Western Australia

Building Services (Complaint Resolution and Administration) Act 2011

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Defined terms

Western Australia

Building Services (Complaint Resolution and Administration) Act 2011

An Act to provide for the following —

- **a system for dealing with complaints about building services, home building work contract matters and disciplinary matters;**
- **a public officer with functions relating to building services and complaints;**
- **a levy in relation to certain authorisations for building services;**
- **a system for ensuring compliance with laws about building services;**
- **related matters.**

Part 1 — Preliminary

1. Short title

This is the *Building Services (Complaint Resolution and Administration) Act 2011*.

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

approved owner-builder means a person to whom an owner-builder approval has been granted under the *Building Services (Registration) Act 2011* section 45(2);

approved policy means a policy in effect under section 6A;

authorised person means a person designated under section 60 as an authorised person;

builder, in relation to a home building work contract, has the meaning given in the *Home Building Contracts Act 1991* section 3(1);

building includes an incidental structure as defined in the *Building Act 2011* section 3;

Building Commissioner means the officer referred to in section 85;

building remedy order has the meaning given in section 36(1);

building service means any of the following —

(a) building work (as defined in the *Building Act 2011* section 3);

(b) demolition work (as defined in the *Building Act 2011* section 3);

(c) plumbing work;

(d) any other service or work prescribed for the purposes of this definition;

building service Act means any of the following —

(a) this Act;

(b) the *Building Act 2011*;

(ba) the *Building and Construction Industry (Security of Payment) Act 2021*;

(c) the *Building Services (Registration) Act 2011*;

(d) the *Construction Contracts (Former Provisions) Act 2004*;

(e) the *Home Building Contracts Act 1991*;

(f) the *Plumbers Licensing Act 1995* Part 5A;

(g) the *Local Government (Miscellaneous Provisions) Act 1960* Parts VIII, IX and XV;

(h) any other enactment prescribed for the purposes of this definition;

building service complaint means a complaint under section 5(1);

Building Services Account means the account referred to in section 92(1);

Building Services Board means the Building Services Board established by the *Building Services (Registration) Act 2011* section 65;

building services levy means the levy provided for by regulations referred to in section 94 and imposed under the *Building Services Levy Act 2011*;

committee means a committee appointed under section 89;

complaint means any of the following —

(a) a building service complaint;

(b) a HBWC complaint;

(c) a disciplinary complaint;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

disciplinary complaint means —

(a) a complaint under section 15(1); or

(b) a matter the Building Commissioner has decided under section 17 to deal with as if it were a disciplinary complaint;

disciplinary matter —

(a) in relation to a registered building service provider — has the meaning given in the *Building Services (Registration) Act 2011* section 53;

(b) in relation to an approved owner-builder — means a matter referred to in the *Building Services (Registration) Act 2011* section 50;

HBWC complaint means a complaint under section 5(2);

HBWC remedy order has the meaning given in section 41(2);

home building work has the meaning given in the *Home Building Contracts Act 1991* section 3(1);

home building work contract has the meaning given in the *Home Building Contracts Act 1991* section 3(1);

interim building service order means an order under section 30;

interim disciplinary order means an order under section 31;

interim order means an interim building service order or an interim disciplinary order;

owner, in relation to a home building work contract, has the meaning given in the *Home Building Contracts Act 1991* section 3(1);

permit authority means a permit authority for a building under the *Building Act 2011*;

place means any land, building or structure, or a part of any land, building or structure;

plumbing work has the meaning given in the *Plumbers Licensing Act 1995* section 59I;

prescribed means prescribed by regulation;

record means any document or record of information, irrespective of how the information is recorded or stored or able to be recovered and includes —

(a) any thing from which images, sounds or writings can be reproduced, with or without the aid of anything else; and

(b) any thing on which information is recorded or stored, whether electronically, magnetically, mechanically or by some other means;

registered building service provider has the meaning given in the *Building Services (Registration) Act 2011* section 3;

regulated building service means any of the following —

(a) a building service carried out by a registered building service provider or an approved owner-builder;

(b) home building work that is —

(i) carried out by a person for another person under a home building work contract or other contract or arrangement for gain or reward; and

(ii) not carried out for a person who is in turn obliged to perform the work under another contract;

(c) any other service or work prescribed for the purposes of this definition;

respondent means a person the subject of a complaint;

vocational regulatory body means any of the following —

(a) the Architects Board of Western Australia established under the *Architects Act 2004* section 5;

(b) the Plumbers Licensing Board established under the *Plumbers Licensing Act 1995* section 59;

(c) any other body or person prescribed for the purposes of this definition.

[Section 3 amended: No. 25 of 2012 s. 205(2); No. 4 of 2021 s. 122; No. 39 of 2024 s. 4.]

4. Crown bound

This Act binds the Crown.

Part 2 — Complaints and conciliation

Division 1 — Complaints about the carrying out of regulated building services or home building work contract matters

5. Making complaint about building service or home building work contract matter

(1) Subject to the regulations, a person may make a complaint to the Building Commissioner about a regulated building service not being carried out in a proper and proficient manner or being faulty or unsatisfactory.

(2) An owner or builder under a home building work contract may make a complaint to the Building Commissioner about a matter referred to in the *Home Building Contracts Act 1991* section 17 or 20 or Schedule 1 clause 5.

(3) A complaint may be made —

(a) under subsection (1) irrespective of whether the regulated building service was carried out before or after the coming into operation of this Act; and

(b) under subsection (2) irrespective of whether —

(i) the matter complained about occurred before or after the coming into operation of this Act; or

(ii) the home building work contract to which the complaint relates was entered into before or after the coming into operation of this Act.

(4) A complaint that is both a complaint about a matter referred to in subsection (1) or (2) and a complaint about a disciplinary matter may be dealt with by the Building Commissioner as if it were a complaint under this section and a complaint under section 15.

(5) The regulations may make provision as to —

(a) who can make a building service complaint; and

(b) any preliminary action required before making a complaint under this section.

(6) A complaint under this section must be —

(a) made in a manner and form approved by the Building Commissioner; and

(b) accompanied by the prescribed fee, if any.

6. Time limit for complaint

(1) A building service complaint is made out of time if the complaint is made —

(a) for a complaint relating to the installation or use of a Typlex pipe — more than 15 years after the completion of the regulated building service to which the complaint relates; or

(b) for a complaint relating to a matter other than the installation or use of a Typlex pipe — more than 6 years after the completion of the regulated building service to which the complaint relates.

(1A) Subsection (1)(a) applies to a building service complaint relating to the installation or use of a Typlex pipe irrespective of whether the making of the complaint would, before the commencement of the *Building Services (Complaint Resolution and Administration) Amendment Act 2024* section 5(1), have been out of time.

(2) For the purposes of subsection (1) a regulated building service is taken to be completed —

(a) if the criteria for determining the date of completion for that building service are prescribed — on the date determined in accordance with the criteria;

(b) if paragraph (a) does not apply — on the date on which the building service was last carried out.

(3) A HBWC complaint is made out of time if —

(a) the *Home Building Contracts Act 1991* section 8(3) applies to the complaint and the complaint is not made within the time specified in that provision; or

(b) the complaint is about a matter referred to in the *Home Building Contracts Act 1991* section 17 (other than a matter referred to in section 8(3) or a breach of section 15) and is made more than 3 years after the cause of action arose; or

(c) the complaint is about a breach of the *Home Building Contracts Act 1991* section 15 and is made more than 3 years after —

(i) the contract was entered into; or

(ii) the breach first occurred,

whichever is the later.

(4) In this section —

related body corporate has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9;

Typlex pipe means a polybutylene pipe manufactured with Typlex-1050 resin by Fletcher Building Limited, ARBN 096 046 936, or a related body corporate of Fletcher Building Limited (including a former related body corporate).

[Section 6 amended: No. 39 of 2024 s. 5.]

6A. Building Commissioner may approve policies for dealing with certain complaints

(1) The Building Commissioner may approve a policy for the purposes of dealing with building service complaints and HBWC complaints, which may include any of the following —

(a) procedures for dealing with the complaints;

(b) the kinds of remedies that may be specified in orders under Part 3 in relation to the regulated building services relating to the complaints;

(c) other relevant matters.

(2) The Building Commissioner must not approve a policy under subsection (1) unless satisfied that —

(a) there are recurring circumstances or incidents of a similar kind relating to regulated building services; and

(b) the policy is likely to assist the Building Commissioner to effectively deal with complaints under section 5 in relation to those circumstances or incidents.

(3) A policy approved under subsection (1) —

(a) must be published in accordance with the *Interpretation Act 1984* section 41(1)(a); and

(b) comes into operation on a day, as specified in the policy, occurring on or after the day on which the policy is published under paragraph (a); and

(c) may be revoked by the Building Commissioner by notice published in accordance with the *Interpretation Act 1984* section 41(1)(a).

(4) If an approved policy is in effect at the time the Building Commissioner makes a reviewable decision (as defined in the *State Administrative Tribunal Act 2004* section 17(3)), the policy is taken to be certified by the Minister as a statement of policy for the purposes of section 28 of that Act.

(5) Sections 38(1A) and 43(1A) apply to an approved policy irrespective of whether the State Administrative Tribunal is dealing with a complaint made before or after the approved policy comes into operation.

(6) Section 46(1)(ba) applies to an approved policy irrespective of whether the Building Commissioner is dealing with a complaint made before or after the approved policy comes into operation.

[Section 6A inserted: No. 39 of 2024 s. 6.]

7. Preliminary decision by Building Commissioner

(1) After receiving a complaint under section 5 the Building Commissioner must decide whether, and to what extent —

(a) to accept it; or

(b) to refuse to accept it.

(2) The Building Commissioner may make such inquiries as are appropriate to enable the making of a decision under this section.

(3) The Building Commissioner may refuse to accept a complaint under subsection (1) if —

(a) the complaint is not made in accordance with this Act; or

(b) the Building Commissioner is not satisfied that the complainant has taken preliminary action prescribed under section 5(5)(b); or

(c) the complaint is made out of time as referred to in section 6; or

(d) in the opinion of the Building Commissioner, the complaint is vexatious, misconceived, frivolous or without substance; or

(e) the matter complained about is the subject of another complaint under this Act; or

(f) an arbitrator or other person or a court or other body has made an order, judgment or other finding about the matter complained about; or

(g) the matter complained about has been the subject of a previous complaint to the Building Commissioner that has been refused or in respect of which the Building Commissioner has made a decision under section 11(1)(a).

(4) Except as provided in subsection (5), if an issue raised in a complaint has already been dealt with by the Building Commissioner or a complaint about the issue has already been referred to the State Administrative Tribunal under this Act, the Building Commissioner may refuse to accept the complaint to the extent to which it relates to that issue.

(5) Subsections (3)(e) and (4) do not operate to prevent an issue being dealt with both as a disciplinary complaint and as a complaint under section 5.

8. Further information and verification

(1) The Building Commissioner may, in writing, require a person making a complaint under section 5 to do either or both of the following —

(a) give the Building Commissioner further details about the complaint;

(b) verify any details about the complaint by statutory declaration.

(2) The Building Commissioner may specify in the requirement a reasonable time within which the person must comply with the requirement.

(3) The Building Commissioner may refuse to accept a complaint if the person making the complaint does not comply with a requirement under subsection (1) within the time specified in the requirement or, if no time is so specified, within a reasonable time.

9. Investigation

(1) Having accepted a building service complaint or a HBWC complaint, the Building Commissioner must cause an investigation of the complaint to be carried out by one or more authorised persons.

(2) The Building Commissioner may, in addition to taking action under subsection (1) in relation to a complaint, and whether before or after receiving a report on the investigation of the complaint, forward the complaint to either or both of the following —

(a) the relevant permit authority for the relevant building, if any;

(b) if the Building Commissioner is of the opinion that a matter raised in the complaint is of relevance to a vocational regulatory body, that body.

10. Report on complaint

(1) An authorised person —

(a) must prepare a report on an investigation carried out under section 9; and

(b) may include in the report recommendations as to the manner in which the complaint should be dealt with; and

(c) must give the Building Commissioner a copy of the report.

