Western Australia

Building Services (Registration) Act 2011

Compare between:

[25 Sep 2025, 00-i0-01] and [21 Oct 2026, 00-j0-00]

Western Australia

Building Services (Registration) Act 2011

An Act to provide for the following —

- **the registration of certain building service providers;**
- **the approval of owner-builders;**
- **the repeal of the *Builders' Registration Act 1939,* the *Painters' Registration Act 1961* and various regulations;**
- **related matters.**

Part 1 — Preliminary

1. Short title

This is the *Building Services (Registration) 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 —

amend, in relation to registration, includes —

(a) impose a condition; and

(b) vary or revoke a condition already imposed;

Board means the Building Services Board established by section 65;

body means any of the following —

(a) a corporation;

(b) a partnership;

(c) an unincorporated body;

Building Commissioner has the meaning given in the *Building Services (Complaint Resolution and Administration) Act 2011* section 3;

building permit means —

(a) a building permit granted under the *Building Act 2011*; or

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

building service has the meaning given in the *Building Services (Complaint Resolution and Administration) Act 2011* section 3;

building service contractor means a person registered under section 18;

building service practitioner means a person registered under section 17;

Building Services Account means the account referred to in the *Building Services (Complaint Resolution and Administration) Act 2011* section 92;

CEO means the chief executive officer of the Department;

class, in relation to a building service practitioner or building service contractor, means a class prescribed as referred to in section 9;

committee means a committee appointed under section 88;

complaint means a complaint made under the *Building Services (Complaint Resolution and Administration) Act 2011* section 15;

condition includes restriction;

corporation has the meaning given in the Corporations Act section 57A;

Corporations Act means the *Corporations Act 2001* (Commonwealth);

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

ineligible person means a person declared to be an ineligible person under section 60;

insolvent has the meaning given in section 63A(1);

jurisdiction means a State or Territory of the Commonwealth;

nominated supervisor has the meaning given in section 21;

officer means —

(a) in the case of a corporation — an officer of a corporation as defined in the Corporations Act section 9; or

(b) in the case of a body that is not a corporation — an officer of an entity that is neither an individual nor a corporation as defined in the Corporations Act section 9;

prescribed building service means a building service that is prescribed by the regulations;

public authority means any of the following —

(a) a Minister of the State;

(b) an agency or an organisation as those terms are defined in the *Public Sector Management Act 1994* section 3(1);

(c) a local government, regional local government or regional subsidiary;

(d) a body, whether incorporated or not, or the holder of an office, that is established or continued for a public purpose under a written law and that, under the authority of a written law, performs a statutory function on behalf of the State;

register means the register referred to in section 29;

registered building service provider means either of the following —

(a) a building service practitioner;

(b) a building service contractor;

registration means registration under Part 3;

registration certificate means a certificate issued under section 20;

registration number, in relation to a registered building service provider, means the number assigned to the person's registration certificate by the Building Commissioner;

serious offence means an offence (whether committed in or outside this State) that is —

(a) an indictable offence against a law of this State, the Commonwealth or another jurisdiction (whether or not the offence is or may be dealt with summarily); or

(b) an offence against the law of another jurisdiction that would be an indictable offence against a law of this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this State).

[Section 3 amended: No. 26 of 2016 s. 31; No. 4 of 2021 s. 126.]

Part 2 — Prohibitions in relation to unregistered persons

Division 1 — Use of titles and representations as to registration

4. Restriction on use of titles

(1) A person must not use a title prescribed by the regulations unless the person is registered in a class of building service practitioner or building service contractor entitled under section 10 or 11 to use that title.

Penalty: a fine of $25 000.

(2) Subsection (1) does not apply to a person, or a person in a class of persons, prescribed by the regulations for the purposes of this section.

5. Claims as to registration

(1) A person must not advertise, or otherwise hold out or imply, that the person is registered in a class of building service practitioner unless the person is registered in that class of building service practitioner.

Penalty: a fine of $25 000.

(2) A person must not advertise, or otherwise hold out or imply, that the person is registered in a class of building service contractor unless the person is registered in that class of building service contractor.

Penalty: a fine of $25 000.

6. Advertising entitlement to carry out prescribed building service when not registered

(1) A person must not advertise, or otherwise hold out or imply, that the person is entitled, either alone or with others, to carry out a prescribed building service for other persons unless the person is a building service contractor entitled under section 11 to carry out that building service.

Penalty: a fine of $25 000.

(2) Subsection (1) does not apply to a person if —

(a) the person is —

(i) a public authority; or

(ii) an officer or employee of a public authority, in so far as that person directs or supervises the carrying out of a prescribed building service in the performance of the person's duties as such an officer or employee;

or

(b) the person is a person, or in a class of persons, prescribed by the regulations for the purposes of this section.

Division 2 — Prohibitions in respect of carrying out prescribed building service

7. Carrying out prescribed building service when not registered

(1) A person must not carry out, or undertake to carry out, a prescribed building service for any other person unless the person is a building service contractor entitled under section 11 to carry out that building service.

Penalty: a fine of $25 000.

(2) Subsection (1) does not apply to the following —

(a) a person who carries out a prescribed building service as an employee of a building service contractor entitled to carry out that building service;

(b) a person who is —

(i) a public authority; or

(ii) an officer or employee of a public authority, in so far as that person directs or supervises the carrying out of a prescribed building service in

the performance of the person's duties as such an officer or employee;

(c) the person is a person, or in a class of persons, prescribed by the regulations for the purposes of this section.

(3) Subject to subsection (4), a person is not entitled to any monetary or other consideration in respect of anything the person did in contravention of subsection (1).

(4) A person is not stopped under subsection (3) from claiming reasonable remuneration for carrying out a prescribed building service, but only if the amount claimed —

(a) is not more than the amount paid by the person in supplying materials and labour for carrying out the building service; and

(b) does not include allowance for any of the following —

(i) the supply of the person's own labour;

(ii) the making of a profit by the person for carrying out the building service;

(iii) costs incurred by the person in supplying materials and labour if, in the circumstances, the costs were not reasonably incurred;

and

(c) is not more than any amount agreed to as the price for carrying out the building service; and

(d) does not include any amount paid by the person that may fairly be characterised as being, in substance, an amount paid for the person's own direct or indirect benefit.

(5) A building service contractor who has entered into a contract to carry out a prescribed building service must not enter into a contract with another person for the other person to carry out the building service (or any part of the building service) for the

contractor unless the other person is a building service contractor entitled to carry out that building service.

Penalty: a fine of $25 000.

Division 3 — Advertisements by building service contractors

8. Advertisements by building service contractor

Unless the regulations prescribe otherwise, a building service contractor must cause the contractor's registration number to appear in any advertisement published by the contractor in respect of availability of the contractor to carry out prescribed building services.

Penalty: a fine of $5 000.

Part 3 — Registration of building service providers

Division 1 — Grant or renewal of registration

9. Classes of building service practitioner and building service contractor

(1) An individual may be registered under section 17 as a building service practitioner in a class of building service practitioner prescribed by the regulations.

(2) An individual or a body may be registered under section 18 as a building service contractor in a class of building service contractor prescribed by the regulations.

10. Effect of registration as building service practitioner

Subject to this Act, registration in a class of building service practitioner entitles the person registered to use a title prescribed by the regulations for that class of practitioner.

11. Effect of registration as building service contractor

Subject to this Act and the *Building Act 2011*, registration in a class of building service contractor entitles the person registered —

(a) to carry out a prescribed building service that is prescribed by the regulations for that class of contractor; and

(b) to use a title prescribed by the regulations for that class of contractor.

12. Duration of registration

(1) The registration of a registered building service provider in a class of building service practitioner or in a class of building service contractor, unless sooner cancelled, expires on the day (the ***expiry day***) that is the earlier of the following —

(a) the day of the 3rd anniversary of the day on which the registration commences;

(b) the expiry day that is specified in the certificate of registration.

(2) The registration of a registered building service provider in a class of building service practitioner or in a class of building service contractor that is renewed under this Act, unless sooner cancelled, expires on the day (the ***expiry day***) that is the earlier of the following —

(a) the day of the 3rd anniversary of the day on which the registration is renewed;

(b) the expiry day that is specified in the certificate of registration.

(3) If an application accepted by the Board for the renewal of registration has not been determined by the expiry day, the registration —

(a) continues to have effect on and from the expiry day until the Board renews or refuses to renew the registration or the applicant withdraws the application, unless the registration is sooner cancelled; and

(b) if renewed, is taken to have been renewed on and from the expiry day.

13. Application for registration or renewal

(1) An individual may apply to the Board for registration as a building service practitioner in a class of building service practitioner or for the renewal of that registration.

(2) An individual or a body may apply to the Board for registration as a building service contractor in a class of building service contractor or for the renewal of that registration.

(3) An application is to —

(a) be made in writing in a manner and form determined by the Building Commissioner; and

(b) state each class of building service practitioner or building service contractor in respect of which registration or renewal is sought; and

(c) be accompanied by —

(i) the application fee prescribed by the regulations; and

(ii) the registration fee prescribed by the regulations.

14. Further information

(1) The Board may, in writing, require an applicant under section 13 to do any or all of the following —

(a) provide the Board with such further information relevant to the application as the Board requires;

(b) verify any further information by statutory declaration;

(c) provide the Board with the applicant's written consent to seek from another specified person information about the applicant relevant to the application.

(2) The Board may specify in the requirement a reasonable time within which the applicant must comply with the requirement.

(3) The Board may refuse to consider an application if the applicant 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.

(4) The Board may, in writing, require an applicant under section 13, or a representative of the applicant, to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application and, if the person fails to attend, may refuse the application.

15. Timing of application for renewal

(1) An application for the renewal of the registration of a registered building service provider in a class of building service practitioner or in a class of building service contractor is to be made to the Board within the period prescribed by the regulations as the renewal period.

(2) The Board may, by written notice, accept an application made within 6 months after the end of the renewal period (even after the expiry of the registration sought to be renewed) if satisfied that —

(a) the delay was caused by reasons beyond the control of the applicant; or

(b) other special circumstances warrant acceptance of the application.

(3) If an application is accepted under subsection (2) after the expiry of the registration —

(a) the registration is taken to have had effect on and from the day immediately following its expiry until the Board renews or refuses to renew the registration or the applicant withdraws the application, unless the registration is sooner suspended or cancelled; and

(b) the registration, if renewed, is taken to have been renewed on the day immediately following its expiry.

(4) Payment of a late fee prescribed by or determined under the regulations may, if the Board thinks fit, be required as a condition of acceptance of an application under subsection (2).

16. Application for registration by a person whose registration has been cancelled

(1) In this section —

disqualified person means a person whose registration has been cancelled under section 58(1)(h).

(2) A disqualified person cannot apply for registration for a period of 3 months after the cancellation of the person's registration.

(3) The Board cannot grant an application for registration by a disqualified person unless the Board has applied for, and obtained, the approval of the State Administrative Tribunal to do so.

17. Registration of building service practitioners

(1) The Board must register, or renew the registration of, an applicant as a building service practitioner in each class of building service practitioner applied for if the Board is satisfied that the applicant —

(a) has complied with sections 13 and 14; and

(b) has the qualifications and experience prescribed by the regulations for that class of building service practitioner; and

(c) is a fit and proper person to be registered; and

(d) has complied with any other requirements prescribed by the regulations for registration as a building service practitioner in that class.

(2) The Board must not register, or renew the registration of, an applicant if —

(a) the requirements of subsection (1) are not met; or

(b) the applicant is an ineligible person.

