

EXPLANATORY MEMORANDUM

***BUILDING SERVICES (COMPLAINT RESOLUTION
AND ADMINISTRATION) BILL 2010***

INTRODUCTION

The *Building Services (Complaint Resolution and Administration) Bill 2010* provides for an efficient and modernised complaint resolution system for building services delivered in Western Australia. It also creates a statutory officer to be called the ‘Building Commissioner’ as the principal regulator of building standards and building services in Western Australia.

Part 2 of the Bill establishes a new system for handling and resolving building complaints affecting owners, registered building service providers and approved owner-builders. This Bill provides for a two-stage dispute resolution service, with complaints being received and dealt with at the front-end by the Building Commissioner and intractable disputes being determined by the State Administrative Tribunal. A formal conciliation process is also introduced to encourage parties to resolve the dispute in the early stages. The Building Commissioner and the State Administrative Tribunal will replace the Building Disputes Tribunal as the place for resolving building-related complaints.

Part 3 of the Bill allows a variety of building-related orders that will expedite the dispute resolution process by making a decision for parties at an early stage, thereby preventing relatively low cost disputes from proceeding to court. Orders can be made to rectify substandard work or correct any regulated work that requires remedying.

Part 4 provides for powers of inspection and investigation to examine issues concerned with the standard of work and the conduct of building service providers. General inspection and investigation powers are available to cover a wide range of building related occupations that are contained in other modern occupational licensing statutes. Power to conduct audits of building work is also provided to enable the Building Commissioner to monitor building standards and as a means to inform building industry policy. Investigators and inspectors must be authorised by the Building Commissioner and entry-by-warrant processes and powers will apply.

Part 5 empowers Building Commission inspectors and investigators to avert a dangerous situation that they may come across on building sites, or in buildings, that represents an immediate danger to people on the site or in the building. An authorised inspector or investigator can decide to isolate a site, restrict access to a site or issue a notice of remediation to an offending party to protect the public against any harm.

Part 6 establishes the position of Building Commissioner who will administer building services in Western Australia. The Building Commissioner will serve as the Executive Director of the Building Commission, which has operated as a division of the Department of Commerce since July 2009.

The Building Commissioner will be responsible for a wide range of functions, including:

- administering the registration of building service providers;
- dealing with complaints and enforcement;
- setting and monitoring building standards;
- overseeing building legislation;
- managing levy funds;
- advising the Government; and
- providing advice, information and education on building service matters to consumers and industry.

Part 7 of the Bill establishes a Building Services Account under the *Financial Management Act 2006*. The Account will be credited with funds raised from a building service levy which will be payable on building, demolition and occupancy permits and building approval certificates. The Account can also receive registration fees, costs and other relevant moneys. The building services levy is imposed under the *Building Services Levy Bill 2010* and replaces the levy currently levied under the *Builders' Registration Act 1939*.

Part 8 of the Bill allows the Building Commissioner to develop building service codes and standards, necessary to provide industry and consumers with guidance on conduct required to safely, fairly and economically deliver building services. The ability to introduce industry codes and standards will ensure coherent, efficient and effective building standards and regulation.

Part 9 of the Bill sets out general provisions needed to clarify and ensure the smooth operation of this Bill and the other building services Bills.

Part 10 provides the consequential amendments and transitional provisions required to harmonise those Acts such as the *Home Building Contracts Act 1991* that are affected by the Bill and to allow for a streamlined transferral of matters from the Building Disputes Tribunal to the State Administrative Tribunal.

Abbreviations list

Account.....	Building Services Account
BDT.....	Building Disputes Tribunal
Board.....	Building Services Board
BR Act.....	<i>Builders' Registration Act 1939 (WA)</i>
BRB.....	Builders' Registration Board
Building Bill.....	<i>Building Bill 2010</i>
Construction Contracts Act.....	<i>Construction Contracts Act 2004 (WA)</i>
Consumer Affairs Act.....	<i>Consumer Affairs Act 1971 (WA)</i>
Disability Discrimination Act.....	<i>Disability Discrimination Act 1992 (CTH)</i>
Financial Management Act.....	<i>Financial Management Act 2006 (WA)</i>
HBC Act.....	<i>Home Building Contracts Act 1991(WA)</i>
HBWC.....	Home Building Work Contract
Levy.....	Building Services Levy
Levy Bill.....	<i>Building Services Levy Bill 2010</i>
Painters' Act.....	<i>Painters' Registration Act 1961(WA)</i>
PLB.....	Plumbers Licensing Board
Registration Bill.....	<i>Building Services (Registration) Bill 2010</i>
SAT.....	State Administrative Tribunal
SAT Act.....	<i>State Administrative Tribunal Act 2004 (WA)</i>
The Bill.....	<i>Building Services (Complaint Resolution and Administration) Bill 2010</i>
Water Act.....	<i>Water Services Licensing Act 1995 (WA)</i>

CLAUSE NOTES

- Long Title** The long title sets out the purpose of the Bill, being primarily to:
- Provide for a system for dealing with complaints regarding building services, home building work contract matters and disciplinary matters concerning building service providers;
 - Establish a public officer - the Building Commissioner - to deal with building services and complaints;
 - Create a levy for building services carried out in Western Australia and to fund support to the industry by the Building Commission; and
 - Implement a system for enforcing building services compliance through conducting inspections and investigations.