(2) The Building Commissioner may give a copy of the report to any or all of the following —

(a) the complainant and the respondent;

(b) the relevant permit authority for the relevant building, if any;

(c) if the Building Commissioner is of the opinion that a matter raised in the report is of relevance to a vocational regulatory body, that body.

11. Action after report

(1) The Building Commissioner must consider any report given to the Building Commissioner under section 10 and may, subject to the other provisions of this section —

(a) dismiss the complaint; or

(b) commence a conciliation proceeding under Division 3; or

(c) deal with the complaint under section 37 or 42, as the case requires; or

(d) refer the complaint to the State Administrative Tribunal for it to deal with under section 38 or 43, as the case requires.

(2) The Building Commissioner may adopt some or all of the recommendations, if any, in the report but is not required to adopt the recommendations.

(3) The Building Commissioner must dismiss a complaint if it is made out of time as referred to in section 6.

(4) A complaint by an owner referred to in the *Home Building Contracts Act 1991* section 17 about a breach of section 15 or 15A of that Act —

(a) must not be dismissed under this section unless it is made out of time; and

(b) if not dismissed, must be referred to the State Administrative Tribunal for it to deal with under section 43.

(5) The regulations may prescribe circumstances in which the Building Commissioner must deal with the complaint by referring the complaint to the State Administrative Tribunal for it to deal with under section 38 or 43, as the case requires.

12. Building Commissioner not party to proceeding before State Administrative Tribunal

If the Building Commissioner refers a complaint to the State Administrative Tribunal under section 11(1)(d) —

(a) the complainant is to be taken to be the applicant for the purposes of the *State Administrative Tribunal Act 2004*; and

(b) the Building Commissioner is not a party to any proceeding in respect of the referral unless joined as a party under the *State Administrative Tribunal Act 2004* section 38.

13. Withdrawal of complaint

(1) A building service complaint or a HBWC complaint may, subject to this section, be withdrawn by the complainant.

(2) The complaint may be withdrawn even though the Building Commissioner has commenced or completed an investigation of the complaint, but cannot be withdrawn if the complaint has been referred to the State Administrative Tribunal.

(3) This section extends to the withdrawal of a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

(4) This section does not limit the powers of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004* section 46.

Division 2 — Complaints about disciplinary matters

14. Application of this Division

(1) This Division applies, with any necessary modifications, to —

(a) a former registered building service provider; and

(b) a former approved owner-builder,

in relation to a disciplinary matter occurring while that person was a registered building service provider or approved owner-builder in the same way as it applies to a person who is a registered building service provider or approved owner-builder.

(2) The *Building Services (Registration) Act 2011* sections 117 and 130 apply in respect of a complaint about conduct occurring

while a person was registered under the *Builders' Registration Act 1939* [1] or the *Painters' Registration Act 1961* [1].

15. Making complaint about disciplinary matter

(1) Subject to the regulations, a person may make a complaint to the Building Commissioner about the alleged occurrence of a disciplinary matter in relation to a registered building service provider or an approved owner-builder.

(2) A complaint that is both a complaint about a matter referred to in section 5(1) or (2) and a complaint about a matter referred to in subsection (1) may be dealt with by the Building Commissioner as if there were a complaint under this section and a complaint under section 5.

(3) The regulations may make provision as to who can make a disciplinary complaint.

(4) A disciplinary complaint must be made in a manner and form approved by the Building Commissioner.

16. Preliminary decision by Building Commissioner

(1) After receiving a disciplinary complaint the Building Commissioner must decide whether, and to what extent —

(a) to accept it; or

(b) to refuse to accept it.

(2) The Building Commissioner may make such inquiries as are appropriate to enable the making of a decision under this section.

(3) The Building Commissioner may refuse to accept a disciplinary complaint under subsection (1) if —

(a) the complaint is not made in accordance with this Act; or

(b) the complaint is made more than 6 years after the alleged occurrence of the disciplinary matter; or

(c) in the opinion of the Building Commissioner, the complaint is vexatious, misconceived, frivolous or without substance; or

(d) the matter complained about is the subject of another complaint under this Act; or

(e) an arbitrator or other person or a court or other body has made an order, judgment or other finding about the matter complained about; or

(f) the matter complained about has been the subject of a previous complaint to the Building Commissioner that has been refused.

(4) Except as provided in subsection (5), if an issue raised in a complaint has already been dealt with by the Building Commissioner, or a complaint about the issue has already been forwarded to the Building Services Board under this Act, the Building Commissioner may refuse to accept the complaint to the extent to which it relates to that issue.

(5) Subsection (4) does not operate to prevent an issue being dealt with both in relation to a complaint about a disciplinary matter and as a building service complaint or a HBWC complaint.

17. Building Commissioner may deal with matter as if it were subject of disciplinary complaint

If the Building Commissioner is of the opinion that there is cause to investigate whether a disciplinary matter exists or has occurred, the Building Commissioner may decide that the matter is to be dealt with as if it were a disciplinary complaint accepted by the Building Commissioner despite no complaint having been made to the Building Commissioner about the matter.

18. Further information and verification

(1) The Building Commissioner may, in writing, require a person making a disciplinary complaint to do either or both of the following —

(a) give the Building Commissioner further details about the complaint;

(b) verify any details about the complaint by statutory declaration.

(2) The Building Commissioner may specify in the requirement a reasonable time within which the person must comply with the requirement.

(3) The Building Commissioner may refuse to accept a complaint if the person making the complaint does not comply with a requirement under subsection (1) within the time specified in the requirement or, if no time is so specified, within a reasonable time.

19. Action in respect of accepted disciplinary complaint

(1) Having accepted a disciplinary complaint, the Building Commissioner must take either or both of the following actions —

(a) cause an investigation of the complaint to be carried out by one or more authorised persons;

(b) forward the complaint to the Building Services Board.

(2) A disciplinary complaint must be investigated if it is referred to the Building Commissioner under the *Building Services (Registration) Act 2011* section 51(2)(c) or 56(2)(c).

20. Report on complaint

(1) An authorised person —

(a) must prepare a report on the investigation of a disciplinary complaint; and

(b) may include in the report recommendations as to the manner in which the complaint should be dealt with; and

(c) must give the Building Commissioner a copy of the report.

(2) If the Building Commissioner is of the opinion that a matter raised in the report is of relevance to a vocational regulatory body, the Building Commissioner may give a copy of the report to that body.

21. Action after report

(1) The Building Commissioner must consider a report on the investigation of a disciplinary complaint given to the Building Commissioner under section 20 and may —

(a) dismiss the complaint; or

(b) forward the complaint and the report to the Building Services Board for it to deal with under the *Building Services (Registration) Act 2011*.

(2) If the Building Commissioner forwards a complaint to the Building Services Board under subsection (1), the Building Commissioner may make such recommendations to the Board as the Building Commissioner thinks fit.

(3) If a report is of the investigation of a complaint that has already been forwarded to the Building Services Board, the Building Commissioner must give the Board a copy of the report and may make such recommendations to the Board as the Building Commissioner thinks fit.

22. Withdrawal of complaint

(1) A disciplinary complaint may, subject to this section, be withdrawn by the complainant.

(2) A disciplinary complaint may be withdrawn even though the Building Commissioner has commenced or completed an

investigation of the complaint, but cannot be withdrawn without the leave of the Building Services Board.

(3) This section extends to the withdrawal of a complaint so far as it relates to some only or part only of the matters that form the subject of the complaint.

Division 3 — Conciliation

23. Role of conciliator

(1) In this section —

conciliator means a person who is —

(a) a public service officer whose duties consist of or include the conciliation of complaints under this Act; or

(b) approved by the Building Commissioner as a person who may act as a conciliator under this Act.

(2) If —

(a) the Building Commissioner decides under section 11(1)(b) to commence a conciliation proceeding in respect of a complaint; or

(b) under the *Building Services (Registration) Act 2011* section 51(2)(b) or 56(2)(b) the Building Services Board refers a complaint about a disciplinary matter to the Building Commissioner for a conciliation proceeding,

the Building Commissioner must assign the conciliation proceeding to a conciliator.

(3) A conciliation proceeding may be commenced with or without the consent of the parties.

(4) A conciliator's function is to encourage the settlement of a complaint and for that purpose the conciliator may —

(a) communicate with the parties; and

(b) arrange for the parties to hold conferences about the complaint and facilitate the conduct of those conferences; and

(c) give advice and make recommendations to assist in the reaching of an agreement.

(5) The conciliator may have regard to a report of the investigation of the complaint prepared under section 10 or 20 when giving advice and making recommendations.

24. Parties to conciliation proceeding

(1) The complainant and the respondent are parties to a conciliation proceeding about a building service complaint or a HBWC complaint.

(2) The Building Services Board, the complainant and the respondent are parties to a conciliation proceeding about a disciplinary complaint.

25. Attendance at conciliation proceeding

(1) The Building Commissioner may, by written notice, require a party to a conciliation proceeding to appear before a conciliator at the proceeding, either separately or with other parties.

(2) A person who has been given a notice under subsection (1) must not, without reasonable excuse, fail to appear as required by the Building Commissioner.

Penalty: a fine of $5 000.

26. Representation at conciliation proceeding

(1) A party is not to be represented by another person during a conciliation proceeding unless the Building Commissioner otherwise determines on the ground that the proceeding will not work effectively without that representation.

(2) Subsection (1) does not prevent —

(a) the representation of a party who is not a natural person by an officer, employee or agent of that party who is not a legal practitioner; or

(b) the personal attendance of any other person who may, in the opinion of the conciliator, help in the conciliation proceeding.

27. Building Commissioner may make orders to give effect to agreement

(1) The Building Commissioner may, with the consent of each of the parties to an agreement negotiated under this Division, by order give effect to the agreement.

(2) An order referred to in subsection (1) —

(a) is final and binding on those parties; and

(b) if the relevant complaint was about a disciplinary matter, may include an order that the Building Services Board take action under the *Building Services (Registration) Act 2011* section 57 as specified in the order; and

(c) if the relevant complaint was a building service complaint, may include a building remedy order; and

(d) if the relevant complaint was a HBWC complaint, may include a HBWC remedy order.

28. Evidence of certain things inadmissible

(1) Evidence of anything lawfully said or done in the course of a conciliation proceeding —

(a) is not admissible in any proceeding before a court, tribunal or other body unless subsection (2) applies; and

(b) cannot be used as a ground for a complaint under this Act.

(2) Evidence referred to in subsection (1) is admissible in a proceeding if —

(a) the parties to the conciliation proceeding consent to the admission of the evidence; or

(b) there is a dispute in the proceeding as to whether the parties to the conciliation proceeding entered into an agreement for the purposes of section 27 and the evidence is relevant to that dispute; or

(c) the proceeding is for the purpose of enforcing an order made under section 27.

29. Action if conciliation fails

(1) If, in relation to a building service complaint or a HBWC complaint —

(a) the conciliation proceeding fails to result in an agreement between the parties on part or all of the matters that form the subject of the complaint; or

(b) the Building Commissioner is satisfied that a party is not cooperating with the conciliation proceeding; or

(c) the Building Commissioner is not satisfied with the result of the conciliation proceeding,

the Building Commissioner must take further action under section 11(1).

(2) If, in relation to a disciplinary complaint —

(a) the conciliation proceeding fails to result in an agreement between the parties on part or all of the matters that form the subject of the complaint; or

(b) the Building Commissioner is satisfied that a party is not cooperating with the conciliation proceeding; or

(c) the Building Commissioner is not satisfied with the result of the conciliation proceeding,

the Building Commissioner must return the complaint to the Building Services Board.

Part 3 — Orders

Division 1 — Interim Orders

30. Interim building service order

(1) If, at any time before a building remedy order is made in respect of a building service complaint accepted by the Building Commissioner, the Building Commissioner is of the opinion that —

(a) a person has carried out, or is carrying out, the regulated building service complained about in a manner that is likely to be found to be not proper or proficient or to be faulty or unsatisfactory; and

(b) it is likely that the person will continue to carry out the regulated building service in that manner; and

(c) there is a risk a person or persons may suffer significant loss or damage as a result of the carrying out of the regulated building service in that manner if immediate action is not taken,

the Building Commissioner may, without further inquiry or investigation, make an interim building service order pending determination of the building service complaint.