18. Registration of building service contractors

(1) The Board must register, or renew the registration of, an applicant as a building service contractor in each class of building service contractor applied for if the Board is satisfied that the applicant —

(a) has complied with sections 13 and 14; and

(b) satisfies the financial requirements, if any, prescribed by the regulations for that class of building service contractor; and

(c) satisfies the insurance requirements, if any, prescribed by the regulations for that class of building service contractor; and

(d) on registration or renewal of registration, will have at least one nominated supervisor for that class of building service contractor; and

(e) has arrangements to ensure that building services to be carried out by the applicant will be managed and supervised in a proficient manner; and

(f) is not a body of which an ineligible person is an officer; and

(fa) has paid any building service debt of a kind referred to in section 53(4) that the applicant has incurred; and

(g) has complied with any other requirements prescribed by the regulations for registration as a building service contractor in that class.

(2) The Board must not register, or renew the registration of, an applicant if the requirements of subsection (1) are not met.

[Section 18 amended: No. 4 of 2021 s. 127.]

19. Notice of decision

(1) The Board must, as soon as is practicable after making a decision under section 17 or 18, give to the person to whom the decision relates written notice of the decision and, if the Board refuses to grant or renew the registration of a person, the person's right of review under section 64.

(2) If, on an application for registration, the Board decides that it will not register the applicant the registration fee referred to in section 13(3)(c)(ii) is to be returned to the applicant.

20. Registration certificate

(1) If the Board registers, or renews the registration of, an applicant the Board must give the applicant a registration certificate in a form approved by the Building Commissioner.

(2) In the absence of evidence to the contrary a registration certificate is evidence that the person to whom the certificate is issued is registered as specified in the certificate.

Division 2 — Nominated supervisors

21. Nominated supervisor for building service contractor

(1) In this section —

eligible person, in relation to a class of building service contractor, means a person who is a registered building service practitioner in a class of building service practitioner prescribed by the regulations for that class of contractor.

(2) A building service contractor who is an individual —

(a) must be an eligible person for each class of building service contractor in which the contractor is registered; and

(b) is the ***nominated supervisor*** for each class of building service contractor in which the contractor is registered.

(3) A ***nominated supervisor*** for a building service contractor that is a body is an officer or employee of the contractor who is —

(a) an eligible person for a class of building service contractor in which the contractor is registered; and

(b) nominated by the contractor, by notice in writing to the Board, as a supervisor for the contractor for that class of building service contractor.

(4) A nomination referred to in subsection (3)(b) may be revoked or varied by the building service contractor by notice in writing given to the Board.

22. Effect of not having nominated supervisor

(1) In this section —

relevant building service, in relation to a class of building service contractor, means a prescribed building service that a contractor registered in that class of contractor is entitled to carry out.

(2) A building service contractor registered in a class of building service contractor must not carry out, or undertake to carry out, a relevant building service during any period in which the contractor does not have a nominated supervisor for that class of building service contractor.

Penalty: a fine of $25 000.

(3) A building service contractor must give the Board written notice if the contractor ceases to have a nominated supervisor for a class of building service contractor in which the contractor is registered.

Penalty: a fine of $10 000.

(4) The notice referred to in subsection (3) must be given to the Board no later than 7 days after the contractor ceases to have a nominated supervisor.

Division 3 — Conditions on registration

23. Conditions generally

(1) Registration is subject to —

(a) any conditions imposed by the Board or the State Administrative Tribunal; and

(b) any other conditions imposed under this Act.

(2) The regulations may provide for conditions of registration.

24. Conditions imposed by Board

(1) The Board may impose conditions on the registration of a registered building service provider —

(a) when registering or renewing the registration; or

(b) during the currency of the registration.

(2) The Board may vary or revoke conditions imposed under this section.

(3) The imposition, variation or revocation of a condition during the currency of the registration of a person does not take effect until written notice, including notice of the person's right of review under section 64, has been given to the person.

25. Compliance with conditions

A registered building service provider must not contravene a condition to which the provider's registration is subject.

Penalty: a fine of $25 000.

Division 4 — Amendment, suspension or cancellation of registration

26. When Board may amend, suspend or cancel registration

(1) The Board may —

(a) amend the registration of a registered building service provider on the provider's request; or

(b) suspend the registration of a registered building service provider and remove the name of the provider from the register for a specified period on the provider's request; or

(c) cancel the registration of a registered building service provider and remove the name of the provider from the register on the provider's request.

(2) Suspension of registration under subsection (1)(b) or cancellation of registration under subsection (1)(c) may be in relation to a provider's registration generally or in relation to registration in a class or classes of building service practitioner or building service contractor.

(3) The Board may amend the registration of a registered building service provider —

(a) for a formal or clerical reason; or

(b) in another way that does not adversely affect the provider's interests.

(4) The amendment, suspension or cancellation of registration under subsection (1) or (3) is effected by written notice given to the provider.

(5) If the Board decides to refuse a request under subsection (1), the Board must give the provider written notice of the decision, the reasons for the decision and the person's right of review under section 64.

27. Suspension of registration: effect

If, under section 26(1)(b) or 58(1)(g), the registration of a person in a class of building service practitioner or building service contractor is suspended, the person is to be taken to be not registered in that class during the period of suspension.

28. Revocation of suspension

(1) The Board may, on the application of a person whose registration is suspended, revoke the suspension.

(2) The revocation of a suspension under subsection (1) is effected by written notice given to the applicant.

(3) If the Board decides to refuse an application under subsection (1), the Board must give the applicant written notice

of the decision, the reasons for the decision and the person's right of review under section 64.

(4) A person whose registration was suspended by the State Administrative Tribunal may not apply for the suspension to be revoked for a period of 3 months commencing on the day the registration was suspended.

(5) The Board must not revoke a suspension imposed by the State Administrative Tribunal unless the Board has applied for, and obtained, the approval of the Tribunal to do so.

Division 5 — Register

29. The register

(1) The Building Commissioner is to keep a register of persons who are registered, or have been registered, under this Part.

(2) The register is to be kept in the manner and form determined by the Building Commissioner.

(3) The register may have divisions relating to —

(a) different classes of building service practitioner; and

(b) different classes of building service contractor; and

(c) whether the person is a registered building service provider or is no longer a registered building service provider.

(4) The register must include the following particulars in respect of each building service practitioner —

(a) the name of the practitioner;

(b) the business address of the practitioner;

(c) the registration number assigned to the practitioner's registration certificate;

(d) each class of building service practitioner in which the practitioner is registered;

(e) any conditions applying to the registration;

(f) details of any order made by the State Administrative Tribunal under section 58(1) or 59(1) in respect of the practitioner;

(g) such other information, if any, as is prescribed by the regulations.

(5) The register must include the following particulars in respect of each building service contractor —

(a) the name of the contractor;

(b) the business address of the contractor;

(c) the registration number assigned to the contractor's registration certificate;

(d) each class of building service contractor in which the contractor is registered;

(e) the name of each nominated supervisor for the contractor;

(f) any conditions applying to the registration;

(g) details of any order made by the State Administrative Tribunal under section 58(1) in respect of the contractor;

(h) such other information, if any, as is prescribed by the regulations.

(6) The register must include the following particulars in respect of each person who is no longer a building service practitioner or a building service contractor —

(a) the name of the person;

(b) each class of building service practitioner or building service contractor in which the person was registered, and the period for which the person was so registered.

30. Inspection of register

(1) The register must be available for inspection by members of the public at the office of the Building Commissioner during normal office hours.

(2) The register must be made available for inspection by members of the public on a website maintained by the Building Commissioner.

(3) A person may, on application to the Building Commissioner in respect of the register or an entry in the register, and payment of the fee prescribed by the regulations, if any, obtain a certified copy of the register or the entry.

(4) The Building Commissioner may publish, in the manner and at the times determined by the Commissioner, a copy of the register or any part of, or entry in, the register.

31. Board to provide register information

The Board is to provide to the Building Commissioner such information as the Commissioner requires for the purpose of keeping the register.

Division 6 — Offences in relation to registration

32. Notification of change of address

(1) A registered building service provider must give the Board written notice of any change to any of the addresses that are recorded in the register in relation to the provider.

Penalty: a fine of $5 000.

(2) The notice referred to in subsection (1) must be given no later than 14 days after the change to the address.

32A. Notification of new directors

(1) In this section —

director, of a body, has the meaning given in the Corporations Act section 9.

(2) A body that is a building service contractor must give the Board written notice of the appointment of any new director of the body.

Penalty for this subsection: a fine of $5 000.

(3) The notice referred to in subsection (2) must be given no later than 7 days after the day on which the new director is appointed and must include any information prescribed by the regulations.

[Section 32A inserted: No. 4 of 2021 s. 128.]

33. Notification of change in eligibility

(1) A registered building service provider must give the Board written notice of any change to the circumstances of the provider that affect the eligibility of the provider to remain registered.

Penalty: a fine of $10 000.

(2) The notice referred to in subsection (1) must be given no later than 7 days after the change in circumstances.

34. Notification of financial difficulty

(1) A building service contractor must give the Board written notice if the contractor is unable to meet the contractor's financial obligations as and when they fall due.

Penalty: a fine of $10 000.

(2) The notice referred to in subsection (1) must be given to the Board no later than 7 days after the building service contractor becomes aware that the contractor is unable to meet the financial obligations.

(3) A registered building service provider must, no later than 7 days after becoming an insolvent, give the Board written notice of the insolvency.

Penalty: a fine of $10 000.

35. Notification of certain offences

(1) A registered building service provider must give the Board written notice if the provider is charged with a serious offence.

Penalty: a fine of $5 000.

(2) A registered building service provider must give the Board written notice if the provider is convicted of a serious offence.

Penalty: a fine of $5 000.

(3) A registered building service provider must give the Board written notice if the provider is convicted of an offence against a law of the Commonwealth or another jurisdiction in connection with the provision of a building service.

Penalty: a fine of $5 000.

(4) Subsection (3) does not apply in respect of a conviction for an offence against this Act.

(5) The notice referred to in subsections (1), (2) and (3) must be given to the Board no later than 7 days after the conviction or charge.

36. Notification of disciplinary action

(1) A registered building service provider who is registered or licensed under an Act prescribed by the regulations must give the Board written notice of any disciplinary action taken against the provider under that Act.

Penalty: a fine of $5 000.

(2) The notice referred to in subsection (1) must be given to the Board no later than 7 days after the disciplinary action is taken.

37. Return of registration certificate

(1) If a person's registration is —

(a) amended or suspended by the Board; or

(b) amended, cancelled or suspended by the State Administrative Tribunal,

the person must return his or her registration certificate to the Board no later than 14 days after the person is notified of the amendment, suspension or cancellation.

Penalty: a fine of $5 000.

(2) The Board may direct in writing that a person is not obliged to comply with subsection (1) and, in that case, the subsection does not apply to that person.

(3) The Board must return the registration certificate to the person as soon as practicable —

(a) if the registration is amended — after amending the registration certificate to reflect the amendment; or

(b) if the registration is suspended and is still current at the end of the suspension period — after the end of the suspension period.

(4) It is a defence to a prosecution for an offence against subsection (1) for the accused to show that the failure to return the certificate was due to its loss or destruction.

Part 4 — Owner-builder approvals

Division 1 — Preliminary

38. Terms used

In this Part —

building work means work for which a building permit is required;

owner has the meaning given in section 39;

owner-builder, in relation to an owner-builder approval, means a person to whom the owner-builder approval is granted;

owner-builder approval has the meaning given in section 40;

owner-builder work means building work for a building that is of a kind prescribed by the regulations.

