for a residential purpose.
- 25
- (3) The Minister administering the **Building Act 1993** must publish a notice in the Government Gazette specifying the type of works that may be funded by a cladding rectification agreement.
- (4) A Council must not enter into a cladding rectification agreement to fund works unless the works are of a type specified in a notice published under subsection (3).
- 30
- (5) A cladding rectification agreement must—
- (a) be in writing; and
- (b) outline the works to be undertaken on the rateable land; and
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Part 6—Amendment of the Local Government Act 1989

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- 5
- (c) provide for the lending body to advance specified funds to conduct the works; and
- (d) provide for the Council to levy a cladding rectification charge on the rateable land; and
- (e) provide for the Council to use the money received under the cladding rectification charge—
- 10
- (i) to repay the lending body the principal amount advanced plus any agreed interest accrued since that advance; and
- 15
- (ii) for any agreed administrative charge to be retained by the Council.

**185J Conditions to be met before entering into cladding rectification agreement**

- 20
- (1) Before entering into a cladding rectification agreement, the owner of the rateable land or, in the case of rateable land managed by an owners corporation, the owner of each lot on the rateable land—
- 25
- (a) must give the Council details in writing of—
- 30
- (i) all taxes, rates and charges owing on the rateable land or lot (including the total amount owing in respect of each tax, rate or charge) imposed by or under an Act; and
- (ii) all registered and unregistered mortgages over the rateable land or lot; and

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- 5 (iii) if a relevant mortgage is held against 2 or more properties including the rateable land or lot, the proportion of the debt secured by the mortgage that applies to the rateable land or lot calculated in accordance with subsection (3); and
- 10 (b) subject to section 185M, may obtain the written agreement of an occupier to pay the cladding rectification charge that will apply in respect of their occupancy.
- 15 (2) For the purposes of satisfying itself of the matters required in subsection (1)(a), a Council must give written notice to each owner or, in the case of rateable land managed by an owners corporation, each owner of a lot on the rateable land—
- 20 (a) that the Council requires the details specified in subsection (1)(a); and
- (b) stating that the owner has 60 days from the date of giving the notice to provide the details.
- 25 (3) For the purposes of subsection (1)(a)(iii), the proportion of the debt secured by the mortgage that applies to the rateable land or lot must be calculated by distributing the debt between all the properties against
- 30 which the mortgage is held in proportion to the relative capital improved values of the properties in respect of the current financial year (as at the time of entering into the agreement).

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- (4) A Council must not enter into a cladding rectification agreement unless the Council is satisfied that the total amount of taxes, rates, charges and mortgages owing on the rateable land when added to the total value of the cladding rectification charge is an amount that does not exceed the capital improved value of the land after the completion of any works that would be undertaken as part of the cladding rectification agreement.
  - (5) A Council must not enter into a cladding rectification agreement in respect of rateable land that is managed by an owners corporation unless the Council is satisfied that, for each separate lot on the rateable land, the total amount of taxes, rates, charges and mortgages owing for that lot when added to the cladding rectification charge owing in respect of that lot does not exceed the capital improved value of that separate lot after the completion of any works that would be undertaken as part of the cladding rectification agreement.
  - (6) If a person who receives a notice under subsection (2) fails to provide the required details within the time specified in the notice, the Council can be taken to be satisfied of the matters required in respect of subsection (4) or (5) (whichever is applicable) in relation to the rateable land or relevant lot on the rateable land (whichever is applicable).
  - (7) The owner of rateable land, or owner of a lot on rateable land (whichever is applicable) must advise, in writing, at least 28 days before a cladding rectification agreement is entered into, any existing mortgagee in

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respect of the rateable land to which the agreement will apply—

- 5 (a) that the rateable land or lot (as the case may be) is intended to be subject to a cladding rectification agreement; and
- 10 (b) of the details of all cladding rectification charges that are expected to be declared by a Council in respect of the rateable land or lot (as the case may be) under the cladding rectification agreement.

15 (8) If a Council is not satisfied of the matters set out in subsection (4), the Council may enter into a cladding rectification agreement if all the existing mortgagees of the rateable land agree in writing to the proposed cladding rectification charge.

20 (9) If a Council is not satisfied of the matters set out in subsection (5) in relation to one or more lots on rateable land, the Council may enter into a cladding rectification agreement if all the existing mortgagees of those lots agree in writing to the cladding rectification charge.