(2) An interim building service order may do either or both of the following —

(a) prohibit the carrying out of a regulated building service specified in the order by the person who carried out or is carrying out the regulated building service complained about;

(b) require the person who carried out or is carrying out the regulated building service complained about to comply with such conditions as the Building Commissioner thinks fit in relation to the carrying out of a regulated building service specified in the order.

(3) An interim building service order must —

(a) state the reasons for making the order; and

(b) advise that the order will remain in force for 28 days unless it is sooner revoked under section 33 or the building service complaint in relation to which it is made is referred to the State Administrative Tribunal.

(4) An interim building service order ceases to be in force 28 days after it is given to the person bound by the order, unless it is sooner revoked under section 33 or the building service complaint in relation to which it is given is referred to the State Administrative Tribunal.

(5) If the building service complaint in relation to which an interim building service order is in force is referred to the State Administrative Tribunal, the interim building service order remains in force until it is revoked by the Tribunal or the Tribunal makes a final determination in respect of the building service complaint.

31. Interim disciplinary order

(1) If the Building Services Board has by notice in writing under the *Building Services (Registration) Act 2011* section 55 required the Building Commissioner to make an interim disciplinary order under this section in relation to a registered building service provider, the Building Commissioner must make the interim disciplinary order pending determination of a complaint about the registered building service provider.

(2) An interim disciplinary order may suspend the registered building service provider's registration, either generally or in relation to any circumstances or regulated building services specified in the order.

(3) An interim disciplinary order must —

(a) state the reasons for making the order; and

(b) advise that the order will remain in force for 28 days unless it is sooner revoked under section 33 or the Building Services Board makes an allegation about the disciplinary complaint to the State Administrative Tribunal.

(4) Within 7 days of the making of an interim disciplinary order the Building Commissioner must —

(a) give a copy of the order to the Building Services Board; and

(b) seek the recommendation of the Building Services Board as to further action to be taken.

(5) An interim disciplinary order ceases to be in force 28 days after it is given to the person bound by the order, unless it is sooner revoked under section 33 or the Building Services Board makes an allegation about the disciplinary complaint in relation to which it is given to the State Administrative Tribunal.

(6) If an allegation is made to the State Administrative Tribunal about a complaint in relation to which an interim disciplinary order is in force, the order remains in force until it is revoked by the Tribunal or an allegation about the disciplinary complaint is finally determined by the Tribunal.

32. Effect of interim order

(1) The Building Commissioner may make an interim order with respect to a matter about which a complaint has been made even if the complaint, or an element of the complaint, is already being dealt with under this Act or the *Building Services (Registration) Act 2011*.

(2) An interim order has effect —

(a) from the time it is given to the person who is bound by the order; and

(b) whether or not the person to whom it is given has had an opportunity to make representations to the Building Services Board or the Building Commissioner.

(3) If, under section 31(2), the registration of a person is suspended, the person is to be taken to be not registered to the extent of the suspension during the period of suspension.

33. Revocation or variation of interim order

(1) The Building Commissioner may, by order, at any time before a building service complaint in relation to which an interim building service order has been made is referred to the State Administrative Tribunal, vary or revoke the interim building service order.

(2) The Building Commissioner must, by order, if required to do so by the Building Services Board, vary or revoke an interim disciplinary order in accordance with the requirements of the Board but cannot otherwise vary or revoke an interim disciplinary order.

(3) The Building Commissioner cannot vary or revoke an interim disciplinary order under subsection (2) if an allegation about the complaint in relation to which the order was made has been made to the State Administrative Tribunal.

34. Jurisdiction of State Administrative Tribunal

(1) If a building service complaint in relation to which an interim building service order is in force is referred to the State Administrative Tribunal, the Tribunal may affirm, revoke or vary the order pending final determination of the complaint.

(2) If an allegation to the State Administrative Tribunal is made about a disciplinary complaint in relation to which an interim disciplinary order is in force, the Tribunal may affirm, revoke or vary the order pending final determination of the allegation.

(3) Nothing in subsection (1) or (2) limits or restricts the functions of the State Administrative Tribunal in respect of a complaint under this Act about a matter in respect of which an interim order is in force.

35. Publication of interim order

The Building Commissioner may provide a copy of an interim order to any person the Building Commissioner considers should be advised of the order.

Division 2 — Building remedy orders

36. Building remedy order

(1) A building remedy order consists of one of the following —

(a) an order that a person who carried out a regulated building service remedy the building service as specified in the order;

(b) an order that a person who carried out a regulated building service pay to an aggrieved person such costs of remedying the building service as the Building Commissioner or State Administrative Tribunal, as the case requires, considers reasonable and specifies in the order;

(c) an order that a person who carried out a regulated building service pay to an aggrieved person a sum of money specified in the order to compensate the aggrieved person for the failure to carry out the building service in a proper and proficient manner or for faulty or unsatisfactory building work.

(2) A building remedy order may require that the order be complied with within a time specified in the order.

(3) A person who is not a building service contractor may arrange for a building service to be carried out for the purpose of compliance by that person with a building remedy order referred

to in subsection (1)(a) despite the *Building Services (Registration) Act 2011* section 7.

37. Building remedy order by Building Commissioner

(1) Subject to regulations made under section 11(5), if the Building Commissioner is satisfied that a regulated building service that is the subject of a building service complaint has not been carried out in a proper and proficient manner or is faulty or unsatisfactory, the Building Commissioner may deal with the building service complaint by making a building remedy order.

(2) The Building Commissioner cannot make a building remedy order requiring —

(a) work to be done of a value estimated by the Building Commissioner to exceed the prescribed amount; or

(b) an amount exceeding the prescribed amount to be paid,

unless the respondent consents to the order being made.

(3) Unless a greater amount is prescribed by the regulations, in subsection (2) the prescribed amount is $100 000.

(4) The Building Commissioner may make any ancillary or incidental order the Building Commissioner considers appropriate.

38. How State Administrative Tribunal may deal with building service complaint

(1) If the Building Commissioner refers a building service complaint to the State Administrative Tribunal, the Tribunal may —

(a) if the Tribunal is satisfied that the regulated building service that is the subject of the building service complaint has not been carried out in a proper and proficient manner or is faulty or unsatisfactory, deal with the building service complaint by making a building remedy order; or

(b) otherwise, decline to make a building remedy order.

(1A) In dealing with the complaint, the State Administrative Tribunal must have regard to any relevant approved policy in effect at the time.

(2) The State Administrative Tribunal cannot make a building remedy order requiring a respondent who is not a registered building services provider —

(a) to do any work of a value estimated by the Tribunal to exceed the prescribed amount; or

(b) to pay any amount exceeding the prescribed amount,

unless —

(c) the order is made in respect of a building service that has been carried out by the respondent in contravention of the *Building Services (Registration) Act 2011* section 7; or

(d) the respondent consents to the order being made.

(3) Unless a greater amount is prescribed by the regulations, in subsection (2) the prescribed amount is $500 000.

(4) Nothing in this section prevents a building service complaint from being dealt with through a compulsory conference or mediation process under the *State Administrative Tribunal Act 2004*.

[Section 38 amended: No. 39 of 2024 s. 7.]

39. Order for payment before building remedy order

(1) In this section —

responsible adjudicator means —

(a) in the case of a building service complaint that has not been referred to the State Administrative Tribunal, the Building Commissioner;

(b) in the case of a building service complaint that has been referred to the State Administrative Tribunal, the Tribunal.

(2) At any time before a building remedy order is made in respect of a building service complaint, the responsible adjudicator may, if the responsible adjudicator considers it just and expedient to do so, order an amount of money to be paid to the responsible adjudicator by either the complainant or the respondent or by both of them.

(3) An order is not to be made under subsection (2) against a party merely on account of the poor financial position of that party.

(4) A responsible adjudicator may, at any time before a building remedy order is made in respect of a building service complaint, vary or cancel an order made under subsection (2) in relation to the matter.

(5) Any amount paid to a responsible adjudicator under this section must be credited to the Building Services Account.

(6) On the making of a building remedy order, the responsible adjudicator making the order must make an order as to payment of any amount credited to the Building Services Account under this section in relation to the building service complaint in respect of which the building remedy order is made.

(7) Any amount credited to the Building Services Account under this section must be paid from the Account in accordance with the order of a responsible adjudicator.

(8) If a party fails to comply with an order made under subsection (2) a responsible adjudicator may determine the building service complaint adversely to the party that has failed to comply and make any appropriate orders.

40. Building remedy order does not prevent disciplinary action

The making of a building remedy order does not limit or affect in any way the power of the Building Services Board or the State Administrative Tribunal to deal with a disciplinary matter under the *Building Services (Registration) Act 2011* that involves the same issue as is dealt with in the building remedy order.

Division 3 — HBWC remedy orders

41. HBWC remedy orders

(1) In this section —

specified means specified in the HBWC order.

(2) A HBWC remedy order in respect of a complaint by an owner or builder under a home building work contract referred to in the *Home Building Contracts Act 1991* section 17 (other than a complaint about a breach of section 15 of that Act) consists of one or more of the following —

(a) an order —

(i) restraining any specified action in breach of the contract or of a provision in the *Home Building Contracts Act 1991* Part 2;

(ii) requiring any specified work to be done in the performance of the contract;

(iii) requiring any specified work to be done to ensure compliance with a provision of the *Home Building Contracts Act 1991* Part 2;

(iv) requiring any specified work to be done to remedy a breach of the contract or of a provision of the *Home Building Contracts Act 1991* Part 2;

(b) an order that a person pay a specified amount payable under the contract;

(c) an order declaring that a specified amount is not payable to a person under the contract and, if already paid, an order that the builder or owner repay that amount;

(d) an order that a person pay specified compensation for loss or damage —

(i) caused by any breach of the contract or of a provision of the *Home Building Contracts Act 1991* Part 2; or

(ii) referred to in the *Home Building Contracts Act 1991* Schedule 1;

(e) an order declaring that a specified amount of money claimed or money claimed for specified work is not payable by a person.

(3) A HBWC remedy order in respect of a complaint by an owner referred to in the *Home Building Contracts Act 1991* section 17 about a breach of section 15 of that Act consists of one or more of the following —

(a) an order declaring the contract or any provision of the contract against which relief is sought to be void from the beginning;

(b) an order modifying the provisions of the contract in such manner as the State Administrative Tribunal considers just;

(c) an order providing for the repayment to the owner of any specified amount paid by the owner under a contract or a provision that has been declared void or modified as referred to in paragraph (a) or (b).

(4) A HBWC remedy order in respect of a complaint by an owner or builder under a home building work contract referred to in the *Home Building Contracts Act 1991* section 20 consists of —

(a) an order providing for the return or repayment of the whole or part of any specified consideration, or the

specified value of any consideration, given by the owner under or in relation to the contract; or

(b) an order providing for specified payment to the builder in respect of —

(i) any materials supplied by the builder; or

(ii) any home building work or other services performed by the builder; or

(iii) costs, including overhead expenses and loss of profit, incurred by the builder,

under or in relation to the contract.

(5) A HBWC remedy order in respect of a complaint by an owner under a home building work contract about a price increase referred to in the *Home Building Contracts Act 1991* Schedule 1 clause 5 consists of an order confirming, varying or disallowing the amount of the price increase.

(6) If a HBWC remedy order referred to in subsection (5) is made in respect of a complaint by an owner under a home building work contract, the contract has effect in accordance with the HBWC remedy order.

(7) A HBWC remedy order may require that the order be complied with within a time specified in the order.

42. HBWC remedy order by Building Commissioner

(1) Subject to regulations made under section 11(5), the Building Commissioner may deal with a HBWC complaint by making a HBWC remedy order referred to in section 41(2), (4) or (5) if satisfied that the order is justified.

(2) The Building Commissioner cannot make a HBWC remedy order requiring a party —

(a) to do work of a value estimated by the Building Commissioner to exceed the prescribed amount; or

(b) to pay an amount exceeding the prescribed amount,

unless the party to be bound by the order consents to the order being made.

(3) Unless a greater amount is prescribed by the regulations, in subsection (2) the prescribed amount is $100 000.