39. Meaning of owner

(1) In this Part —

owner, in relation to land, means a person —

(a) whose name is registered as a proprietor of the land; or

(b) who holds an interest in the land of a kind prescribed by the regulations.

(2) The regulations may impose restrictions on the circumstances in which a person will be treated as an owner for the purposes of this Part.

40. When owner-builder approval may be applied for

(1) An owner may apply for approval under this Part (***owner-builder approval***) before obtaining a building permit to carry out owner-builder work on the owner's land if the owner proposes to be named as the builder on the building permit.

(2) An owner-builder approval cannot be granted to an owner who is not an individual.

41. Application by more than one person

If an application made under section 43 is signed by more than one person, a reference in this Part to the applicant is a reference to each of the persons (unless otherwise specified).

42. Approval issued to more than one person

If an owner-builder approval is granted jointly to more than one person, a reference in this Part to an owner-builder is a reference to each of the persons.

Division 2 — Grant of approval

43. Application for owner-builder approval

(1) An individual who is the owner of land may apply to the Board for approval to carry out owner-builder work on the land.

(2) The application must be —

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

(b) accompanied by —

(i) evidence that the applicant is the owner of the land; and

(ii) evidence that the applicant or, if there is more than one applicant, at least one of the applicants, has sufficient knowledge of the duties and responsibilities of an owner-builder; and

(iii) the fee, if any, prescribed by the regulations;

and

(c) signed by each owner of the land.

(3) For the purposes of subsection (2)(b)(ii) evidence that a person —

(a) has successfully completed an owner-builder course prescribed by the regulations within the period prescribed by the regulations; or

(b) is a building service practitioner registered in a class of building service practitioner prescribed by the regulations for the purposes of this section,

is to be taken to be evidence that the person has sufficient knowledge of the duties and responsibilities of an owner-builder.

44. Further information

(1) The Board may, in writing, require an applicant under section 43 to do any or all of the following —

(a) provide the Board with such further information as the Board requires in any particular case;

(b) verify any further information by statutory declaration;

(c) provide the Board with the applicant's written consent to seek information about the applicant relevant to the application from another specified person.

(2) The Board may specify in the requirement a reasonable time within which the applicant must comply with the requirement.

(3) The Board may refuse to consider an application if the applicant 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.

(4) The Board may, in writing, require the applicant to attend before the Board for the purpose of satisfying the Board as to a matter relevant to the application and, if the person fails to attend, may refuse the application.

45. Decision on application for approval

(1) The Board must grant an owner-builder approval if it is satisfied that —

(a) the applicant has complied with sections 43 and 44; and

(b) the application relates to owner-builder work on land owned by the applicant; and

(c) the applicant or if there is more than one applicant, at least one of the applicants, has sufficient knowledge of the duties and responsibilities of an owner-builder; and

(d) in the 6 years preceding the application the applicant has not been granted or issued with a building permit as an owner-builder; and

(e) the applicant has complied with each other requirement prescribed by the regulations for the grant of an owner-builder approval.

(2) The Board may waive the requirement in subsection (1)(d) if the Board is satisfied that —

(a) the building permit was to carry out owner-builder work on the land to which the application relates; or

(b) the circumstances of the applicant have changed since the building permit was issued and the applicant would suffer hardship if the application were refused.

(3) Except as provided in subsection (2), the Board must not grant an owner-builder approval to an applicant if the requirements of subsection (1) are not met.

(4) An owner-builder approval is to be in a form approved by the Building Commissioner.

(5) The Board must, if it refuses to grant an owner-builder approval under subsection (1), or to waive the requirements under subsection (2), give the applicant written notice of the decision, the reasons for the decision and the person's right of review under section 64.

46. Duration of approval

(1) An owner-builder approval expires 6 months after the grant of the approval unless subsection (2) applies.

(2) If, within the period of 6 months commencing on the grant of the approval, the owner-builder applies for a building permit to do building work on the land to which the approval relates, the owner-builder approval expires —

(a) if the application is refused — on the day on which the application is refused; or

(b) if the building permit is granted — on the day on which the building permit ceases to have effect.

Division 3 — Conditions on approval

47. Conditions of owner-builder approval

(1) An owner-builder approval is subject to —

(a) the condition that the owner-builder may only carry out building work in respect of which there is a current building permit; and

(b) any other conditions imposed by the Board; and

(c) any other conditions imposed under this Act.

(2) The regulations may provide for conditions of approval.

48. Conditions imposed by Board

(1) The Board may impose conditions on an owner-builder approval —

(a) when granting the approval; or

(b) during the currency of the approval.

(2) The Board may vary or revoke conditions imposed under this section.

(3) The imposition, variation or revocation of a condition during the currency of an approval does not take effect until written notice, including notice of the owner-builder's right of review under section 64, is given to the owner-builder.

49. Compliance with conditions

An owner-builder must not contravene a condition that applies to an owner-builder approval.

Penalty: a fine of $25 000.

Division 4 — Role of Board in respect of complaint about owner-builder

50. Grounds for cancellation of approval

The following are grounds for cancellation of an owner-builder approval —

(a) the approval was granted because of incorrect or misleading information;

(b) a condition to which the approval is subject has been contravened;

(c) the Board becomes aware of the existence of facts that would have allowed the Board to refuse to grant the approval originally.

51. Board to decide what action to take in respect of complaint forwarded by Building Commission

(1) The Board must consider —

(a) a complaint in relation to an owner-builder forwarded to it by the Building Commissioner under the *Building Services (Complaint Resolution and Administration) Act 2011*; and

(b) any report and recommendations in respect of the complaint given to the Board by the Building Commissioner.

(2) The Board may, on consideration of a complaint under subsection (1), decide —

(a) not to take any action; or

(b) to refer the complaint back to the Building Commissioner for the purpose of commencing a conciliation proceeding under the *Building Services (Complaint Resolution and Administration) Act 2011* Part 2 Division 3; or

(c) to refer the complaint back to the Building Commissioner for investigation or further investigation; or

(d) if the Board is satisfied that grounds for cancellation of an owner-builder approval exist, to cancel the owner-builder approval.

(3) The Board must, as soon as is practicable, but in any case no later than 7 days after making a decision under this section, give to the complainant, if any, and the respondent written notice of the decision together with short particulars of the reasons for the decision.

(4) A cancellation of an owner-builder approval is effected by written notice to the owner-builder.

(5) The notice referred to in subsection (4) must include notice of the person's right of review under section 64.

(6) The Board may notify any person who has authority to grant a building permit that the Board has cancelled an owner-builder approval if the Board considers that the person has a relevant interest.

Part 5 — Disciplinary matters — registered building service providers

Division 1 — Preliminary

52. Application of Part

(1) This Part applies, with any necessary modifications, to a former registered building service provider in relation to conduct occurring while the person was a registered building service provider in the same way as it applies to a person who is a registered building service provider.

(2) Disciplinary action under this Part may be taken against a building service practitioner who is or was the nominated supervisor of a building service contractor whether or not such disciplinary action has been taken against the building service contractor.

53. Disciplinary matters

(1) The following are disciplinary matters —

(a) that after registration the registered building service provider has been convicted —

(i) of a serious offence; or

(ii) of an offence against this Act, the *Building Services (Complaint Resolution and Administration) Act 2011*, the *Building Act 2011*, the *Building and Construction Industry (Security of Payment) Act 2021*, the *Local Government (Miscellaneous Provisions) Act 1960* or the *Home Building Contracts Act 1991*; or

(iii) if the provider is a building service contractor — of any other offence the nature of which renders the contractor unfit to carry out a prescribed building service that the contractor is otherwise entitled under section 11 to carry out;

(b) that the registered building service provider does not satisfy one or more of the matters referred to in section 17(1) or 18(1), as the case may be, that must be satisfied if an application for registration or renewal of registration is to be granted;

(c) that the registered building service provider has obtained a registration certificate because of incorrect or misleading information;

(d) that the registered building service provider has contravened a condition of the provider's registration;

(e) that the registered building service provider has been negligent or incompetent in connection with carrying out a building service;

(f) that the registered building service provider, if a building service contractor, has failed to ensure that a building service carried out by the provider has been properly managed and supervised;

(g) that the registered building service provider, if a nominated supervisor, has not properly managed and supervised a building service which he or she is responsible for managing and supervising;

(h) that the registered building service provider has made any statement or representation with respect to the provision of finance or the terms and charges for the provision of finance that is to the knowledge of the provider false in a material particular, for the purpose of inducing a person —

(i) to enter into a contract for the carrying out or completion of a building service; or

(ii) to purchase land on which a building service has been or is proposed to be carried out by the provider, or by a building service contractor for which the provider is a nominated supervisor or employee;

(i) that the registered building service provider has engaged in fraudulent conduct in connection with the carrying out or completion of a building service;

(j) that the registered building service provider has engaged in conduct that is harsh, unconscionable, oppressive, misleading or deceptive in connection with —

(i) a contract for the carrying out or completion of a building service or a variation of that contract; or

(ii) the carrying out or completion of a building service;

(k) that the registered building service provider has failed to comply with an undertaking given by the provider to the Board or an order or direction of the Board;

(l) that the registered building service provider has failed to comply with an order of the Board or the State Administrative Tribunal under this Act or an order of the Building Commissioner or the State Administrative Tribunal under the *Building Services (Complaint Resolution and Administration) Act 2011*;

(m) that an ineligible person is or has been involved in the management of a registered building service provider that is a building service contractor;

(n) that the registered building service provider has not paid a building service debt of a kind referred to in subsection (4) that the registered building service provider has incurred.

(2) A reference in subsection (1)(a) to a conviction includes —

(a) a finding of guilt, or the acceptance of a guilty plea, whether or not a conviction is recorded; and

(b) a conviction before commencement of this section.

(3) A breach of a Commissioner code or a Commissioner standard (as those terms are defined in the *Building Services (Complaint Resolution and Administration) Act 2011* section 95) does not of

itself constitute a disciplinary matter but, in any proceeding under this Part, such a breach may be asserted and may be taken into account in determining any question that arises in the course of that proceeding.

(4) A building service debt of a registered building service provider is any of the following —

(a) a debt for which judgment has been entered in a court of competent jurisdiction, after the commencement of the *Building and Construction Industry (Security of Payment) Act 2021* section 129, against the provider in connection with a contract for a building service or for the supply of goods or services for a building service;

(b) an amount that an adjudicator or review adjudicator determines, after the commencement of the *Building and Construction Industry (Security of Payment) Act 2021* section 129, is payable by the provider under Part 3 of that Act;

(c) an amount that an adjudicator determines, after the commencement of the *Building and Construction Industry (Security of Payment) Act 2021* section 129, is payable by the provider under the *Construction Contracts (Former Provisions) Act 2004* section 31(2)(b).

(5) A judgment debt is a building service debt under subsection (4) only if —

(a) the amount is not paid in full within 28 days after the judgment debt was entered (or within any longer period for payment allowed by the court); and

(b) the judgment debtor has not entered into a payment arrangement with the judgment creditor or, if any payment arrangement is entered into, the judgment debtor has failed to comply with the arrangement; and

(c) either —

(i) proceedings have not been instituted to appeal or set aside the judgment debt within the time allowed for instituting the proceedings; or

(ii) any proceedings so instituted do not result in the judgment debt being quashed or set aside and the debt has not been paid in full within 5 days after the termination of the proceedings.