25 **185K Cladding rectification agreements with owners corporations**

- 30 (1) If a proposed cladding rectification agreement is in respect of rateable land that is managed by an owners corporation—
- 35 (a) the owners corporation must not enter into the agreement without the written consent of the owners of no less than 75 per cent of the total lots affected by the owners corporation in respect of the land; and

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- (b) the owners corporation must, before entering into the agreement—
    - (i) give to the Council in writing the names and postal addresses of all of the owners of the lots affected by the owners corporation in respect of the land; and
    - (ii) specify to the Council which of the owners consented to entering the agreement.
  - (2) If an owners corporation enters into a cladding rectification agreement—
    - (a) the agreement is taken not to be a mortgage or charge of common property for the purposes of section 17 of the **Owners Corporations Act 2006**; and
    - (b) works undertaken under the agreement are taken not to be upgrading works for which the owners corporation can levy a fee under section 53 of the **Owners Corporations Act 2006**; and
    - (c) the agreement is taken not to be a maintenance plan for the purposes of the **Owners Corporations Act 2006**; and
    - (d) any levying and collection of the cladding rectification charge by the Council under the agreement is taken not to be a maintenance fund for the purposes of the **Owners Corporations Act 2006**.
  - (3) A cladding rectification charge declared and levied in respect of rateable land that is managed by an owners corporation—
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- 5
- (a) does not apply to the part of the land that is common property; and
  - (b) must be apportioned based on the separate lots or occupancies on the land.
- (4) An owners corporation is not liable for any failure by an owner or any occupier to pay a cladding rectification charge.

**185L Cladding rectification charge**

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- (1) After entering into a cladding rectification agreement a Council must, in accordance with the conditions of that agreement, declare a cladding rectification charge in respect of the rateable land that is the subject of the cladding rectification agreement.
  - (2) Subject to the provisions of the cladding rectification agreement, the cladding rectification charge may be varied to provide for any of the following—
    - (a) a variation in the works;
    - (b) a variation in the cost of the works;
    - (c) an additional penalty interest in the event of a failure to pay the charge in accordance with the cladding rectification agreement.
  - (3) This Act applies to a cladding rectification charge as if it were a service charge.
  - (4) A Council may, by instrument of delegation, delegate to the Chief Executive Officer the power to declare and levy a cladding rectification charge.

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- 5
- (5) A cladding rectification charge must not exceed the expected value of the rateable land after the works are completed, unless all the existing mortgagees agree.
- (6) A cladding rectification charge must be expressed to be repayable in equal instalments over a period of no less than 10 years.

10 **185M Liability of occupier to pay cladding rectification charge**

- 15
- (1) Despite any provision of any existing lease or agreement between an owner of a rateable land which is subject to a cladding rectification charge and an occupier, the occupier is not liable to pay any part of the cladding rectification charge unless the occupier of the rateable property has specifically agreed in writing to pay the cladding rectification charge.
- 20
- (2) If an occupier has agreed in writing to pay a cladding rectification charge and the occupier fails to do so by the due date, the occupier is liable to pay any penalty interest accruing as a result of that failure.
- 25
- (3) An owner must not require an occupier to assume liability to pay any part of a cladding rectification charge as a condition of a residential tenancy agreement and an occupier is not liable to pay the charge merely by signing a residential tenancy agreement that contains such a condition.
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**185N Liability of Council to recover cladding rectification charge**

- 35
- (1) Subject to subsections (2) and (3), a Council must use its best endeavours to recover a cladding rectification charge in accordance
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with any requirements imposed on it by this Act and the cladding rectification agreement.

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(2) Neither a Council nor an owners corporation (if applicable) is liable for any failure by an owner or any occupier to pay a cladding rectification charge.

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(3) A failure by an owner or any occupier under subsection (2) does not make the Council or owners corporation (if applicable) liable to pay the outstanding amount under the cladding rectification charge to the lending body."

Part 7—Repeal of amending Act

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**Part 7—Repeal of amending Act**

**80 Repeal of amending Act**

This Act is **repealed** on 1 September 2021.

**Note**

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The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

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Endnotes

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## Endnotes

### 1 General information

See [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au) for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

<sup>1</sup> S. 190(1): See note 5.

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By Authority. Government Printer for the State of Victoria.