(4) The Building Commissioner may make any ancillary or incidental order the Building Commissioner considers appropriate.

43. How State Administrative Tribunal may deal with HBWC complaint

(1) If the Building Commissioner refers a HBWC complaint to the State Administrative Tribunal, the Tribunal may —

(a) if satisfied that the order is justified, make a HBWC remedy order; or

(b) otherwise, decline to make the order.

(1A) In dealing with the complaint, the State Administrative Tribunal must have regard to any relevant approved policy in effect at the time.

(2) The State Administrative Tribunal cannot make a HBWC remedy order requiring a party —

(a) to do work of a value estimated by the Tribunal to exceed the prescribed amount; or

(b) to pay an amount exceeding the prescribed amount,

unless the party consents to the order being made.

(3) Unless a greater amount is prescribed by the regulations, in subsection (2) the prescribed amount is $500 000.

(4) Nothing in this section prevents a HBWC complaint from being dealt with through a compulsory conference or mediation process under the *State Administrative Tribunal Act 2004*.

[Section 43 amended: No. 39 of 2024 s. 8.]

44. Order for payment before HBWC remedy order

(1) In this section —

responsible adjudicator means —

(a) in the case of a HBWC complaint that has not been referred to the State Administrative Tribunal, the Building Commissioner;

(b) in the case of a HBWC complaint that has been referred to the State Administrative Tribunal, the Tribunal.

(2) At any time before a HBWC remedy order is made in respect of a HBWC complaint, the responsible adjudicator may, if the responsible adjudicator considers it just and expedient to do so, order an amount of money to be paid to the responsible adjudicator by either the owner or the builder or by both of them.

(3) An order is not to be made under subsection (2) against an owner or builder merely on account of the poor financial position of that party.

(4) A responsible adjudicator may, at any time before a HBWC remedy order is made in respect of a HBWC complaint, vary or cancel an order made under subsection (2) in relation to the matter.

(5) Any amount paid to a responsible adjudicator under this section must be credited to the Building Services Account.

(6) On the making of a HBWC remedy order the responsible adjudicator making the order must make an order as to payment of any amount credited to the Building Services Account under this section in relation to the HBWC complaint in respect of which the HBWC remedy order is made.

(7) Any amount credited to the Building Services Account under this section must be paid from the Account in accordance with the order of a responsible adjudicator.

(8) If a party fails to comply with an order made under subsection (2) a responsible adjudicator may determine the HBWC complaint adversely to the party that has failed to comply and make any appropriate orders.

45. HBWC remedy order does not prevent disciplinary action

The making of a HBWC remedy order does not limit or affect in any way the power of the Building Services Board or the State Administrative Tribunal to deal with a disciplinary matter under the *Building Services (Registration) Act 2011* that involves the same issue as is dealt with in the HBWC remedy order.

Division 4 — Procedure, costs and enforcement of orders

46. Procedure of Building Commissioner

(1) In dealing with a building service complaint or a HBWC complaint or making a building remedy order or a HBWC remedy order the Building Commissioner —

(a) must act informally; and

(b) is not bound by the rules of evidence; and

(ba) must have regard to any relevant approved policy in effect at the time; and

(c) may inform himself or herself in any way the Building Commissioner thinks fit.

(2) Subject to this Act, the Building Commissioner may determine his or her own procedure.

[Section 46 amended: No. 39 of 2024 s. 9.]

47. Provision of information and documents to Building Commissioner

(1) For the purpose of making a decision in relation to a building remedy order or a HBWC remedy order, the Building Commissioner may, by written notice, direct a person to do either or both of the following —

(a) to provide, in writing and within a time specified in the notice, the Building Commissioner with any information or explanation that the Building Commissioner requires;

(b) to produce, within a time specified in the notice, to the Building Commissioner any records in the custody or under the control of the person.

(2) A person who, without reasonable excuse, fails to comply with a direction under this section commits an offence.

Penalty: a fine of $10 000.

(3) The Building Commissioner's power to make a building remedy order or a HBWC remedy order is not affected by the failure of either or both of the parties to comply with a direction of the Building Commissioner under this section.

(4) Nothing in this section limits the powers of the Building Commissioner as an authorised person under Part 4.

48. Joining of parties in HBWC complaint about unconscionable, harsh or oppressive conduct or contract

(1) In this section —

officer has the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.

(2) For the purposes of subsection (3), a person is an associate of another person if —

(a) the person is a partner of the latter person; or

(b) where the latter person is a company, the person is a shareholder or officer of that company.

(3) Where it appears to the State Administrative Tribunal in a proceeding in respect of a HBWC complaint about a breach of the *Home Building Contracts Act 1991* section 15 that a person is an associate of a party to the proceeding and has or may have —

(a) shared in the profits of; or

(b) a beneficial interest in,

the transaction in question, the person may be joined as a party to the proceeding and the Tribunal may make such orders against, or in respect of, that person as the Tribunal considers just.

(4) This section does not limit the powers of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004* section 38.

49. Costs and expenses

(1) Subject to this section, the Building Commissioner or the State Administrative Tribunal may make such orders for costs as they think fit in relation to proceedings arising from a building service complaint or a HBWC complaint.

(2) The Building Commissioner must not award costs to a party for the services of a representative of that party unless, in the opinion of the Building Commissioner, it is fair to do so, having regard to —

(a) whether a party has acted in relation to a complaint in a way that unnecessarily disadvantaged another party; or

(b) whether a party has been responsible for prolonging unreasonably the time taken to deal with the complaint; or

(c) the relative strengths of the claims made by each of the parties; or

(d) any other matter the Building Commissioner considers relevant.

(3) If the Building Commissioner or the State Administrative Tribunal is of the opinion that the costs and expenses were unnecessarily incurred due to the conduct of a party, the Building Commissioner or Tribunal may make an order requiring the party to pay all or any specified part of the costs

and expenses incurred under this Act in investigating the complaint.

(4) An order may be made under subsection (3) even where no building remedy order or HBWC remedy order is made.

(5) In determining costs to be paid the Building Commissioner or State Administrative Tribunal may take into account any refusal or failure by a party to comply with an order or direction of the Building Commissioner or Tribunal.

(6) When any costs or expenses are ordered to be paid under subsection (3) —

(a) the amount ordered to be paid is recoverable by the Building Commissioner in a court of competent jurisdiction as a debt due to the State; and

(b) any amount paid or recovered must be credited to the Building Services Account.

(7) This section does not limit the powers of the State Administrative Tribunal under the *State Administrative Tribunal Act 2004* Part 4 Division 5.

50. Enforcement of order requiring payment of money

(1) A person to whom payment is to be made under an order made under this Act may —

(a) if the order is made by the Building Commissioner — enforce the order by filing in a court of competent jurisdiction —

(i) a copy of the order that the Building Commissioner has certified to be a true copy; and

(ii) the person's affidavit as to the amount not paid under the order;

or

(b) if the order is made by the State Administrative Tribunal — enforce the order under the *State Administrative Tribunal Act 2004* section 85.

(2) No charge is to be made for filing a copy of an order or an affidavit under subsection (1)(a).

(3) On filing under subsection (1)(a), the order is taken to be an order of the court, and may be enforced accordingly.

51. Failure to comply with order to do work, new order

(1) In this section —

responsible adjudicator, in relation to an order, means —

(a) if the order was made by the Building Commissioner, the Building Commissioner; and

(b) if the order was made by the State Administrative Tribunal, the State Administrative Tribunal.

(2) If the responsible adjudicator is satisfied that a building remedy order referred to in section 36(1)(a) to remedy a building service has not been complied with, or has been complied with in part only, by the person to whom it was given by the responsible adjudicator, the responsible adjudicator may —

(a) revoke the order in relation to remedying the building service or the part in question; and

(b) make a building remedy order referred to in section 36(1)(b) or (c) in relation to that building service.

(3) If the responsible adjudicator is satisfied that a HBWC remedy order referred to in section 41(2)(a) to do any work has not been complied with, or has been complied with in part only, by the person to whom it was given by the responsible adjudicator, the responsible adjudicator may —

(a) revoke the order in relation to the work or the part in question; and

(b) make an order against the person for the payment of a sum of money as compensation for the failure to comply.

(4) An order under subsection (3)(b) is taken to be a HBWC remedy order.

(5) Subsections (2) and (3) apply whether or not a person has been convicted of an offence under section 53 or the *State Administrative Tribunal Act 2004* section 95 before the revocation.

(6) Sections 37, 38, 42 and 43 apply to the making of an order under this section.

(7) The revocation of an order under subsection (2) or (3) does not affect —

(a) anything done under the order before the revocation; or

(b) a penalty that has or may be imposed under section 53, or the *State Administrative Tribunal Act 2004* section 95 in respect of the failure to comply; or

(c) any action that has or may be taken under the *Building Services (Registration) Act 2011* section 57 or 58 in respect of the failure to comply.

52. Enforcement of order other than monetary order or order to do work

(1) If, or to the extent that, an order of the Building Commissioner is not an order requiring the payment of money or an order to which section 51 applies, it may be enforced under this section.

(2) A person seeking to enforce an order under this section may file in the Supreme Court —

(a) a copy of the order that the Building Commissioner has certified to be a true copy; and

(b) the person's affidavit as to the failure to comply with the order; and

(c) a certificate from the Building Commissioner stating that the decision is appropriate for filing in the Supreme Court.

(3) No charge is to be made for filing a copy of an order, an affidavit or a certificate under this section.

(4) On filing, the decision is taken to be a decision of the Supreme Court, and may be enforced accordingly.

(5) The enforcement of an order under this section does not affect —

(a) anything done under the order before the enforcement; or

(b) a penalty that has or may be imposed under section 53 or the *State Administrative Tribunal Act 2004* section 95 in respect of the failure to comply; or

(c) any action that has or may be taken under the *Building Services (Registration) Act 2011* section 57 or 58 in respect of the failure to comply.

53. Failure to comply with order, offence

(1) A person must not without reasonable excuse fail to comply with —

(a) an order of the Building Commissioner; or

(b) a building remedy order or HBWC remedy order of the State Administrative Tribunal.

Penalty:

(a) for a first offence, a fine of $50 000;

(b) for a second offence, a fine of $75 000;

(c) for a third or subsequent offence, a fine of $100 000 and imprisonment for 12 months.

(2) Subsection (1) does not apply if, or to the extent that, the order is an order referred to in section 50(1).

(3) Subsection (1) applies despite the *State Administrative Tribunal Act 2004* section 95.

54. Avoidance of concurrent proceedings

(1) If —

(a) a building service complaint is made; or

(b) a HBWC complaint is made claiming that there has been a breach of a home building work contract,

the matter to which the complaint relates (whether as shown in the complaint or as emerging in the course of the determination of the complaint) is not, unless subsection (2) applies, justiciable by a court that would otherwise have jurisdiction to determine the matter.

(2) This subsection applies if —

(a) the matter was before the court at the time when the complaint was made; or

(b) the Building Commissioner does not accept the complaint; or

(c) the complaint is dismissed for want of jurisdiction or without deciding the matter on its merits; or

(d) the complaint is withdrawn or not pursued; or

(e) the matter is ordered to be transferred to the court under section 55(3); or

(f) as a result of judicial review, a determination of the complaint is quashed or declared invalid on the ground that there was not jurisdiction to deal with the complaint under this Act.

55. Transfer of proceeding

(1) The Building Commissioner may, with the consent of the State Administrative Tribunal and in accordance with the rules of the Tribunal, transfer a matter that the Building Commissioner has

decided to deal with under section 37 or 42, or that is before the Building Commissioner under section 51, to the Tribunal.

(2) If a matter that could be dealt with under this Act as a building service complaint or a HBWC complaint is before a court, the court may order that the matter be transferred to the Building Commissioner to be dealt with as a building service complaint or a HBWC complaint, as the case requires.

(3) If a matter that a court has jurisdiction to determine is the subject of a building service complaint or a HBWC complaint before the State Administrative Tribunal, the Tribunal may order that the matter be transferred to that court in accordance with the rules of the court.

56. Effect on other remedies

Except as provided in section 54, nothing in this Part affects a right or remedy a person would have had this Part not been enacted, but a court or tribunal may have regard to a building remedy order or a HBWC remedy order in a proceeding in which the complainant and respondent are parties.