(6) An adjudicated amount is a building service debt under subsection (4) only if —

(a) the amount is not paid in full by the due date for payment of the adjudicated amount (or within any longer period for payment allowed by the adjudicator or review adjudicator); and

(b) either —

(i) an adjudication review or judicial review has not been instituted within the time allowed for doing so; or

(ii) any review so instituted does not result in the adjudicated amount being quashed or set aside and the amount has not been paid in full within 5 days after the termination of the review.

(7) The reference to the time allowed for instituting a judicial review in subsection (6)(b)(i) does not include time that is allowed only with the leave of a court.

(8) For the purposes of subsection (4), it does not matter that the judgment debt or adjudication determination resulted from matters arising before the commencement of the *Building and Construction Industry (Security of Payment) Act 2021* section 129.

[Section 53 amended: No. 4 of 2021 s. 129.]

54. Relationship with other legislation

Nothing in this Part prevents a complaint from being made or an investigation being initiated under the *Building Services (Complaint Resolution and Administration) Act 2011* Part 2, about a matter to which this Part relates.

Division 2 — Interim disciplinary orders

55. Interim disciplinary orders

If, at any time before a disciplinary order is made in respect of a complaint about a disciplinary matter accepted by the Building Commissioner under the *Building Services (Complaint Resolution and Administration) Act 2011* section 16, the Board is of the opinion that —

(a) a registered building service provider has engaged in conduct that is likely to constitute grounds for suspension or cancellation of the building service provider's registration; and

(b) it is likely that the provider will continue to engage in conduct of that kind; and

(c) there is a risk that a person or persons may suffer significant loss or damage as a result of the conduct of the provider if immediate action is not taken,

the Board may by notice in writing —

(d) require the Building Commissioner to make an interim disciplinary order under the *Building Services (Complaint Resolution and Administration) Act 2011* section 31; and

(e) specify the terms of the required order.

Division 3 — Role of Board

56. Board to decide what action to take in respect of complaint forwarded by Building Commissioner

(1) The Board must consider —

(a) a complaint in relation to a registered building service provider forwarded to it by the Building Commissioner under the *Building Services (Complaint Resolution and Administration) Act 2011*; and

(b) any report and recommendations in respect of the complaint given to the Board by the Building Commissioner.

(2) The Board may, on consideration of a complaint under subsection (1), decide —

(a) not to take any action; or

(b) to refer the complaint back to the Building Commissioner for the purpose of commencing a conciliation proceeding under the *Building Services (Complaint Resolution and Administration) Act 2011* Part 2 Division 3; or

(c) to refer the complaint back to the Building Commissioner for investigation or further investigation; or

(d) to take action under section 57; or

(e) to make an allegation about the complaint to the State Administrative Tribunal.

(3) The Board must, as soon as is practicable, but in any case no later than 14 days after making a decision under this section, give to the complainant, if any, and the respondent written notice of the decision together with short particulars of the reasons for the decision.

57. Board may deal with certain complaints

(1) This section applies if —

(a) a complaint in relation to a registered building service provider has been forwarded to the Board by the Building Commissioner under the *Building Services (Complaint Resolution and Administration) Act 2011*; and

(b) the Board is satisfied that a disciplinary matter exists in relation to the provider; and

(c) the Board is of the opinion that a proceeding before the State Administrative Tribunal is not warranted by the nature of the complaint; and

(d) the provider consents to the exercise of power by the Board under this section or the exercise of power relates only to a disciplinary matter referred to in section 53(1)(n).

(2) If this section applies, the Board may do one or more of the following —

(a) order that the registration of the provider be amended;

(b) caution or reprimand the provider;

(c) require the provider to give an undertaking to the Board for such period as is specified —

(i) in relation to the provider's future conduct as a registered building service provider; or

(ii) to comply with such conditions as are specified in relation to the carrying out of a building service by the provider;

(d) order the provider to pay to the Building Commissioner a fine of a specified amount not exceeding $5 000.

(3) The Board may, in addition to or instead of imposing one or more of the penalties specified in subsection (2), order the provider to pay to the Building Commissioner —

(a) such costs and expenses of or arising from the Commissioner's investigation of the complaint; or

(b) such costs and expenses of or incidental to the proceeding,

as the Board thinks fit.

(4) If action is taken under subsection (2) in relation to a complaint, no further action is to be taken under this Part with respect to the complaint.

(5) Where any penalty, costs or expenses are ordered to be paid under this section the amount ordered to be paid is recoverable in any court of competent jurisdiction as a debt due to the Building Commissioner.

(6) The Board must give the complainant, if any, and the respondent notice of a decision made under subsection (2) or (3) together with short particulars of the reasons for the decision and the right to apply for a review of the decision under section 64.

[Section 57 amended: No. 4 of 2021 s. 130.]

Division 4 — Proceedings in State Administrative Tribunal

58. Jurisdiction of State Administrative Tribunal

(1) If, in a proceeding commenced by an allegation under this Act, the State Administrative Tribunal is satisfied that a disciplinary matter exists in respect of a registered building service provider, the Tribunal may do one or more of the following —

(a) decline to make an order under this section;

(b) order the Board to amend the registration of the provider;

(c) caution or reprimand the provider;

(d) impose a condition on the registration of the provider, or amend an existing condition;

(e) where the provider is a building service practitioner, order that the provider undertake and complete a specified further course of training or education;

(f) where the provider is a building service contractor, order that a nominated supervisor of the provider undertake and complete a specified further course of training or education;

(g) order that the registration of the provider be suspended for a period, not exceeding 2 years, specified in the order;

(h) order that the provider's registration be cancelled and name be removed from the register;

(i) if the Tribunal makes its finding on a ground referred to in section 53(1)(c) to (n), order that the provider pay to the Building Commissioner a penalty of a fine not exceeding $25 000.

(2) An order referred to in subsection (1)(g) or (h) may be in relation to a provider's registration generally or in relation to registration in a class or classes of building service practitioner or building service contractor specified in the order.

(3) If, in a proceeding commenced by an allegation under this Act against a person who was a registered building service provider when the disciplinary matter allegedly occurred but who is no longer a registered building service provider, the State Administrative Tribunal is of the opinion that a disciplinary matter exists in respect of the person, the only powers that the Tribunal may exercise are the powers in subsection (1)(a), (c) and (i).

(4) If the State Administrative Tribunal orders the cancellation of the registration of a person as a building service contractor, it

may, for the purposes of Part 5A, certify that the person is unable to meet the person's financial obligations as and when they fall due if the Tribunal made its order wholly or partly on that basis.

[Section 58 amended: No. 4 of 2021 s. 131.]

59. Disciplinary action against nominated supervisor or officer of building service contractor

(1) If, in a proceeding under this Division, the registration of a building service contractor is cancelled or suspended, the State Administrative Tribunal may, if satisfied that it is appropriate to do so —

(a) order that the registration as a building service practitioner of a nominated supervisor of the contractor be suspended for a period, not exceeding 2 years, specified in the order; or

(b) order that the registration as a building service practitioner of a nominated supervisor of the contractor be cancelled and the practitioner's name be removed from the register.

(2) An order referred to in subsection (1)(a) or (b) may be in relation to a practitioner's registration generally or in relation to registration in a class or classes of building service practitioner specified in the order.

(3) If, in a proceeding under this Division, the State Administrative Tribunal is of the opinion that a disciplinary matter referred to in section 53(1)(c) to (f) or (h) to (n) exists in respect of a building service contractor, the State Administrative Tribunal may, instead of, or in addition to cancelling or suspending the registration of the contractor, impose a fine not exceeding $25 000 on one or more of the following persons —

(a) a nominated supervisor of the contractor;

(b) where the contractor is a partnership, a partner;

(c) where the contractor is a body corporate —

(i) a director of the body corporate;

(ii) a person who is concerned in the management of the body corporate;

(d) where the contractor is an unincorporated body, a person who is concerned in the management of the body.

[Section 58 amended: No. 4 of 2021 s. 132.]

60. Declaration of ineligible person

(1) If, in a proceeding under this Division, the State Administrative Tribunal cancels or suspends the registration of a building service contractor which is a body, the State Administrative Tribunal may, if satisfied that it is appropriate to do so, make an order declaring an officer of the contractor to be an ineligible person.

(2) The order is to specify the period, not exceeding 3 years, for which the officer is an ineligible person.

(3) An order made under this section may be varied or revoked by the State Administrative Tribunal on application by the person declared to be an ineligible person.

61. State Administrative Tribunal to provide information to Building Commissioner

The State Administrative Tribunal must provide to the Building Commissioner sufficient information to enable the Commissioner to exercise the Commissioner's functions under section 29(4) and (5) in respect of the register.

62. Board may notify certain persons if registration suspended or cancelled

The Board may notify any person who has authority to grant a building permit that the registration of a building service

provider is suspended or cancelled under this Division if the Board considers that the person has a relevant interest.

63. Other remedies not affected

This Division does not affect any other remedy available to the owner of a building or a person for whom building work is carried out.

Part 5A — Insolvency of building service contractors

[Heading inserted: No. 4 of 2021 s. 133.]

63A. Terms used

(1) In this Part —

construction company means a corporation or non-corporate body that directly or indirectly —

(a) carries out construction work in this State or in any other State or a Territory; or

(b) carried out construction work in this State or in any other State or a Territory during the period of 2 years immediately before becoming an insolvent;

construction work has the meaning given in the *Building and Construction Industry (Security of Payment) Act 2021* section 6;

excluded contractor means a temporarily excluded contractor or a permanently excluded contractor;

influential person, for a corporation or non-corporate body —

(a) means an individual who controls or substantially influences the conduct of the corporation or body; but

(b) does not include —

(i) a lawyer, accountant, business consultant or other professional who provides professional advice to the corporation or body and who influences the conduct of the corporation or body only because of the provision of that professional advice; or

(ii) an individual who regulates or otherwise influences the conduct of the corporation or body in the exercise of public functions under a written law;

insolvency event means any event occurring after the commencement of the *Building and Construction Industry (Security of Payment) Act 2021* section 133 that results in an

individual, corporation, non-corporate body or construction company becoming an insolvent;

insolvent means —

(a) in the case of an individual or officer of a non-corporate body — a person who is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or

(b) in the case of a corporation — a corporation that has a liquidator, provisional liquidator, administrator (including an administrator of a deed of company arrangement) or receiver appointed, or that is otherwise being wound up, under the Corporations Act; or

(c) in any case — a person whose registration as a building service contractor is cancelled by order of the State Administrative Tribunal if the Tribunal certifies under section 58(4) that the person is unable to meet the person's financial obligations as and when they fall due;

non-corporate body means a partnership or unincorporated body;

officer —

(a) of a corporation —

(i) means an officer of the corporation as defined in the Corporations Act section 9; and

(ii) includes an influential person for the corporation; and

(iii) does not include an administrator, receiver or liquidator appointed under the Corporations Act;

or

(b) of a non-corporate body —

(i) means an officer of an entity that is neither an individual nor a corporation as defined in the Corporations Act section 9; and

(ii) includes an influential person for the body;

permanently excluded contractor means a person excluded from being registered as a building service contractor under section 63C(2)(b);

registration means registration under Part 3 as a building service contractor;

temporarily excluded contractor means a person excluded from being registered as a building service contractor under section 63C(2)(a).

(2) A reference in this Part to a person becoming an insolvent is a reference to the person becoming an insolvent after the commencement of the *Building and Construction Industry (Security of Payment) Act 2021* section 133.

(3) A reference in this Part to a non-corporate body becoming an insolvent is a reference to an officer of the body becoming an insolvent after the commencement of the *Building and Construction Industry (Security of Payment) Act 2021* section 133.