Division 5 — Review

57. Review by State Administrative Tribunal of orders given by Building Commissioner

(1) A person aggrieved by —

(a) an interim order; or

(b) an order under section 33 to vary an interim order; or

(c) a building remedy order made by the Building Commissioner; or

(d) a HBWC remedy order made by the Building Commissioner; or

(e) an order made by the Building Commissioner under section 49,

may apply to the State Administrative Tribunal for a review of the order.

(2) If the State Administrative Tribunal gives leave, a person aggrieved by a decision of the Building Commissioner to refuse to accept a complaint may apply to the Tribunal for a review of the decision.

58. State Administrative Tribunal internal review

(1) In this section each of the following terms has the meaning given to it by the *State Administrative Tribunal Act 2004* section 3(1) —

judicial member

legally qualified member

President

senior member

(2) The State Administrative Tribunal constituted by —

(a) a judicial member or a senior member who is a legally qualified member; and

(b) such other members, if any, as the President considers appropriate,

may, upon an application of a party, review an order that was made by the State Administrative Tribunal when constituted without a judicial member in the exercise of jurisdiction given under section 38 or 43.

(3) The State Administrative Tribunal constituted under subsection (2) may —

(a) affirm the order that is reviewed; or

(b) vary the order that is reviewed; or

(c) set aside the order that is reviewed and substitute another order.

(4) The order that is reviewed, as affirmed or varied under subsection (3), or an order that is substituted for the order reviewed —

(a) is to be regarded as, and given effect as, an order made under section 38 or 43, as the case requires; and

(b) unless the Tribunal orders otherwise, is to be regarded as having effect, or having had effect, from the time when the order reviewed would have, or would have had, effect.

(5) An application under subsection (2) for review of an order —

(a) cannot be made unless the State Administrative Tribunal constituted by —

(i) a judicial member or a senior member who is a legally qualified member; and

(ii) such other members, if any, as the President considers appropriate,

gives leave; and

(b) cannot be made later than 30 days after the order is made.

(6) Unless otherwise provided by the regulations, the *State Administrative Tribunal Act 2004* Part 3 Division 3 Subdivision 3 applies in relation to a review under this section.

(7) The regulations may modify the operation of the *State Administrative Tribunal Act 2004* in relation to a review under this section.

Part 4 — Inspections and investigations

Division 1 — Preliminary

59. Terms used

In this Part —

compliance purposes has the meaning given in section 64(1);

entry warrant means an entry warrant issued under Division 5;

occupier, of a place, includes any person who appears to have the control or management of the place;

place includes a vehicle;

public place means —

(a) a place that —

(i) the public is entitled to use; or

(ii) is open to members of the public; or

(iii) is used by the public,

whether or not on payment of money; or

(b) a place that the occupier allows members of the public to enter, whether or not on payment of money;

relevant record means a record that —

(a) is required to be kept under a building service Act; or

(b) contains information that is or may be relevant to a contravention of a building service Act; or

(c) relates to the carrying out of a regulated building service.

Division 2 — Authorised persons

60. Authorised persons

(1) The Building Commissioner may, by instrument in writing, designate —

(a) a public service officer; or

(b) a person employed or engaged under the *Public Sector Management Act 1994* section 100 by the employing authority of the Department,

as an authorised person for the purposes of this Act.

(2) A person may be designated to be an authorised person for a fixed or indefinite period.

(3) The Building Commissioner may, by instrument in writing, revoke a designation at any time.

(4) The Building Commissioner is an authorised person by force of this subsection.

61. Identity cards

(1) The Building Commissioner must give each authorised person an identity card.

(2) An identity card must —

(a) identify the person as an authorised person; and

(b) contain a recent photograph of the person.

(3) A person must, within 14 days of ceasing to be an authorised person, return the person's identity card to the Building Commissioner.

Penalty: a fine of $5 000.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

(5) An authorised person must carry his or her identity card at all times when exercising powers or performing functions as an authorised person.

62. Production or display of identity card

(1) An authorised person may exercise a power in relation to someone only if —

(a) the authorised person first produces the authorised person's identity card for the other person's inspection; or

(b) the authorised person has the identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person may exercise the power and then produce the identity card for inspection by the person at the first reasonable opportunity.

63. Limitation on powers of authorised person

(1) An authorised person must act —

(a) in accordance with the directions of the Building Commissioner; and

(b) subject to any limitation on the powers of that person referred to in subsection (2).

(2) The powers of an authorised person may be limited —

(a) under a regulation; or

(b) under a condition specified in the person's instrument of designation as an authorised person; or

(c) by written notice given by the Building Commissioner to the authorised person.

(3) The Building Commissioner may revoke or vary a condition of designation referred to in subsection (2)(b) or a notice referred to in subsection (2)(c).

Division 3 — Inspections

64. Compliance inspections

(1) An authorised person may carry out an inspection under this section for any or all of the following purposes (***compliance purposes***) —

(a) monitoring whether a building service Act has been, or is being, complied with;

(b) without limiting paragraph (a), monitoring whether —

(i) a registered building service provider or approved owner-builder is complying with the conditions, if any, of that person's registration or approval under the *Building Services (Registration) Act 2011*;

(ii) any other disciplinary matter may exist in relation to a registered building service provider or approved owner-builder;

(c) monitoring compliance with the provisions of this Act about the building services levy;

(d) investigating a suspected contravention of a building service Act;

(e) examining the records of a local government or other permit authority relating to applications for and the grant or issue of building and demolition licences under the *Local Government (Miscellaneous Provisions) Act 1960* and permits and building approval certificates under the *Building Act 2011*;

(f) assisting in the determination of an application or other matter before the Building Services Board.

(2) If the Building Services Board requests that the Building Commissioner carry out an inspection for a purpose mentioned in subsection (1)(f), the Building Commissioner must direct an authorised person to carry out the inspection.

65. General inspections

(1) An authorised person may inspect any building or building service that has been or is being carried out to ascertain any or all of the following —

(a) how building services have been or are being carried out;

(b) how building standards (as defined in the *Building Act 2011*) have been or are being applied;

(c) whether a building service Act is operating effectively.

(2) A registered building service provider who has carried out a building service may request the Building Commissioner to inspect the building service.

(3) On request under subsection (2), the Building Commissioner may direct an authorised person to inspect the building service.

(4) For the purposes of carrying out an inspection under this section an authorised person may at any reasonable time —

(a) enter and remain on a place in or on which the authorised person has reasonable cause to believe that a building service is being, or has been, carried out; and

(b) inspect any building or building service in or on the place.

(5) An authorised person is not entitled under subsection (4) to enter a place that is not a public place unless —

(a) the occupier of the place consents; or

(b) the authorised person has reasonable cause to believe that the place is not occupied and that a building service is being carried out at the place.

Division 4 — Powers in relation to inspections and investigations

66. Entry powers

(1) For compliance purposes or for the purposes of an investigation under section 9 or 19 an authorised person may at any reasonable time enter and remain in or on the following places —

(a) a place in or on which the authorised person has reasonable cause to believe that a building service is being, or has been, carried out;

(b) a place in or on which the authorised person has reasonable cause to believe that there are relevant records;

(c) a place in or on which a registered building service provider carries on business;

(d) a place in or on which the authorised person has reasonable cause to believe that a breach of a building service Act has occurred, is occurring or is likely to occur.

(2) The authorised person is not entitled under this section to enter a place that is not a public place unless —

(a) the occupier of the place consents; or

(b) the authorised person has reasonable cause to believe that the place is not occupied and that a building service is being carried out at the place; or

(c) the authorised person has the authority of an entry warrant.

67. Powers after entry for compliance purposes or investigation

(1) An authorised person who enters a place under section 66(1) or under the authority of an entry warrant may, for compliance

purposes or the purposes of the investigation, do any of the following —

(a) inspect the place and any thing at the place;

(b) search the place and any thing at the place;

(c) examine, measure, test, photograph or film the place and any thing at the place;

(d) operate a computer or other thing at the place;

(e) take any thing, or a sample of or from any thing, at the place for analysis or testing;

(f) make a copy of, take an extract from, or download or print out, any record that the authorised person suspects on reasonable grounds is a relevant record;

(g) seize any thing that is or may afford evidence of a contravention of a building service Act;

(h) if a thing found in or on the place cannot be conveniently removed, secure it against interference;

(i) seize a record that the authorised person suspects on reasonable grounds is a relevant record and retain it for as long as is necessary for the purposes of this Act;

(j) direct a person who is at the place to do any of the following —

(i) state the person's full name, date of birth, the address of where the person is living and the address of where the person usually lives;

(ii) answer (orally or in writing) questions asked by the authorised person;

(iii) produce relevant records in the person's custody or under the person's control;

(iv) operate a computer or other thing at the place;

(v) provide access (free of charge) to photocopying equipment at the place to enable the copying of documents;

(vi) give the authorised person a translation, code, password or other information necessary to gain access to or interpret and understand a record;

(vii) give other assistance the authorised person reasonably requires.

(2) If an authorised person takes any thing away from the place, the authorised person must give the occupier of the place a receipt for the thing.

68. Obtaining information and documents

(1) An authorised person, for compliance purposes or for the purposes of an investigation under section 9 or 19, may do any of the following —

(a) direct a person —

(i) to give such information as the authorised person requires; or

(ii) to answer a question put to the person,

in relation to any matter the subject of the compliance purposes or investigation;

(b) direct a person to produce a relevant record in the person's custody or under the person's control;

(c) examine and make a copy of a relevant record produced in response to a direction under paragraph (b).

(2) A direction under subsection (1)(a) —

(a) must specify the time at or within which the information or answer is to be given; and

(b) may require that the information or answer —

(i) be given orally or in writing; or

(ii) be given at or delivered to a place specified in the direction; or

(iii) in the case of written information or a written answer, be delivered by means specified in the direction; or

(iv) be verified by statutory declaration.

(3) A direction under subsection (1)(b) —

(a) must be in writing given to the person required to produce the record; and

(b) must specify the time at or within which the record is to be produced; and

(c) may require that the record be produced —

(i) at a place specified in the direction; and

(ii) by any means specified in the direction.

69. Use of force and assistance

(1) An authorised person may use assistance and force that is reasonably necessary in the circumstances when exercising a power under this Act.

(2) However, if the use of reasonable force is likely to cause significant damage to property, the authorised person is not entitled to use force without the authority of the Building Commissioner in the particular case.

(3) An authorised person may request a police officer or other person to assist the authorised person in exercising powers under this Act.

(4) While a person is assisting an authorised person at the request of the authorised person and in accordance with this Act, the person —

(a) has the same powers; and

(b) is subject to the same responsibilities; and

(c) has the same protection from liability,

as in like circumstances would be conferred or imposed on an authorised officer under this Act.

(5) Nothing in this section derogates from the powers of a police officer.

70. Obstruction

A person must not hinder or obstruct an authorised person, or a person assisting an authorised person, exercising a power conferred by this Act.

Penalty: a fine of $25 000.

[Section 70 amended: No. 4 of 2021 s. 123.]

71. Directions generally

(1) Except as otherwise stated in this Division, a direction under this Division may be given orally or in writing.

(2) A person must not without reasonable excuse fail to comply with a direction given to the person under this Division.

Penalty for this subsection: a fine of $25 000.

[Section 71 amended: No. 4 of 2021 s. 124.]

Division 5 — Entry warrants

72. Warrant to enter place

(1) An authorised person may apply to a justice of the peace for an entry warrant authorising the entry of a place for compliance purposes or an investigation under section 9 or 19.

(2) An authorised person may apply for an entry warrant for a place even if, under this Act, the authorised person may enter the place without an entry warrant.

(3) The application must be made in accordance with the *Criminal Investigation Act 2006* section 13 and section 13(8) of that Act applies in relation to the entry warrant.

(4) An application for a warrant must —

(a) describe with reasonable particularity the place to be entered; and

(b) state that the authorised person has reasonable grounds for believing that entry to the place is necessary for a compliance purpose or an investigation under section 9 or 19; and

(c) state the purposes for which entry to the place is required; and

(d) include any other information that is prescribed.

73. Issue of warrant

(1) A justice of the peace to whom an application is made under section 72 may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the place are necessary for compliance purposes or an investigation under section 9 or 19.

(2) An entry warrant must contain the following information —

(a) a reasonably particular description of the place to which it relates;

(b) a reasonably particular description of the purposes for which entry to the place is required;

(c) the period, not exceeding 7 days, in which it may be executed;

(d) the name of the justice of the peace who issued it;

(e) the date and time when it was issued.

74. Effect of entry warrant

(1) An entry warrant has effect according to its content and this section.

(2) An entry warrant comes into force when it is issued by a justice of the peace.

(3) An entry warrant authorises the authorised person executing the warrant —

(a) to enter the place described in the warrant; and

(b) to exercise the powers referred to in section 67,

during the period stated in the warrant.

75. Execution of warrant

(1) A warrant may be executed by the authorised person to whom it is issued or by any other authorised person.

(2) An authorised person executing a warrant must, at the reasonable request of a person apparently in charge of the place, produce the warrant.

Part 5 — Remedying dangerous and other situations

76. Terms used

In this Part —

dangerous situation means a situation where there is an imminent and high risk to people, property or the environment from the carrying out of a building service;

remediation notice means a remediation notice issued under section 80.

77. Dangerous situation, emergency remedial measures

(1) If an authorised person suspects on reasonable grounds —

(a) that a dangerous situation exists; and

(b) that immediate measures are needed in order to identify, assess, reduce, eliminate or avert the risk to people, property or the environment from the building services involved in the situation,

the authorised person may take the necessary measures.

(2) For the purposes of subsection (1), an authorised person may do any or all of the following —

(a) enter and take possession of a place;

(b) isolate the place under section 78;

(c) take any other action that is necessary and incidental.

(3) An authorised person's powers under this section are in addition to the other powers of the authorised person under this Act and may be exercised whether or not a remediation notice has been given to any person.

(4) An authorised person must not exercise a power under this section if a like power is already being exercised under another written law.

78. Restricting access to dangerous situations

(1) In this section —

unauthorised person, in relation to a restricted access site, means any person other than —

(a) an authorised person; or

(b) a person authorised by an authorised person.

(2) If an authorised person suspects on reasonable grounds that —

(a) immediate measures are needed under section 77 in relation to a dangerous situation; and

(b) it is necessary to isolate a place for the purposes of dealing with the dangerous situation or ensuring that people, property or the environment will not be endangered,

the authorised person may establish a restricted access site that includes the place, and, if necessary, an area around it.

(3) In order to establish a restricted access site, an authorised person must take reasonable measures to notify people of the existence and boundaries of the site.

(4) The area of a restricted access site must not be greater than is reasonably necessary for the purposes for which it is established.

(5) The boundaries of a restricted access site may be altered at any time.

(6) An authorised person must disestablish a restricted access site when the purposes for which it was established cease to exist.

(7) While a restricted access site is established, an authorised person may remain at the site and take reasonable measures to do any or all of the following —

(a) to secure the site against, and to prevent, unauthorised entry or disturbance;

(b) to remove an unauthorised person from the site;

(c) if there is a vehicle at the site, to prevent the vehicle from being moved.

(8) An unauthorised person who, without reasonable excuse, enters a restricted access site while it is established commits an offence.

Penalty:

(a) for a first offence, a fine of $50 000;

(b) for a second offence, a fine of $75 000;

(c) for a third or subsequent offence, a fine of $100 000 and imprisonment for 12 months.

(9) An unauthorised person who, without reasonable excuse, disturbs any thing at a restricted access site while the site is established commits an offence.

Penalty:

(a) for a first offence, a fine of $50 000;

(b) for a second offence, a fine of $75 000;

(c) for a third or subsequent offence, a fine of $100 000 and imprisonment for 12 months.

79. Recovering costs

(1) If an authorised person takes measures under section 77 to deal with a dangerous situation, the Building Commissioner may recover the reasonable costs and expenses incurred in taking the measures in a court of competent jurisdiction as a debt due.

(2) The costs are recoverable jointly or severally from —

(a) the person who, at the time the dangerous situation occurred, was the owner of the place on which the dangerous situation occurred; and

(b) the person who, at the time the dangerous situation occurred, was in control of the carrying out of the

building service that gave rise to the dangerous situation; and

(c) the person who caused the dangerous situation.

(3) The costs and expenses are not recoverable from a person who proves that —

(a) the dangerous situation was due to the act or default of another person; and

(b) the person took all reasonably practicable measures to prevent the situation; and

(c) the situation was not attributable to an employee, agent or subcontractor of the person.

(4) The recovery of costs and expenses incurred by an authorised person as a result of a dangerous situation does not preclude the recovery of costs and expenses incurred by another government agency as a result of the situation.

(5) In a proceeding under this section, a document apparently signed by the Building Commissioner specifying details of the costs and expenses reasonably incurred as a result of a dangerous situation is, in the absence of evidence to the contrary, proof of the details specified.

80. Remediation notice

(1) An authorised person may give a person a remediation notice if the authorised person suspects on reasonable grounds either or both of the following matters —

(a) that the person is contravening, or is about to contravene, the *Building Act 2011* section 9 or 10 or the *Building Services (Registration) Act 2011* section 7;

(b) that there is or is about to be at a place, a dangerous situation and that the person is carrying out the building service giving rise to the situation.

(2) A remediation notice must —

(a) be in writing; and

(b) identify the person to whom it is given, whether by name or a sufficient description; and

(c) state why the notice is given; and

(d) if a contravention of the *Building Act 2011* section 9 or 10 or the *Building Services (Registration) Act 2011* section 7 is suspected, specify the provision concerned and the grounds for the suspicion; and

(e) specify the measure that the person must take; and

(f) if the measure relates to a place, specify the place; and

(g) specify a date that is at least 7 days after the date of the notice on or before which the measures to remedy the matter (other than measures referred to in subsection (4)) are to be taken, unless the Building Commissioner has given an approval under section 81(1); and

(h) explain the effect of section 82; and

(i) inform the person to whom it is given that the person has a right to apply under section 83 or 84 for a review of the decision to give the notice.

(3) The measures specified in the remediation notice must be ones that are reasonably necessary to remedy the matter suspicion of which has given rise to the notice.

(4) Without limiting subsection (3), the measures may include requiring the person to take either or both of the following measures either immediately or before a specified time —

(a) to stop carrying out all building services or specified building services at the place;

(b) to isolate the place or part of the place in accordance with directions specified in the remediation notice,

for a specified period or until a specified event occurs.

(5) An authorised person must not exercise a power under this section if a like power is already being exercised under another written law.

(6) An authorised person may at any time cancel or amend a remediation notice.

(7) A person who fails to comply with a remediation notice given to the person commits an offence.

Penalty:

(a) for a first offence, a fine of $50 000;

(b) for a second offence, a fine of $75 000;

(c) for a third or subsequent offence, a fine of $100 000 and imprisonment for 12 months.

81. Building Commissioner may approve earlier or immediate compliance with remediation notice

(1) If the Building Commissioner is of the opinion that the measures specified in a remediation notice should be taken —

(a) on or before a date that is less than 7 days after the date of the notice; or

(b) immediately,

in order to avert a dangerous situation, the Building Commissioner may approve of the notice being issued or amended so as to require the measure to be taken —

(c) on or before a date that is less than 7 days after the date of the notice; or

(d) immediately.

(2) The Building Commissioner must give the person to whom a remediation notice is given written reasons for any opinion formed under subsection (1).

(3) If the Building Commissioner approves of a remediation notice being issued or amended so as to require the measures to be

taken immediately, an authorised person may remain at any place where the measures are to be taken until the person to whom the notice is directed has been given the notice or amended notice.

82. Contravention of remediation notice, action by authorised person

(1) If a remediation notice has been given to a person and the person has not complied with it, an authorised person may take the measures specified in the notice.

(2) For the purposes of subsection (1) an authorised person may —

(a) enter and take possession of a place; and

(b) take any other action that is reasonably necessary and incidental.

(3) An authorised person's powers under this section are in addition to the other powers of the authorised person under this Act.

(4) The Building Commissioner may recover the reasonable costs and expenses incurred in taking measures for the purposes of subsection (1) in a court of competent jurisdiction as a debt due from the person to whom the remediation notice was given.

(5) In a proceeding under subsection (4), a document apparently signed by the Building Commissioner specifying details of the reasonable costs and expenses incurred is, in the absence of evidence to the contrary, proof of the details specified.

83. Review by Building Commissioner

(1) The Building Commissioner on his or her own initiative may inquire into the circumstances relating to a remediation notice and review the notice, and after doing so, may amend, suspend, cancel or confirm it.

(2) A person who has been given a remediation notice may request the Building Commissioner to review it.

(3) Such a request must be in writing and must be made before the time for complying with the remediation notice expires or before such later date as the Building Commissioner may allow.

(4) On receiving such a request the Building Commissioner may suspend the remediation notice pending making a decision under subsection (5).

(5) On receiving such a request the Building Commissioner must inquire into the circumstances relating to the remediation notice and review it, and after doing so, may amend, suspend, cancel or confirm the remediation notice.

(6) If the Building Commissioner amends a remediation notice it has effect accordingly.

(7) If the Building Commissioner reviews a remediation notice at the request of a person, the Building Commissioner must give the person written advice of the decision on the review and the reasons for the decision.

84. Review by State Administrative Tribunal

A person aggrieved by a decision to give a remediation notice or a decision of the Building Commissioner under section 83 may apply to the State Administrative Tribunal for a review of the decision.

Part 6 — Administration

85. Building Commissioner

(1) The Minister is required, by notice published in the *Gazette*, to designate a person who is an executive officer of the Department as the Building Commissioner for the purposes of this Act.

(2) In subsection (1) —

executive officer has the meaning given in the *Public Sector Management Act 1994* section 3(1).

86. Functions

The Building Commissioner has the following functions —

(a) to monitor developments relevant to the regulation of building services in the State;

(b) to monitor and review the operation of the building service Acts;

(c) to administer the Building Services Board and the operation of registration and approval schemes under the *Building Services (Registration) Act 2011*;

(d) to administer the collection of the building services levy under Part 7 Division 2;

(e) to promote and conduct research and training into building industry policy, building services and other matters that relate to the functions of the Building Commissioner;

(f) to advise the Minister on any matter to which a building service Act relates;

(g) to provide information on the registration of registered building service providers or the approval of approved owner-builders;

(h) to provide, or facilitate the provision of, advice, information, education and training in relation to —

(i) building standards and codes; and

(ii) consumer protection in relation to building services;

(i) to audit the work and conduct of registered building service providers;

(j) to deal with complaints under this Act;

(k) to review and identify the causes of complaints and to suggest ways of removing or minimising those causes;

(l) to provide advice generally on any matter relating to complaints, and in particular —

(i) advice to the public on the making of complaints;

(ii) advice to the public on other avenues available for dealing with grievances about building services, registered building service providers or approved owner-builders;

(iii) advice about removing or minimising the causes of complaints;

(m) to perform any other function conferred on the Building Commissioner by this Act or another written law.

87. Powers

(1) The Building Commissioner has all the powers the Building Commissioner needs to perform the functions of the Building Commissioner under this Act or any other Act.

(2) The Building Commissioner may, for the purpose of performing any of the Building Commissioner's functions under this Act or any other Act, but subject to any limitation imposed by any Act —

(a) carry out any investigation, survey, exploration, feasibility study, evaluation or review; and

(b) collaborate in, carry out or procure the carrying out of research and publish information; and

(c) use information that the Building Commissioner derives from the performance of the function.

(3) Subsection (2) does not limit subsection (1) or any of the Building Commissioner's other powers.

88. Warning about unsatisfactory or dangerous services

(1) The Building Commissioner may publish (in any form) a statement identifying or giving warnings or information about any of the following —

(a) building services carried out in an unsatisfactory or dangerous manner and persons who carry out or are likely to carry out those services in that manner;

(b) unfair business practices in relation to the carrying out of building services and persons who engage or are likely to engage in these practices;

(c) any other matter which adversely affects or may adversely affect the interests of consumers in connection with the acquisition by them of building services.