[Section 63A inserted: No. 4 of 2021 s. 133.]

63B. Excluded contractors not to be registered

(1) The Board must refuse to register or renew the registration of an excluded contractor as a building service contractor.

(2) The Board must cancel the registration of an excluded contractor as a building service contractor.

[Section 63B inserted: No. 4 of 2021 s. 133.]

63C. Declaration of excluded contractors

(1) This section applies to a person (being an individual, non-corporate body or corporation) who is an applicant for registration or renewal of registration as a building service contractor or who is a building service contractor.

(2) The Board may, in accordance with section 63D or 63E, declare that the person is excluded from being registered as a building service contractor —

(a) for the period ending 3 years after the date of the last insolvency event (specified by the Board) on which the declaration of the Board is based; or

(b) on a permanent basis.

(3) The Board may at any time revoke a declaration under this section.

[Section 63C inserted: No. 4 of 2021 s. 133.]

63D. When individual or non-corporate body may be declared excluded contractor

(1) An individual or non-corporate body may be declared to be a temporarily excluded contractor if —

(a) the individual or an officer of the non-corporate body became an insolvent on at least one occasion; and

(b) the period of 3 years has not elapsed since the insolvency event that resulted in the insolvency.

(2) An individual or non-corporate body may be declared to be a permanently excluded contractor if —

(a) the individual or an officer of the non-corporate body became an insolvent on 2 separate occasions; and

(b) the insolvency event that resulted in the second insolvency occurred within 5 years after the insolvency event that resulted in the first insolvency.

(3) The declaration of an individual or non-corporate body as an excluded contractor is subject to section 63F.

[Section 63D inserted: No. 4 of 2021 s. 133.]

63E. When corporation may be declared excluded contractor

(1) A corporation may be declared to be a temporarily excluded contractor if —

(a) the corporation became an insolvent on at least one occasion; and

(b) the period of 3 years has not elapsed since the insolvency event that resulted in the insolvency.

(2) A corporation may also be declared to be a temporarily excluded contractor if an officer of the corporation —

(a) was an officer of a construction company at the time the company became an insolvent (or within 2 years immediately before the company became an insolvent) and the period of 3 years has not elapsed since the insolvency event that resulted in the insolvency; or

(b) is an individual who could (subject to compliance with section 63F) be declared to be a temporarily excluded contractor.

(3) A corporation may be declared to be a permanently excluded contractor if —

(a) the corporation became an insolvent on 2 separate occasions; and

(b) the insolvency event that resulted in the second insolvency occurred within 5 years after the insolvency event that resulted in the first insolvency.

(4) A corporation may also be declared to be a permanently excluded contractor if an officer of the corporation —

(a) was an officer of a construction company at the time the company became an insolvent on 2 separate occasions (or within 2 years immediately before each occasion on which the company became an insolvent) and the insolvency event that resulted in the second insolvency

occurred within 5 years after the insolvency event that resulted in the first insolvency; or

(b) was an officer of a construction company at the time the company became an insolvent (or within 2 years immediately before the company became an insolvent) and is an individual who also became an insolvent, and the insolvency event that resulted in the later insolvency occurred within 5 years after the insolvency event that resulted in the earlier insolvency; or

(c) is an individual who could (subject to compliance with section 63F) be declared to be a permanently excluded contractor.

(5) The Board must not declare a corporation to be a permanently excluded contractor because of insolvency on 2 separate occasions if the corporation satisfies the Board that those insolvencies arose out of the same set of circumstances.

(6) The declaration of a corporation as an excluded contractor is subject to section 63F.

[Section 63E inserted: No. 4 of 2021 s. 133.]

63F. Procedure for declaring excluded contractor

(1) The Board must not declare a person to be an excluded contractor unless —

(a) the Board has given the person a written notice of its intention to consider making the declaration (a ***show cause notice***); and

(b) the show cause notice identifies the insolvency event or events on which the declaration would be based; and

(c) the Board has given the person the opportunity to make a submission to the Board on the matter within 28 days or any longer period that is specified in the show cause notice.

(2) The Board must not declare a person to be an excluded contractor if the person satisfies the Board that —

(a) reasonable steps were taken to avoid the circumstances that resulted in the insolvency or insolvencies concerned; and

(b) sufficient arrangements are in place to ensure that the person's construction work business will be managed in a competent and proficient manner.

(3) The Board must not declare a corporation to be an excluded contractor because a particular individual is an officer of the corporation if the corporation satisfies the Board that the individual is no longer an officer of the corporation.

(4) For the purposes of this section, the reasonable steps taken to avoid the circumstances that resulted in insolvency may include (but are not limited to) the following —

(a) keeping proper accounting records;

(b) obtaining appropriate financial or legal advice before entering into significant business arrangements;

(c) reporting fraud or theft in relation to the business;

(d) putting in place appropriate credit arrangements and taking reasonable steps to recover outstanding money owed;

(e) making adequate provision for Commonwealth and State taxes and employee entitlements;

(f) ensuring there are sufficient assets to meet guarantees.

(5) Reasonable steps for the purposes of this section do not require a person to contribute additional equity to a business to prevent insolvency.

(6) Reasonable steps for the purposes of this section require consideration of the circumstances existing before an insolvency that were known to the individuals who could have prevented

the insolvency and whether the individuals were in a position to control the circumstances that resulted in the insolvency.

(7) For the purposes of this section, sufficient arrangements to ensure that a person's construction work business will be managed in a competent and proficient manner may include (but are not limited to) the following —

(a) the appointment of additional company directors or business managers;

(b) the engagement of financial or legal advisers on an ongoing basis;

(c) the provision of sufficient working capital and equity;

(d) credit management arrangements and other appropriate business plans.

[Section 63F inserted: No. 4 of 2021 s. 133.]

63G. When declaration of excluded contractor takes effect

The declaration of a person as an excluded contractor does not take effect —

(a) until the expiration of the period of 28 days after written notice of the decision of the Board to make the declaration has been given to the person; or

(b) if the person duly applies within that period to the State Administrative Tribunal for a review of the decision under Part 6 — unless the application is withdrawn or the decision is confirmed following the review.

[Section 63G inserted: No. 4 of 2021 s. 133.]

Part 6 — Review

64. Review by State Administrative Tribunal of certain decisions

(1) In this section —

reviewable decision means a decision of the Board —

(a) to refuse to grant or renew the registration of a building service provider under section 17 or 18; or

(b) to impose conditions on the registration of a building service provider under section 24(1); or

(c) to refuse to amend, suspend or cancel the registration of a building service provider under section 26(1); or

(d) to refuse to revoke the suspension of the registration of a building service provider under section 28(1); or

(da) to declare that a person is excluded from being registered as a building service contractor under section 63C; or

(e) to refuse to grant an owner-builder approval under section 45; or

(f) to impose conditions on an owner-builder approval under section 48(1); or

(g) to cancel an owner-builder approval under section 51; or

(h) to take action under section 57(2) or (3).

(2) A person aggrieved by a reviewable decision may apply to the State Administrative Tribunal for a review of the decision.

(3) A decision to refuse to grant or renew registration as a building service contractor, or to cancel the registration of a building service contractor, is not subject to review under this Part if it was made only on the basis of a declaration under section 63C that has been reviewed and confirmed by the Tribunal or that was not the subject of an application for review by the Tribunal.

[Section 64 amended: No. 4 of 2021 s. 134.]

Part 7 — Building Services Board

Division 1 — Establishment

65. Board established

A body called the Building Services Board is established.

66. Status

The Board is an agent of the State and has the status, immunities and privileges of the State.

67. Membership of Board

(1) In this section —

occupation group means classes of registered building service providers prescribed by the regulations as comprising an occupation group.

(2) The Board consists of the following members appointed by the Minister —

(a) a member designated by the Minister as chairperson of the Board;

(b) 2 members each of whom has knowledge of and experience in representing the interests of consumers;

(c) for each occupation group — 2 members each of whom has experience as a registered building service provider in a class comprising that group.

(3) The Minister is to designate a member appointed under subsection (2)(b) or (c) to be the deputy chairperson of the Board.

68. Remuneration and allowances

A member of the Board, or of a committee, is entitled to be paid such remuneration and allowances (if any) as the Minister, on

the recommendation of the Public Sector Commissioner, determines from time to time.

Division 2 — Functions and powers

69. Functions

The functions of the Board are as follows —

(a) to perform the functions that are conferred on the Board under this Act or any other Act;

(b) to advise the Minister and the Building Commissioner on matters to which this Act applies.

70. Powers

The Board has all the powers it needs to perform its functions.

71. Delegation by Board

(1) The Board may delegate any power or duty of the Board under another provision of this Act, other than a power or duty conferred on the Board under a provision referred to in the Table —

(a) to a member of the Board; or

(b) to a committee; or

(c) to the Building Commissioner; or

(d) with the consent of the CEO, to an officer or employee employed in the Department.

Table

s. 24	s. 26
s. 56	

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

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

(4) 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.

(5) Nothing in this section limits the ability of the Board to perform a function through an agent.

Division 3 — Staff and services

72. Staff and services

(1) The Building Commissioner is to arrange for the Board to be provided with —

(a) staff, systems and other resources and support; and

(b) services and facilities,

to assist in the performance of the functions of the Board and its committees.

(2) For the purposes of subsection (1) the Building Commissioner may, with the consent of the CEO, arrange for the Board to make use, either full-time or part-time of —

(a) the services of any officer or employee employed in the Department; and

(b) any services or facilities of the Department.

Division 4 — Relationship of Board with Minister

73. Directions by Minister

(1) Subject to subsection (2), the Minister may give written directions to the Board with respect to the performance of its functions, either generally or in relation to a particular matter, and the Board is to give effect to any such direction.

(2) The Minister must not under subsection (1) direct the Board with respect to the performance of its functions in respect of —

(a) a particular person; or

(b) a particular application, complaint or proceeding.

(3) The text of a direction given under subsection (1) must be included in the annual report of the Department.

74. Minister to have access to information

(1) In this section —

document includes any tape, disk or other device or medium on which information is recorded or stored;

information means information specified, or of a description specified, by the Minister that relates to the functions of the Board.

(2) The Minister is entitled —

(a) to have information in the possession of the Board; and

(b) if the information is in or on a document, to have, and make and retain copies of, that document.

(3) For the purposes of subsection (2) the Minister may —

(a) request the Board to furnish information to the Minister; and

(b) request the Board to give the Minister access to information; and

(c) for the purposes of paragraph (b) make use of the services of any officer or employee employed in the Department to obtain the information and furnish it to the Minister.

(4) The Board is to comply with a request under subsection (3) and the CEO is to arrange for his or her staff and facilities to be available to the Minister for the purposes of subsection (3)(c).

(5) The Minister is not entitled to have information under this section in a form that —

(a) discloses the identity of a person involved in a particular application, complaint, investigation or other proceeding; or

(b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

Division 5 — Constitution and proceedings of the Board

Subdivision 1 — General provisions

75. Term of office

(1) Subject to section 76, a member of the Board holds office for the term, not exceeding 3 years, that is specified in the member's instrument of appointment.

(2) A member of the Board is eligible for reappointment.

(3) A member of the Board whose term of office expires without a person having been appointed to fill the vacancy continues in office (unless under section 76 the person resigns or is removed from office) until whichever of the following occurs first —

(a) a person is appointed to fill the vacancy;

(b) a period of 3 months elapses after the expiry of the term of office.

(4) A member of the Board ceases to be a member if the occupation group for which the member was appointed under section 67 ceases to exist.

76. Casual vacancies

(1) A member of the Board may at any time resign from office by notice in writing delivered to the Minister.

(2) The Minister may remove a member of the Board from office on the grounds of —

(a) mental or physical incapacity to carry out the person's duties in a satisfactory manner; or

(b) the person being an insolvent; or

(c) the person being convicted of a serious offence; or

(d) absence, without leave, from 3 consecutive meetings of the Board of which the member has had notice; or

(e) neglect of duty; or

(f) misconduct.

(3) The office of a member becomes vacant if, before the term for which the person holding the office was appointed expires, the person dies or resigns or is removed from office.

77. Deputy chairperson acting as chairperson

(1) The deputy chairperson is to perform the functions of the chairperson —

(a) when the chairperson is unable to act because of illness, absence or other cause; or

(b) during any vacancy in the office of chairperson.

(2) An act or omission of the deputy chairperson acting in the place of the chairperson is not to be questioned on the ground that the occasion for acting had not arisen or had ceased.

78. Alternate members

(1) If a member of the Board other than the chairperson is unable to act because of illness, absence or other cause, the Minister may appoint another person as an alternate member to act temporarily in the member's place.

(2) If the deputy chairperson is acting in place of the chairperson at a meeting, the Minister may appoint another person to act in his or her place as alternate member.

(3) While acting in accordance with the appointment the alternate member is to be taken to be, and to have any entitlement of, a member.

(4) An act or omission of an alternate member is not to be questioned on the ground that the occasion for the appointment or acting had not arisen or had ceased.

79. Holding meetings

(1) The first meeting of the Board is to be convened by the chairperson and subsequent meetings, unless convened under subsection (2), are to be held at times and places determined by the Board.

(2) A special meeting of the Board may at any time be convened by the chairperson.

80. Quorum

Without otherwise affecting the *Interpretation Act 1984* section 54(2), less than half of the number of members does not constitute a quorum of the Board.

81. Presiding at meetings

(1) The chairperson, if present, is to preside at a meeting of the Board.

(2) If neither the chairperson, nor the deputy chairperson acting as the chairperson, is presiding under subsection (1) the members present at the meeting are to appoint one of their number to preside.

82. Procedure at meetings

The Board is to determine its own meeting procedures to the extent that they are not fixed by this Act.

83. Voting

(1) At a meeting of the Board, each member present has a deliberative vote unless section 90 prevents the member from voting.

(2) A question is resolved according to how a majority of the votes are cast but if there is not a majority the question is resolved according to the casting vote of the person presiding.

84. Inviting consultant to participate in meeting

The Board may arrange for a person who is not a member to participate in a meeting in a consultative capacity, but that person is not entitled to vote at the meeting.

85. Holding meetings remotely

The presence of a person at a meeting of the Board need not be by attendance in person but may be by that person and each other person at the meeting being simultaneously in contact by telephone or other means of instantaneous communication.

86. Resolution without meeting

A resolution in writing signed or assented to by letter, facsimile, email or other similar means by at least half of the number of members of the Board has the same effect as if it had been passed at a meeting of the Board.

87. Minutes

The Board is to cause accurate minutes to be kept of the proceedings at each of its meetings and each meeting of its committees.

88. Committees

(1) The Board may appoint committees to assist it to perform its functions, and may discharge or alter any committee it has appointed.

(2) A committee may include people who are not members of the Board but must include at least one member of the Board.

(3) The Board may give directions to a committee on the following matters —

(a) the functions to be performed by the committee;

(b) the procedures of the committee;

(c) reporting by the committee on the performance of its functions.

(4) A committee must comply with a direction of the Board.

(5) A committee may determine its own procedures but they must be consistent with any directions of the Board and the terms of any delegation under which the committee is acting.

Subdivision 2 — Disclosure of interests

89. Disclosure of interest

(1) A member of the Board who has a material personal interest in a matter being considered or about to be considered by the Board 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 Board.

Penalty: a fine of $25 000.

(2) 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.

(3) Subsection (2) applies to a person who is a member of the committee and also a member of the Board even though the person has already disclosed the nature of the interest at a meeting of the Board.

(4) A disclosure under subsection (1) or (2) is to be recorded in the minutes of the meeting.

90. Voting by interested Board member

(1) A member who has a material personal interest in a matter that is being considered by the Board —

(a) must not vote, whether at a meeting or otherwise, on the matter; and

(b) must not be present while the matter is being considered at a meeting.

(2) A reference in subsection (1)(a) or (b) to a matter includes a reference to a proposed resolution under section 91 in respect of the matter, whether relating to that member or a different member.

91. Section 90 may be declared inapplicable

Section 90 does not apply if the Board has at any time passed a resolution that —

(a) specifies the member, the interest and the matter; and

(b) states that the members voting for the resolution are satisfied that the interest should not disqualify the member from considering or voting on the matter.

92. Quorum where section 90 applies

(1) Despite section 80, if the Board is dealing with a matter in relation to which a member is disqualified under section 90, a quorum is present during the consideration of the matter if at least half the number of members who are entitled to vote on any motion that may be moved at the meeting in relation to the matter are present.

(2) The Minister may deal with a matter in so far as the Board cannot deal with it because of subsection (1).

93. Minister may declare sections 90 and 92 inapplicable

(1) The Minister may by writing declare that section 90 or 92 or both of them do not apply in relation to a specified matter either generally or in voting on particular resolutions.

(2) The Minister must, within 14 sitting days after a declaration under subsection (1) is made, cause a copy of the declaration to be laid before each House of Parliament.

Division 6 — General

94. Information to be provided to Building Commissioner annually

The Board is to provide to the Building Commissioner as soon as is practicable after 30 June in each year the following information in respect of the year ending on that day (the ***report year***) —

(a) the number, nature and outcome, of complaints forwarded to the Board by the Building Commissioner;

(b) the number, nature and outcome, of matters that have been brought before the State Administrative Tribunal by the Board during the report year;

(c) the number and nature of matters referred to in paragraphs (a) and (b) that are outstanding;

(d) any trends or special problems that have emerged;

(e) forecasts of the workload of the Board in the year after the report year;

(f) any proposals for improving the operation of the Board.

95. Moneys to be credited to Building Services Account

The Building Services Account is to be credited with the following —

(a) fees and other moneys paid or recovered under this Act;

(b) any fine imposed under section 57(2)(d), 58(1)(i) or 59(3);

(c) any costs or expenses ordered to be paid under section 57(3).

96. Execution of documents by the Board

(1) A document is duly executed by the Board if it is signed on behalf of the Board by a person or persons authorised to do so under subsection (2).

(2) The Board may —

(a) authorise one or more of its members; or

(b) authorise the Building Commissioner; or

(c) with the consent of the CEO, authorise any officer or employee employed in the Department,

to sign documents on behalf of the Board, either generally or subject to the conditions that are specified in the authorisation.

(3) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.

Part 8 — General provisions

97. 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. 4(1)	s. 5(2)
s. 6(1)	s. 7(1) and (5)
s. 22(2) and (3)	s. 25
s. 33(1)	s. 34(1) and (3)
s. 35(1), (2) and (3)	s. 36(1)
s. 37(1)	s. 99

[Section 97 inserted: No. 9 of 2023 s. 38.]

98. 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 any thing includes a reference to the omission to do any thing.

99. False or misleading information

A person must not, in relation to an application under this Act or the compliance, or purported compliance, with any requirement under this Act to give the Board advice or information —

(a) make a statement which the person knows is false or misleading in a material particular; or

(b) make a statement which 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) provide, or cause to be provided, information that the person knows is false or misleading in a material particular; or

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

Penalty: a fine of $25 000.

100. Confidentiality of information

(1) This section applies to a person who is or has been engaged in the performance of functions in the administration of this Act.

(2) A person to whom this section applies must not, directly or indirectly, disclose or make use of information obtained by reason of being a person to whom this section applies except —

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

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

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

(d) for the purpose of investigation of a suspected offence or the conduct of proceedings against a person arising out of the administration of this or another written law; or

(e) in other circumstances, if any, prescribed by the regulations.

Penalty: a fine of $25 000.

(3) Subsection (2) does not apply to the disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

101. When a prosecution can be commenced

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.

102. Prosecutions

(1) A prosecution for an offence against this Act may be commenced by, and only 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) All prosecutions for offences against this Act must be heard in a court of summary jurisdiction constituted by a magistrate.

103. 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 commence the prosecution.

(2) In the absence of evidence to the contrary, in a proceeding for an offence against this Act —

(a) an allegation in the prosecution notice of any of the following matters is taken to be proved —

(i) that specified persons constituted the Board on a specified date;

(ii) that a specified resolution, order or act was passed, made or done by the Board on a specified date;

(iii) that at a specified time a person was or was not registered under this Act in a specified class of building service practitioner or building service contractor;

(iv) that at a specified time a person's registration was subject to specified conditions;

(v) that a person's registration in a specified class of building service practitioner or building service contractor was suspended on any day or during any specified period;

and

(b) a copy of or extract from the register or any statement that purports to reproduce matters entered in the register that is certified by the Building Commissioner as a true copy, extract or statement, is evidence of the facts appearing in that copy, extract or statement; and

(c) judicial notice is to be taken of the fact that a person is the holder of the office of Building Commissioner and of the signature of the Building Commissioner on a certificate purporting to be issued under paragraph (b).

(3) In subsection (2) —

specified means specified in the prosecution notice.

(4) This section is in addition to and does not affect the operation of the *Evidence Act 1906*.

104. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to this Act.

(2) Without limiting subsection (1) regulations may be made for all or any of the following purposes —

(a) regulating the meetings and proceedings of, and the conduct of business by, the Board;

(b) providing for registration, including applications for, and the amendment or renewal of, registration;

(c) maintaining the accuracy of the register;

(d) regulating the issue, display and use of certificates of registration;

(e) regulating the display on land of signs indicating that a building service is being carried out by a building service contractor on the land;

(f) regulating the display on land of signs indicating that building work is being carried out by an owner-builder on the land;

(g) prescribing returns and notices that are to be given to the Board, and the manner in which they are to be given;

(h) providing that information supplied to the Board may be required to be verified by statutory declaration.

(3) The regulations may provide that contravention of a regulation is an offence, and provide, for an offence against the regulations, a penalty not exceeding a fine of $5 000.

105. Review of Act

(1) The Minister is to 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 is to 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 9 — Repeal, savings, transitional and other provisions

Division 1 — General

106. *Interpretation Act 1984* not affected

Except where the contrary intention appears, this Part does not prejudice or affect the application of the *Interpretation Act 1984* to or in relation to the repeals effected by sections 107 and 108.

Division 2 — Repeal

107. *Builders' Registration Act 1939* repealed

The *Builders' Registration Act 1939* is repealed.

108. *Painters' Registration Act 1961* repealed

The *Painters' Registration Act 1961* is repealed.

109. *Builders' Registration Regulations* repealed

The *Builders' Registration Regulations* are repealed.

110. *Painters' Registration (Infringement Notices) Regulations 2006* repealed

The *Painters' Registration (Infringement Notices) Regulations 2006* are repealed.

111. *Painters' Registration Board Rules 1962* repealed

The *Painters' Registration Board Rules 1962* are repealed.

112. *Local Government (Building Surveyors) Regulations 2008* repealed

The *Local Government (Building Surveyors) Regulations 2008* are repealed.

Division 3 — Savings and transitional matters

Subdivision 1 — Builders

113. Terms used

In this Subdivision —

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money) and includes securities, choses in action and documents;

commencement day means the day on which section 107 comes into operation;

former board means the Builders' Registration Board of Western Australia constituted under section 5(1) of the repealed Act;

repealed Act means the *Builders' Registration Act 1939*.