(2) A statement under subsection (1) may identify particular building services, business practices, registered building service providers and other persons.

(3) The Building Commissioner must not make or issue a statement under this section unless satisfied that it is in the public interest to do so.

(4) No liability is incurred by a person for publishing in good faith —

(a) a statement under this section; or

(b) a fair report or summary of such a statement.

(5) In subsection (4) —

liability includes liability for defamation.

89. Committees

(1) The Building Commissioner may appoint committees to assist in the performance of the Building Commissioner's functions.

(2) The Building Commissioner may discharge, alter or reconstitute any committee.

(3) A committee may, with the approval of the Building Commissioner, invite a person to participate in a meeting of the committee but the person cannot vote on any matter before the committee.

(4) A committee must comply with any direction that the Building Commissioner gives it.

(5) Subject to directions given by the Building Commissioner and to the terms of any delegation under which the committee is acting, a committee may determine its own procedures.

(6) A member of a committee is to be paid such remuneration and allowances, if any, as the Minister, on the recommendation of the Public Sector Commissioner determines.

90. Disclosure of material personal interest

(1) A member of a committee who has a material personal interest in a matter being considered or about to be considered by the committee must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.

Penalty: a fine of $25 000.

(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

91. Delegation

(1) The Building Commissioner may delegate to a person or a committee any power or duty of the Building Commissioner under another provision of this Act or under any other Act.

(2) The delegation must be in writing executed by the Building Commissioner.

(3) A delegation to a committee, any member of which is not a public service officer in the Department, can only be made if the delegation has been approved by the Minister.

(4) If a person is not a public service officer in the Department, a power or duty can only be delegated to the person under this section if the person has been approved for the purposes of this section by the Minister.

(5) An approval under subsection (4) may be given in respect of —

(a) a specified person or persons of a specified class; or

(b) the holder or holders for the time being of a specified office or class of office.

(6) A person or committee to which a power or duty is delegated under this section cannot delegate that power or duty.

(7) A person or committee exercising or performing a power or duty that has been delegated to the person or committee under this section is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

(8) Nothing in this section limits the ability of the Building Commissioner to perform a function through an officer or agent.

Part 7 — Financial provisions

Division 1 — Building Services Account

92. Building Services Account

(1) An agency special purpose account called the Building Services Account is to be established under the *Financial Management Act 2006* section 16.

(2) The Building Services Account must be credited with the following —

(a) any building services levy received or recovered;

(b) fees, costs and other moneys received or recovered under this Act;

(c) other money received by, made available to, or payable to, the Building Commissioner in the performance of functions under this or any other Act;

(d) money required under section 39(5) or 44(5) to be credited to the Account;

(e) other money required or authorised under this or any other written law to be credited to the Building Services Account;

(f) any amount appropriated by Parliament to, or otherwise lawfully received for, the Building Services Account.

(3) Moneys held in the Building Services Account must be applied for the following —

(a) to fund the costs and expenses incurred in the operation and administration of the State Administrative Tribunal in dealing with building service complaints and HBWC complaints;

(b) in payment of any amount ordered under section 39(6) or 44(6) to be paid from the Account.

(4) The amount to be applied under subsection (3)(a) is to be —

(a) determined by the Treasurer after consultation with the chief executive officer of the Department and the chief executive officer of the department assisting in the administration of the *State Administrative Tribunal Act 2004*; and

(b) credited to an operating account of the department assisting in the administration of the *State Administrative Tribunal Act 2004*.

(5) Moneys held in the Building Services Account may be applied for the following —

(a) in payment of the costs of the administration and enforcement of the building service Acts;

(b) to fund the services and facilities provided under the building service Acts;

(c) in payment of the costs and expenses incurred in the performance of the functions of the Building Commissioner under the building service Acts;

(d) in payment of the remuneration and allowances payable to the members of the Building Services Board and committees under the *Building Services (Registration) Act 2011* and this Act;

(e) in payment of the remuneration and allowances payable to members of the Plumbers Licensing Board under the *Plumbers Licensing Act 1995*.

[Section 92 amended: No. 25 of 2012 s. 205(3).]

Division 2 — Building services levy

93. Terms used

In this Division —

building approval certificate has the meaning given in the *Building Act 2011* section 3;

permit means —

(a) a building permit as defined in the *Building Act 2011* section 3; or

(b) a demolition permit as defined in the *Building Act 2011* section 3; or

(c) an occupancy permit as defined in the *Building Act 2011* section 3; or

(d) a building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960* section 374; or

(e) a demolition licence issued under the *Local Government (Miscellaneous Provisions) Act 1960* section 374A.

94. Building services levy may be prescribed

(1) The Governor may make regulations to provide for a levy, which may be in the nature of a tax, to be payable in respect of permits and building approval certificates.

(2) The regulations may —

(a) prescribe different amounts of levy payable in respect of different classes of case; and

(b) provide for the amount of levy payable to be calculated on such basis, and in accordance with such factors, as are prescribed; and

(c) specify who is liable to pay the levy and when payment becomes due (which may include a requirement for payment on application for a permit or building approval certificate); and

(d) deal with how and to whom the levy is to be paid; and

(e) impose requirements on permit authorities or other prescribed persons to collect the levy and remit it to the Building Commissioner, and deal with the consequences of failure to collect or remit the levy; and

(f) authorise the payment to a permit authority or other person prescribed under paragraph (e) of an amount for collecting and remitting the levy, and providing for the determination of that amount; and

(g) deal with the refund of overpaid amounts of levy and repayment of any levy paid in respect of a permit or building approval certificate if the permit or certificate is not granted; and

(h) deal with the consequences of failure to pay the levy, which may include the imposition of an increase in the amount of an outstanding liability and may include interest; and

(i) deal with how any amount outstanding may be recovered; and

(j) provide for penalties not exceeding $5 000 for a breach of the regulations.

(3) The regulations may provide for the keeping of records, the provision of information and any other matter to facilitate the administration of the provisions for the building services levy.

(4) Nothing in this section is to be taken as limiting the operation of the *Interpretation Act 1984* section 43.

Part 8 — Codes and standards

95. Terms used

In this Part —

Commissioner code means a code issued by the Building Commissioner under section 96(1);

Commissioner standard means a standard issued by the Building Commissioner under section 96(1).

96. Building Commissioner may develop and issue building service codes and standards

(1) The Building Commissioner may —

(a) develop policy proposals relevant to Commissioner codes and Commissioner standards; and

(b) prepare and issue codes in respect of the following —

(i) the carrying out of building services;

(ii) the conduct of registered building service providers and approved owner-builders;

(iii) any other related matter;

and

(c) prepare and issue standards in relation to the technical aspects of the construction or demolition of a building; and

(d) participate on behalf of the State in the development of national codes and standards in respect of the matters referred to in paragraphs (b) and (c).

(2) The *Interpretation Act 1984* Part II, sections 43 (other than subsection (6)) and 44 and Part VIII apply to a Commissioner code or Commissioner standard as if it were subsidiary legislation.

(3) The Building Commissioner must ensure that any Commissioner code —

(a) can be inspected by the public at the Building Commissioner's office during business hours; and

(b) can be purchased by the public.

(4) The Building Commissioner may give advice as to any question or issue of doubt or difficulty in relation to the interpretation of a Commissioner code.

(5) A breach of a Commissioner code does not of itself constitute a disciplinary matter under the *Building Services (Registration) Act 2011* but such a breach may be asserted in a disciplinary complaint and may be taken into account in dealing with that complaint.

(6) Except as provided in subsection (5), no civil or criminal liability attaches to a person by reason only that the person has committed a breach of a Commissioner code.

97. Codes and standards may refer to published documents

(1) A Commissioner code or Commissioner standard may adopt a published document specified in the code or standard —

(a) as that document exists at a particular date; or

(b) as that document may from time to time be amended.

(2) The document may be adopted —

(a) wholly or in part; or

(b) as modified by the Commissioner code or Commissioner standard.

(3) The adoption may be direct (by reference made in the Commissioner code or Commissioner standard), or indirect (by reference made in the document that is itself directly or indirectly adopted).

(4) If a document is adopted in a Commissioner code or Commissioner standard —

(a) details of where the document may be inspected or purchased must be specified in, or attached to, the code or standard; and

(b) the Building Commissioner must ensure that the following are available during business hours for public inspection without charge —

(i) the adopted document;

(ii) if the document is adopted as it may from time to time be amended, either the amendments to the document or the document as amended.

Part 9 — General provisions

98. Incriminating information

(1) An individual is not excused from complying with a direction under section 47, 67(1) or 68 on the ground that the answer to a question or the production of a record or other thing might tend to incriminate the individual or expose the individual to a criminal penalty.

(2) If an individual complies with a requirement to answer a question or produce a record or other thing under section 47, 67(1) or 68 neither —

(a) an answer given by the individual that was given to comply with the requirement; nor

(b) the fact that a record or other thing produced by the individual to comply with the requirement was produced,

is admissible in evidence in any criminal proceeding against the individual other than proceeding for perjury or for an offence against this Act arising out of the false or misleading nature of the information given.

99. Legal professional privilege

Nothing in this Act prevents a person from refusing to answer a question, provide information or produce a document or other thing because the answer or information would relate to, or the document or thing contains, information in respect of which the person claims legal professional privilege.

100. Protection from liability

(1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.

(2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

(3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.

(4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

(5) A person who —

(a) performs a function under this Act in relation to a complaint or investigation; or

(b) is otherwise concerned in proceedings in relation to the complaint,

has, in respect of any such function or concern, the same protection and immunity as a member or officer of the Supreme Court, or a witness or party before the Supreme Court, would have in respect of a function or concern of a like nature related to the jurisdiction of the Supreme Court.

101. Exchange of information

(1) The Building Commissioner may disclose information to the Building Services Board or the Commissioner referred to in the *Consumer Affairs Act 1971* section 15 if, in the opinion of the Building Commissioner the information is, or is likely to be, relevant to the functions of the Board or that Commissioner.

(2) The Building Commissioner may request the Building Services Board or the Commissioner referred to in the *Consumer Affairs Act 1971* section 15 to disclose information to the Building Commissioner if, in the opinion of the Building Commissioner, the information is, or is likely to be, relevant to the functions of the Building Commissioner.

(3) Without limiting other ways in which a disclosure may be made, information may be disclosed under this section by adding the information directly into a database that is accessible only to persons to whom the information may be disclosed in accordance with this section.

(4) Information may be disclosed under subsection (1), or in compliance with a request under subsection (2), despite any written law relating to secrecy or confidentiality.

(5) If information is disclosed in good faith under this section —

(a) no civil or criminal liability is incurred in respect of the disclosure; and

(b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and

(c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.

102. Protection for compliance with Act

(1) No civil or criminal liability attaches to a person for compliance, or purported compliance, in good faith, with a requirement of this Act.

(2) In particular, if a person produces a record or other information as required under this Act, no civil liability attaches to the person for producing the record or information, whether the liability would arise under a contract or otherwise.

103. Confidentiality

A person who is or has been engaged in the performance of functions under this Act must not, directly or indirectly, record, disclose or make use of any information obtained in the performance of those functions except —

(a) for the purpose of, or in connection with, performing functions under this Act or another written law; or

(b) as required or allowed by this Act or another written law; or

(c) with the written consent of the Minister or the person to whom the information relates; or

(d) for the purpose of any proceeding before a court, the State Administrative Tribunal or the Building Services Board arising out of the administration of a building service Act; or

(e) in prescribed circumstances.

Penalty: a fine of $25 000.

104. False or misleading information

(1) A person must not do any of the things set out in subsection (2) —

(a) in relation to a complaint under this Act; or

(b) in relation to the compliance, or purported compliance, with any direction under this or another written law to give the Building Commissioner or an authorised person information; or

(c) in relation to a conciliation proceeding under this Act.

Penalty: a fine of $25 000.

(2) The things to which subsection (1) applies are —

(a) making a statement that the person knows is false or misleading in a material particular; or

(b) making a statement that is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular; or

(c) providing, or causing to be provided, information that the person knows is false or misleading in a material particular; or

(d) providing, or causing to be provided, information that is false or misleading in a material particular, with reckless disregard as to whether information is false or misleading in a material particular.