114. Registration continues

(1) An individual who immediately before commencement day was registered under section 9A(1) or 10(1) of the repealed Act is to be taken to be registered —

(a) under section 17 in a class of building service practitioner determined in accordance with the regulations; and

(b) under section 18 in a class of building service contractor determined in accordance with the regulations,

for the period commencing on commencement day and ending on 1 February immediately following commencement day subject to the same conditions as applied to that person's registration under the repealed Act.

(2) A body which immediately before commencement day was registered under section 10(2) of the repealed Act is to be taken

to be registered under section 18 in a class of building service contractor determined in accordance with the regulations for a period commencing on commencement day and ending on 1 February immediately following commencement day subject to the same conditions as applied to that person's registration under that Act.

(3) A person who immediately before commencement day was listed in the register of builders referred to in section 9(1) of the repealed Act as a supervisor for a body that is to be taken under subsection (2) to be registered as a building service contractor in a class of building service contractor is to be taken to have been nominated by the contractor on commencement day as a supervisor for that class of building service contractor.

(4) A person who immediately before commencement day was deemed to be a journeyman builder under section 10A of the repealed Act is to be taken to be registered —

(a) under section 17 in a class of building service practitioner determined in accordance with the regulations; and

(b) under section 18 in a class of building service contractor determined in accordance with the regulations,

for the period commencing on commencement day and ending on 1 February immediately following commencement day subject to the same conditions as applied to that person's registration under the repealed Act.

115. Existing applications for registration

(1) An application for registration made under section 9A or 10 of the repealed Act before commencement day that has not been finally determined before commencement day is to be dealt with and determined under the repealed Act as if that Act had not been repealed.

(2) For the purposes of subsection (1) —

(a) a reference in the repealed Act to the former board is to be taken to be a reference to the Board; and

(b) a reference in the repealed Act to the registrar of the former board is to be taken to be a reference to the Building Commissioner.

(3) A person who is registered on the determination of an application to which subsection (1) applies is to be taken to have been registered immediately before commencement day.

116. Allegations of cause for disciplinary action made by former Board

A proceeding commenced by an allegation under section 12D of the repealed Act before commencement day is to be continued and dealt with as if it were a proceeding commenced by an allegation made by the Board under this Act.

117. Disciplinary action: persons registered under repealed Act

(1) Part 5 and the *Building Services (Complaint Resolution and Administration) Act 2011* Part 2 Division 2 apply, with any necessary modifications, to a person who was registered under section 9A(1), 10(1) or (2) or 10A of the repealed Act in relation to conduct occurring while the person was registered under that Act in the same way that they apply to a person who is a registered building service provider.

(2) However, subsection (1) applies only to the extent that the conduct amounts to a proper cause for disciplinary action referred to in section 13 of the repealed Act.

118. Devolution of assets and liabilities of former board

(1) On and after commencement day —

(a) the assets and rights of the former board that were immediately before that day vested in the board vest in the State by force of this section; and

(b) the liabilities of the former board (including a share of a liability) immediately before that day become, by force of this section, the liabilities of the State; and

(c) any proceeding or remedy that immediately before that day might have been brought or continued by or available against or to the former board may be brought or continued and are available, by or against or to the Building Commissioner; and

(d) all records and data of the former board pass to the Building Commissioner.

(2) Moneys vested in the State under subsection (1)(a) are to be held to the credit of the Building Services Account.

(3) The proceeds of the sale of any assets vested in the State under subsection (1)(a) are to be paid into the Building Services Account.

(4) Liabilities taken over by the State under subsection (1)(b) are to be paid from the Building Services Account.

119. Members of former board

A member of the former board ceases to be a member on commencement day.

120. Staff of former board

(1) In this section —

staff member of the former board means a person who, immediately before commencement day, was the registrar or other employee of the former board appointed under section 7(1) of the repealed Act.

(2) On commencement day, each staff member of the former board is to be employed in the Department.

(3) Except as otherwise agreed by a staff member of a former board, the operation of this section does not —

(a) affect the staff member's pay, as that term is defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* regulation 3(1); or

(b) affect the staff member's existing or accruing rights in respect of annual leave, long service leave, sick leave or parental leave; or

(c) affect any rights under a superannuation scheme; or

(d) interrupt the continuity of the staff member's service.

(4) For the purposes of subsection (3)(d), the staff member's service with the former board is to be taken to have been with the Department.

121. Reporting in respect of former board

The Building Commissioner is to —

(a) comply with the provisions of section 23A and 23B of the repealed Act in respect of the former board to the extent that those provisions have not been complied with for any financial year that ended before commencement day; and

(b) comply with the provisions of section 23A of the repealed Act in respect of the former board for the period from the end of the financial year before commencement day to commencement day; and

(c) prepare and submit to the Minister an annual report in respect of the former board as required by section 23B of the repealed Act for the period from the end of the financial year before commencement day to commencement day, and that provision applies as if that period were a year.

122. Completion of things commenced

Anything commenced to be done by the former board before commencement day may be continued by the Board so far as the doing of that thing is a function of the Board.

123. Continuing effect of things done

(1) Any act, matter or thing done or omitted to be done before commencement day by, to or in respect of the former board, to the extent that the act, matter or thing —

(a) has any force or significance; and

(b) is not governed by another provision of this Subdivision,

is to be taken to have been done or omitted by, to or in respect of the Board so far as the act, matter or thing is relevant to the Board.

(2) An appointment made by the former board under the *Home Building Contracts Act 1991* section 31B(10) is to be taken to be an appointment made by the Building Commissioner.

(3) A certificate issued by the former board under the *Home Building Contracts Act 1991* section 31B(11) is to be taken to have been issued by the Building Commissioner.

124. Agreements and instruments generally

Any agreement or instrument subsisting immediately before commencement day —

(a) to which the former board was a party; or

(b) which contains a reference to the former board,

has effect on and after commencement day as if —

(c) the Building Commissioner were substituted for the former board as a party to the agreement or instrument; and

(d) any reference in the agreement or instrument to the former board were (unless the context otherwise requires) amended to be or include a reference to the Building Commissioner.

Subdivision 2 — Painters

125. Terms used

In this Subdivision —

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money) and includes securities, choses in action and documents;

commencement day means the day on which section 108 comes into operation;

former board means the Painters' Registration Board established under section 5 of the repealed Act;

repealed Act means the *Painters' Registration Act 1961*.

126. Painting commenced before commencement day

Any painting —

(a) lawfully commenced before commencement day in an area of the State to which section 4 of the repealed Act did not apply, but to which section 7 of this Act applies; and

(b) not completed or discontinued before the coming into operation of this Act,

may be continued and completed as if section 7 did not apply.

127. Registration continues

(1) A person who immediately before commencement day was registered under section 12(1) or (2) of the repealed Act is to be taken to be registered —

(a) under section 17 in a class of building service practitioner determined in accordance with the regulations; and

(b) under section 18 in a class of building service contractor determined in accordance with the regulations,

for the period commencing on commencement day and ending on 1 February immediately following commencement day subject to the same conditions as applied to that person's registration under the repealed Act.

(2) A person who immediately before commencement day was registered under section 14(1) of the repealed Act is to be taken to be registered under section 18 in a class of building service contractor determined in accordance with the regulations for the period commencing on commencement day and ending on 1 February immediately following commencement day subject to the same conditions as applied to that person's registration under the repealed Act.

(3) A person who immediately before commencement day was listed in the Register of Painters referred to in section 10(1) of the repealed Act as a supervisor for a body that is to be taken under subsection (2) to be registered as a building service contractor in a class of building service contractor is to be taken to have been nominated by the contractor on commencement day as a supervisor for that class of building service contractor.

128. Existing applications for registration

(1) An application for registration made under section 12 or 14 of the repealed Act before commencement day that has not been finally determined before commencement day is to be dealt with and determined under the repealed Act as if that Act had not been repealed.

(2) For the purposes of subsection (1) —

(a) a reference in the repealed Act to the former board is to be taken to be a reference to the Board; and

(b) a reference in the repealed Act to the registrar of the former board is to be taken to be a reference to the Building Commissioner.

(3) A person who is registered on the determination of an application to which subsection subsection (1) applies is to be taken to have been registered immediately before commencement day.

129. Allegations of cause for disciplinary action made by former board

A proceeding commenced by an allegation under section 16(1) of the repealed Act before commencement day is to be continued and dealt with as if it were a proceeding commenced by an allegation made by the Board under this Act.

130. Disciplinary action: persons registered under repealed Act

(1) Part 5 and the *Building Services (Complaint Resolution and Administration) Act 2011* Part 2 Division 2 apply, with any necessary modifications, to a person who was registered under section 12(1) or (2) or 14(1) of the repealed Act in relation to conduct occurring while the person was registered under that Act in the same way that they apply to a person who is a registered building service provider.

(2) However, subsection (1) applies only to the extent that the conduct amounts to a reason described in section 16(2) of the repealed Act.

131. Devolution of assets and liabilities of former board

(1) On and after commencement day —

(a) the assets and rights of the former board that were immediately before that day vested in the board vest in the State by force of this section; and

(b) the liabilities of the former board (including a share of a liability) immediately before that day become, by force of this section, the liabilities of the State; and

(c) any proceeding or remedy that immediately before that day might have been brought or continued by or available against or to the former board may be brought or continued and are available, by or against or to the Building Commissioner; and

(d) all records and data of the former board pass to the Building Commissioner.

(2) Moneys vested in the State under subsection (1)(a) are to be held to the credit of the Building Services Account.

(3) The proceeds of the sale of any assets vested in the State under subsection (1)(a) are to be paid into the Building Services Account.

(4) Liabilities taken over by the State under subsection (1)(b) are to be paid from the Building Services Account.

132. Members of former board

A member of the former board ceases to be a member on commencement day.

133. Staff of former board

(1) In this section —

staff member of the former board means a person who, immediately before commencement day, was an officer or servant of the former board appointed under section 9(1) of the repealed Act.

(2) On commencement day, each staff member of the former board is to be employed in the Department.

(3) Except as otherwise agreed by a staff member of a former board, the operation of this section does not —

(a) affect the staff member's pay, as that term is defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* regulation 3; or

(b) affect the staff member's existing or accruing rights in respect of annual leave, long service leave, sick leave or parental leave; or

(c) affect any rights under a superannuation scheme; or

(d) interrupt the continuity of the staff member's service.

(4) For the purposes of subsection (3)(d), the staff member's service with the former board is to be taken to have been with the Department.

134. Reporting in respect of former board

The Building Commissioner is to —

(a) comply with the provisions of sections 23A and 23B of the repealed Act in respect of the former board to the extent that those provisions have not been complied with for any financial year that ended before commencement day; and

(b) comply with the provisions of section 23A of the repealed Act in respect of the former board for the period from the end of the financial year before commencement day to commencement day; and

(c) prepare and submit to the Minister an annual report in respect of the former board as required by section 23B of the repealed Act for the period from the end of the financial year before commencement day to commencement day, and that provision applies as if that period were a year.

135. Completion of things commenced

Anything commenced to be done by the former board before commencement day may be continued by the Board so far as the doing of that thing is a function of the Board.

136. Continuing effect of things done

Any act, matter or thing done or omitted to be done before commencement day by, to or in respect of the former board, to the extent that the act, matter or thing —

(a) has any force or significance; and

(b) is not governed by another provision of this Subdivision,

is to be taken to have been done or omitted by, to or in respect of the Board so far as the act, matter or thing is relevant to the Board.

137. Agreements and instruments generally

Any agreement or instrument subsisting immediately before commencement day —

(a) to which the former board was a party; or

(b) which contains a reference to the former board,

has effect on and after commencement day as if —

(c) the Building Commissioner were substituted for the former board as a party to the agreement or instrument; and

(d) any reference in the agreement or instrument to the former board were (unless the context otherwise requires) amended to be or include a reference to the Building Commissioner.

Subdivision 3 — Building Surveyors

138. Terms used

In this Subdivision —

commencement day means the day on which section 112 comes into operation;

former committee means the Building Surveyors Qualifications Committee established under regulation 7 of the repealed regulations;

repealed regulations means the *Local Government (Building Surveyors) Regulations 2008*.

139. Registration of certificate holders

A person who immediately before commencement day held a certificate of qualification granted under regulation 21 of the repealed regulations is taken to be registered under section 17 in a class of building service practitioner determined in accordance with the regulations for the period commencing on commencement day and ending on 1 February immediately following commencement day subject to such conditions, if any, as are prescribed by the regulations.

140. Existing applications for certificate

(1) An application for a certificate of qualification made under regulation 20 of the repealed regulations before commencement day that has not been finally determined before commencement day is to be dealt with and determined under the repealed regulations as if they had not been repealed.

(2) For the purposes of subsection (1), a reference in the repealed regulations to the former committee is to be taken to be a reference to the Board.

(3) A person who is granted a certificate on the determination of an application to which subsection (1) applies is to be taken to have held a certificate of qualification immediately before commencement day.

141. Members of former committee

A member of the former committee ceases to be a member on commencement day.

142. Records of former committee

On and after commencement day all records and data of the former committee pass to the Building Commissioner.

143. Agreements and instruments generally

Any agreement or instrument subsisting immediately before commencement day —

(a) to which the former committee was a party; or

(b) which contains a reference to the former committee,

has effect on and after commencement day as if —

(c) the Building Commissioner were substituted for the former committee as a party to the agreement or instrument; and

(d) any reference in the agreement or instrument to the former committee were (unless the context otherwise requires) amended to be or include a reference to the Building Commissioner.

Subdivision 4 — General provisions

144. Registration of documents

(1) In this section —

relevant official means —

(a) the Registrar of Titles; or

(b) the Registrar of Deeds; or

(c) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions,

according to which, if any, of them has responsibility for a register relating to the relevant property;

relevant property means property of a kind affected by this Part, whether it is an estate or interest in land or other property.

(2) The Building Commissioner is to cause to be delivered to each relevant official a schedule, in a form acceptable to the relevant official, of the information that the relevant official needs in order to register changes effected by this Part.

(3) The relevant officials are to take notice of this Part and are to record and register in the appropriate manner the documents necessary to show the effect of this Part.

145. Exemption from State tax

(1) In this section —

State tax includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge, under a law of the State.

(2) State tax is not payable in relation to —

(a) anything that occurs by operation of this Part; or

(b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of, giving effect to this Part.

146. Transitional regulations

(1) If there is no sufficient provision in this Part 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 commencement day, 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*.

Part 10 — Consequential amendments

Division 1 — *Home Building Contracts Act 1991* amended

147. *Home Building Contracts Act 1991* amended

This Division amends the *Home Building Contracts Act 1991*.

148. Section 3 amended

(1) In section 3(1) delete the definition of ***building licence***.

(2) In section 3(1) insert in alphabetical order:

> ***building licence*** means building licence issued under the *Local Government (Miscellaneous Provisions) Act 1960* section 374 before that provision was deleted by the *Building Act 2011* section 153(2);
>
> ***building permit*** means building permit as defined in the *Building Act 2011* section 3;
>
> ***repealed Act*** means the *Builders' Registration Act 1939*;

(3) In section 3(1) in the definition of ***Builders' Registration Board*** delete "*Builders' Registration Act 1939*;" and insert:

> repealed Act;

149. Section 25A amended

(1) In section 25A delete the definition of ***builder***.

(2) In section 25A insert in alphabetical order:

> ***builder*** includes, in addition to the meaning given by the definition in section 3(1), a person who —

(a) was registered under the repealed Act; or

(b) is a building service contractor in a class of building service contractor prescribed by the regulations,

whether or not the person carries on a business referred to in that definition;

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

(3) In section 25A in the definition of ***owner-builder***:

(a) in paragraph (a) delete "*Builders' Registration Act 1939*; or" and insert:

the repealed Act; or

(b) delete paragraph (b)(i) and insert:

(i) was registered under the repealed Act; and

(c) after paragraph (b) insert:

(c) a person who —

(i) has owner-builder approval under the *Building Services (Registration) Act 2011* section 45 to carry out residential building work for the dwelling; and

(ii) is issued a building licence or granted a building permit for the residential building work;

or

(d) a person who —

(i) is a building service contractor in a class of building service contractor prescribed by the regulations for the purpose of this definition; and

(ii) constructs the dwelling for himself or herself as his or her principal place of residence and not for immediate sale; and

(iii) was issued a building licence or granted a building permit for the residential building work for the dwelling when no policy of insurance that complies with Division 2 was in force, or no corresponding cover (of the type referred to in section 25DA) was provided by an approved fund in relation to the residential building work;

(d) at the end of paragraph (b) insert:

or

150. Section 25B amended

(1) Delete section 25B(3)(b) and insert:

(b) the builder —

(i) had given to the Builders' Registration Board a statutory declaration verifying that he or she had not, within the last 6 years, obtained a building licence for residential building work; or

(ii) has given to the Building Commissioner a statutory declaration verifying that he or she has not, within the last 6 years, obtained a building licence or a building permit for residential building work,

in respect of which no insurance was required because of this subsection.

151. Section 25F amended

In section 25F(1) delete "licence" and insert:

licence, or the date of grant of the relevant building permit,

152. Section 25FA amended

(1) In section 25FA(1) in the Penalty delete "$10 000." and insert:

a fine of $10 000.

(2) After section 25FA(1) insert:

(2A) A person to whom paragraph (d) of the definition of ***owner-builder*** applies in relation to a dwelling must not, within 3 years of the date the building licence is issued, or the building permit is granted, to the person for the dwelling, sell or otherwise dispose of the land on which the dwelling was constructed unless the Minister by order otherwise consents.

Penalty: a fine of $10 000.

(3) In section 25FA(2) delete "subsection (1)," and insert:

subsection (1) or (2A),

(4) After section 25FA(3) insert:

(4) Subsection (2A) does not apply to a person in relation to a dwelling if the building permit for the dwelling was granted to the person during a period specified in an order made under section 25I for the purposes of section 25C(3).

153. Section 25G amended

(1) Delete section 25G(1)(b) and insert:

(b) it provides that claims may be made under it at any time before the expiration of a period of 7 years from —

(i) the date of issue to the owner-builder of the relevant building licence for the building work; or

(ii) the date of grant to the owner-builder of the relevant building permit for the building work;

and

(2) After each of paragraphs (a) and (c) insert:

and

154. Section 31B amended

In section 31B(10) and (11) delete "Builders' Registration Board" and insert:

Building Commissioner

Division 2 — Other Acts amended

155. *Constitution Acts Amendment Act 1899* amended

(1) This section amends the *Constitution Acts Amendment Act 1899.*

(2) In Schedule V Part 3 delete the items relating to:

The Builders' Registration Board of Western Australia

The Municipal Building Surveyors Examination Committee

The Painters' Registration Board

(3) In Schedule V Part 3 after the item relating to the Broome Port Authority insert:

The Building Services Board established under the *Building Services (Registration) Act 2011*.

156. *Local Government (Miscellaneous Provisions) Act 1960* amended

(1) This section amends the *Local Government (Miscellaneous Provisions) Act 1960*.

(2) In section 364(3C) delete "building surveyor of the".

(3) Delete Part XV Division 1A.

(4) After section 374 insert —

374AAA. Local governments not to issue building licences in certain circumstances

(1) A local government must not issue a building licence to commence or proceed with any building work unless the licence is issued to a person who —

(a) is a building service contractor, as defined in the *Building Services (Registration) Act 2011* section 3, registered in a class of building service contractor prescribed by the regulations for the purposes of this section; or

(b) has been granted owner-builder approval, as defined in the *Building Services (Registration) Act 2011* section 38, to carry out the building work.

(2) Subsection (1) does not apply in respect of a building licence for building work —

(a) with a value of less than $20 000; or

(b) that is to be carried out in an area of the State prescribed by the regulations for the purposes of this section.

(3) A person who for the purposes of obtaining or attempting to obtain a building licence from a local government makes a representation or statement that is false in a material particular in relation to —

(a) the value of building work to be carried out under the building licence; or

(b) the fee or charge payable in respect of the carrying out of the building work; or

(c) whether the person is registered, or has been granted approval, under the *Building Services (Registration) Act 2011*,

commits an offence.

Penalty: a fine of $10 000.

157. *Sentencing Act 1995* amended

(1) This section amends the *Sentencing Act 1995*.

(2) In Schedule 1 delete the items relating to:

Builders' Registration Act 1939

Painters' Registration Act 1961

158. *State Administrative Tribunal Act 2004* amended

(1) This section amends the *State Administrative Tribunal Act 2004.*

(2) In Schedule 1 delete:

Builders' Registration Act 1939

Painters' Registration Act 1961

(3) In Schedule 1 insert in alphabetical order:

Building Services (Registration) Act 2011

159. *Travel Agents Act 1985* amended

(1) This section amends the *Travel Agents Act 1985.*

(2) In the Schedule:

(a) delete item 2 and insert:

2. *Building Services (Registration) Act 2011*

(b) delete item 11.

Notes

This is a compilation of the *Building Services (Registration) Act 2011* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
Building Services (Registration) Act 2011	19 of 2011	22 Jun 2011	s. 1 and 2: 22 Jun 2011 (see s. 2(a)); s. 3, Pt. 2-8, Pt. 9 other than s. 112 and Div. 3 Subdiv. 3, Pt. 10 Div. 1, s. 155, s. 156(1) and (4) and s. 157-159: 29 Aug 2011 (see s. 2(b) and *Gazette* 26 Aug 2011 p. 3475-6); s. 112 & Pt. 9 Div. 3 Subdiv. 3, s. 155(2) (the item relating to The Municipal Building Surveyors Examination Committee) and s. 156(2) and (3): 2 Apr 2012 (see s. 2(b) and *Gazette* 30 Mar 2012 p. 1549)
Local Government Legislation Amendment Act 2016 Pt. 3 Div. 3	26 of 2016	21 Sep 2016	21 Jan 2017 (see s. 2(b) and *Gazette* 20 Jan 2017 p. 648)
Building and Construction Industry (Security of Payment) Act 2021 Pt. 7 Div. 2	4 of 2021	25 Jun 2021	1 Feb 2023 (see s. 2(c) and SL 2022/78 cl. 2(2)(b)(iv))
Directors' Liability Reform Act 2023 Pt. 3 Div. 13	9 of 2023	4 Apr 2023	5 Apr 2023 (see s. 2(j))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA legislation website.

Short title	Number and year	Assent	Commencement
Evidence Act 2025 s. 492(1)	15 of 2025	25 Sep 2025	18 Sep 2027 (see s. 2(e) and SL 2026/190 cl. 2)

Building and Construction Industry (Security of Payment) Amendment Act 2026 Pt. 3	16 of 2026	21 Oct 2026	To be proclaimed (see s. 2(b))

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