105. Liability of officers for offence by body corporate

The Criminal Code section 39 (which provides for the criminal liability of officers of a body corporate) applies to an offence under a provision of this Act listed in the Table.

Table

s. 53(1)	s. 71(2)
s. 80(7)	

[Section 105 inserted: No. 9 of 2023 s. 36.]

106. Prosecutions

(1) A prosecution for an offence against this Act can only be commenced by the Building Commissioner or a person authorised to do so by the Building Commissioner.

(2) Subsection (1) does not limit the functions of the Director of Public Prosecutions under the *Director of Public Prosecutions Act 1991* section 11.

(3) A prosecution for an offence against this Act may be commenced within 3 years after the date on which the offence was allegedly committed, but not later.

(4) All prosecutions for offences against this Act are to be heard by a court of summary jurisdiction constituted by a magistrate.

107. Service of documents

(1) For the purposes of this Act a document may be served —

(a) on a registered building service provider —

(i) if the provider is a natural person — by delivering it to the provider personally; or

(ii) if the provider is a body corporate — by leaving it with a person apparently or of above the age of 16 years at the head office, a registered office or a principal office of the body corporate; or

(iii) by sending it by post to the address of that provider shown in the register referred to in the *Building Services (Registration) Act 2011* section 29;

or

(b) on any other natural person —

(i) by delivering it to the person personally; or

(ii) by sending it by post to the address for service specified by the person for the service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving the document;

or

(c) on any other body corporate —

(i) by leaving it with a person apparently or of above the age of 16 years at the head office, a registered office or a principal office of the body corporate; or

(ii) by sending it by post to the address for service specified by the body corporate for the service of documents or, if no such address is specified, the head office, a registered office or a principal office of the body corporate.

(2) If a document is properly addressed, prepaid and posted, the document is, unless the contrary is proved, taken to have been given to the person to whom it is addressed at the time at which the letter would be delivered in the ordinary course of post.

(3) This section does not affect the operation of another written law that provides for the service of documents.

108. Evidentiary matters

(1) In the absence of evidence to the contrary, proof is not required in any proceeding for an offence against this Act —

(a) that the prosecutor is authorised to commence the prosecution; or

(b) that a signature on a prosecution notice alleging the offence is the signature of a person authorised to take the proceeding.

(2) All courts, judges and persons acting judicially are to take judicial notice of —

(a) the fact that a person is or was the Building Commissioner or an authorised person; and

(b) the official signature of such a person.

(3) A document signed by the Building Commissioner and purporting to be a record or copy of a decision or order of the Building Commissioner is, in the absence of evidence to the contrary, proof of the matters stated in it.

(4) This section is in addition to and does not affect the operation of the *Evidence Act 1906*.

109. Regulations

(1) The Governor may make regulations prescribing all matters that are —

(a) required or permitted by the Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out this Act.

(2) Without limiting subsection (1), regulations may be made for all or any of the following purposes —

(a) regulating —

(i) who may make a complaint; and

(ii) procedures for dealing with a complaint; and

(iii) the practice and procedure of the Building Commissioner;

(b) regulating the conduct of conciliation proceedings under Part 2 Division 3;

(c) regulating the conduct of investigations and inspections under this Act;

(d) making provision for and in relation to the imposition of fees, costs and charges in connection with any matter under this Act, including —

(i) for inspections carried out under this Act; and

(ii) in connection with the performance of the functions of the Building Commissioner;

(e) without limiting the *Interpretation Act 1984* sections 43 and 45, providing for the following —

(i) the time at which, or the period for or during which, fees, costs or charges are to be paid;

(ii) the structure of fees, costs or charges;

(iii) the basis on which fees, costs or charges are to be calculated;

(iv) the persons liable for payment of fees, costs and charges;

(v) interest on unpaid fees, costs and charges;

(vi) penalties for late payment or underpayment;

(vii) the recovery of unpaid fees, costs and charges;

(f) providing that information supplied to the Building Commissioner or an authorised person may be required to be verified by statutory declaration.

(3) The regulations may provide for the method of calculating a fee or charge, including calculation according to the cost of performing a function.

(4) Without limiting subsections (2)(d) and (e) and (3), the regulations may —

(a) authorise the Building Commissioner to fix, and determine the liability for, the costs and expenses of dealing with and determining complaints; and

(b) make any incidental or supplementary provision that is expedient for the purposes of paragraph (a).

(5) The application of subsection (4) extends to the cost and expenses of dealing with complaints that are commenced but discontinued or otherwise not brought to finality.

(6) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding $5 000.

110. Forms

Forms that are convenient for the purposes of this Act may be prescribed or approved by the Building Commissioner.

111. Review of Act

(1) The Minister must carry out a review of the operation and effectiveness of this Act as soon as practicable after —

(a) the fifth anniversary of its commencement; and

(b) the expiry of each 5 yearly interval after that anniversary.

(2) The Minister must prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

Part 10 — Consequential amendments and transitional provisions

[Division 1 omitted under the Reprints Act 1984 s. 7(4)(e).]

[Division 2 Subdivision 1 (s. 127-130) omitted under the Reprints Act 1984 s. 7(4)(e).]

[Division 2 Subdivision 2 (s. 131) omitted under the Reprints Act 1984 s. 7(4)(f).]

Division 3 — Transitional and savings provisions

132. Terms used

In this Division —

commencement day means the day on which the *Building Services (Registration) Act 2011* section 107 comes into operation;

former Tribunal means the Building Disputes Tribunal constituted under the repealed Act;

repealed Act means the *Builders' Registration Act 1939* repealed by the *Building Services (Registration) Act 2011* section 107.

133. Transfer of jurisdiction

(1) On commencement day, except as provided in section 134 —

(a) any matter involved in the performance of a function of the former Tribunal is to be transferred to, and dealt with by, the Building Commissioner; and

(b) any complaint, application or other thing made, addressed or otherwise directed or given to the former Tribunal to do with the performance of a function of the former Tribunal becomes of the same effect as if it had been given to the Building Commissioner to be dealt with under this Act.

(2) On commencement day all records relating to a matter that is transferred under this section are to be sent to the Building Commissioner.

134. Current proceedings continued

(1) In this section —

current proceeding means —

(a) a proceeding in respect of which a hearing has commenced before the former Tribunal, but which has not been concluded before the former Tribunal; or

(b) a proceeding in respect of which an order is made under subsection (2);

proceeding means —

(a) a proceeding to deal with a complaint under section 12A of the repealed Act; or

(b) a proceeding to deal with an application under the *Home Building Contracts Act 1991*,

but does not include a proceeding of an interlocutory or procedural nature.

(2) The State Administrative Tribunal constituted by the President of the Tribunal sitting alone may, on its own initiative or on the application of a party, order that a proceeding is a current proceeding for the purposes of this section.

(3) A current proceeding is to be dealt with and determined in accordance with the relevant provisions of the repealed Act and the *Home Building Contracts Act 1991* as in force immediately before commencement day.

(4) For the purposes of dealing with a current proceeding the former Tribunal is to continue as constituted under the repealed Act immediately before commencement day.

135. Decisions and actions of former Tribunal

(1) Any decision of the former Tribunal, whether made before commencement day or in accordance with section 134 —

(a) that would have been reviewable by the State Administrative Tribunal had the law in force immediately before commencement day continued to apply; or

(b) in respect of which an application for review had been made to the State Administrative Tribunal but not determined,

is to continue to be dealt with as if the repealed Act as in force before commencement day and the *Home Building Contracts Act 1991* as in force immediately before the coming into operation of Division 1 had continued to apply.

(2) On and from commencement day anything ordered, decided or otherwise done by the former Tribunal in the performance of a function of the former Tribunal, whether before commencement day or in accordance with section 134, remains or is of the same effect as if, and is enforceable as if, the repealed Act as in force before commencement day and the *Home Building Contracts Act 1991* as in force immediately before the coming into operation of Division 1 had continued to apply.

136. Construction of written laws and other instruments

If in a written law, agreement or other instrument, there is a reference to a remedy under section 12A of the repealed Act, that reference is to have effect on and after commencement day as if a reference to a building remedy order were substituted, unless in the context it would be inappropriate to make the substitution.

137. *Construction Contracts Act 2004* amendments, transitional provisions

(1) Anything commenced to be done by the Registrar under the *Construction Contracts Act 2004* before the coming into operation of section 128 may be continued by the Building Commissioner.

(2) Any act, matter or thing done or omitted to be done under the *Construction Contracts Act 2004* before the coming into operation of section 128 by, to or in respect of the Registrar under that Act, to the extent that the act, matter or thing has any force or significance, has the same effect after the coming into operation of that section as if it had been done or omitted by, to or in respect of the Building Commissioner.

137A. Transitional provisions for *Building Services (Complaint Resolution and Administration) Amendment Act 2024*

(1) In this section —

amendment Act means the *Building Services (Complaint Resolution and Administration) Amendment Act 2024*;

commencement day means the day on which the amendment Act section 5(1) comes into operation;

relevant policy means a policy of insurance entered into before commencement day to satisfy a requirement of the *Home Building Contracts Act 1991* Part 3A;

residential building work has the meaning given in the *Home Building Contracts Act 1991* section 25A.

(2) The amendment of section 6(1) by the amendment Act section 5(1) does not —

(a) extend or otherwise affect the period during which a relevant policy is in force in relation to residential building work; or

(b) revive a relevant policy or a policy holder's right to claim under a relevant policy; or

(c) extend or otherwise affect the period for making a claim under a relevant policy.

(3) A policy under section 6A applies in relation to complaints made under section 5, but not finally determined, before commencement day.

[Section 137A inserted: No. 39 of 2024 s. 10.]

138. Regulations for transitional matters

(1) If there is no sufficient provision in this Division for dealing with a transitional matter, regulations under this Act may prescribe all matters that are required or necessary or convenient to be prescribed in relation to that matter.

(2) In subsection (1) —

transitional matter means a matter that needs to be dealt with for the transition required because of this Act.

(3) Regulations made under subsection (1) may provide that specific provisions of any written law —

(a) do not apply to or in relation to any matter; or

(b) apply with specific modifications to or in relation to any matter.

(4) If regulations made under subsection (1) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the day on which this section comes into operation, the regulations have effect according to their terms.

(5) In subsection (4) —

specified means specified or described in the regulations.

(6) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the regulations were published in the *Gazette*; or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the regulations were published in the *Gazette*.

Notes

This is a compilation of the *Building Services (Complaint Resolution and Administration) Act 2011* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Building Services (Complaint Resolution and Administration) Act 2011	16 of 2011	25 May 2011	s. 1 and 2: 25 May 2011 (see s. 2(a)); Act other than s. 1 and 2: 29 Aug 2011 (see s. 2(b) and *Gazette* 26 Aug 2011 p. 3475)
Water Services Legislation Amendment and Repeal Act 2012 s. 205	25 of 2012	3 Sep 2012	18 Nov 2013 (see s. 2(b) and *Gazette* 14 Nov 2013 p. 5028)
Reprint 1: The *Building Services (Complaint Resolution and Administration) Act 2011* as at 5 Aug 2016 (includes amendments listed above)			
Building and Construction Industry (Security of Payment) Act 2021 Pt. 7 Div. 1	4 of 2021	25 Jun 2021	Pt. 7 Div. 1 (other than s. 123 and 124): 1 Aug 2022 (see s. 2(c) and SL 2022/78 cl. 2(2)(a)(vii)); **s.** 123 and 124: 1 Feb 2023 (see s. 2(c) and SL 2022/78 cl. 2(2)(b)(iii))
Directors' Liability Reform Act 2023 Pt. 3 Div. 12	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))
Building Services (Complaint Resolution and Administration) Amendment Act 2024	39 of 2024	29 Oct 2024	s. 1 and 2: 29 Oct 2024 (see s. 2(a)); Act other than s. 1 and 2: 30 Oct 2024 (see s. 2(b))

Other notes

[1] Repealed by the *Building Services (Registration) Act 2011*.

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
amendment Act	137A(1)
approved owner-builder	3
approved policy	3
authorised person	3
builder	3
building	3
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