PART 1 – PRELIMINARY

This Part formally titles the Act, provides a means for setting a commencement date(s) for the Act or specific provisions of the Act and sets out the definition of key terms used in the Act.

Clause 1 Short title

This clause formally titles the Act.

Clause 2 Commencement

Provides for commencement of the Act.

Clauses 1 and 2 (short title and commencement) are to come into effect when the Bill is passed by State Parliament and receives Royal Assent.

The remainder of the Act commences on a day fixed by proclamation, and allows provisions to be proclaimed on different days to allow for staged introduction of various reforms where desirable.

The Bill is written on the basis that the Building Bill, the Registration Bill and the Levy Bill will be enacted at the same time and proclaimed in stages to allow smooth transitioning from the repealed Acts.

Clause 3 Terms used

Defines the key terms used in the Bill, including:

“approved owner-builder” is defined by reference to the same term in clause 3 of the Registration Bill as a person to whom an owner-builder approval has been granted by the Board under clause 45(2).

“authorised person” is a public servant or a person who may be employed or engaged under a contract by a State Government department to perform inspections and investigations. An authorised person must be appointed by the Building Commissioner under clause 60.

“builder” is defined to ensure that when dealing with a HBWC, “builder” has the same meaning as the HBC Act section 3(1), as a person who carries on, or two or more persons who together carry on, a business which consists of or includes the performing of home building work for others.

This includes people who are not registered as builders under the Registration Bill but who lawfully undertake building contracts where a registered builder is not required.

“building” takes its normal or “dictionary” meaning. Section 3 of the Building Bill notes that “building” includes part of a building.

“Building Commissioner” means the executive officer appointed by the Minister under clause 85 of the Bill. This will be the Executive Director of the Department of Commerce, Building Commission division. The Building Commissioner is to perform the functions set out under clause 86.

“building remedy order” 36(1) defines a building remedy order as one of three types of orders:

- (a) an order under 36(1)(a) requires that the person who carried out the regulated building service, rectify the work within a reasonable stipulated time.
- (b) an order under 36(1)(b) requires that the person who carried out a regulated building service pay to an aggrieved person, the costs of remedying the building service as the SAT or the Building Commissioner considers reasonable.
- (c) an order under 36(1)(c) requires that a person who carried out a regulated building service pay to the aggrieved person a sum of money to either compensate the aggrieved person for the failure to carry out the service in a proper and proficient manner or where the work is faulty or unsatisfactory.

“building service” a building service is, in its broadest sense, any service or work provided in respect of the design, construction, maintenance or certification of a building. This includes building, demolition, painting, plumbing and building surveying work, and any other service that is prescribed by regulation.

“Building work” is further defined under clause 3 of the Building Bill as:

- (a) the erection, assembly or construction of a building or a structure incidental to a building; or
- (b) the renovation, alteration, extension, improvement or repair of a building or a structure incidental to a building; or
- (c) the assembly, reassembly or securing of a relocated building or a relocated structure incidental to a building; or
- (d) changing ground levels of land for the purposes of work of a kind mentioned in paragraph (a), (b) or (c) to an extent that could adversely affect land beyond its boundaries; or
- (e) site work on any land for the purposes of, or required because of, work of a kind mentioned in paragraph (a), (b), (c) or (d), or in the definition of demolition work, including the placement of permanent retaining or other permanent protection structures; or

- (f) other work of a kind prescribed by the regulations but does not include work of a kind prescribed by the regulations for the purposes of this definition as not being building work.

The Building Bill at clause 3 defines “demolition work” as:

- (a) the demolition, dismantling or removal of a building or a structure incidental to a building; or
- (b) changing ground levels for the purposes of work of a kind mentioned in paragraph (a) to an extent that could adversely affect land owned by a person other than an owner of the building or structure the subject of the demolition work;
- (c) other work of a kind prescribed by the regulations, but does not include work of a kind prescribed by the regulations for the purposes of this definition as not being demolition work;
- (d) other work of a kind prescribed by the regulations.

“Plumbing work” takes its normal meaning, and includes work done by licensed plumbers under Part 5A of the Water Act.

Other services or work prescribed for the purposes of the definition will include prescribed building services under clause 3 of the Registration Bill and will include building services, painting services and building surveying services.

“building service Act” a building service Act refers to those Acts that regulate the building industry and to which the complaints process and enforcement functions of the Bill will apply.

“building service complaint” is a complaint defined under clause 5(1) regarding a regulated building service that has not been carried out in a proper and proficient manner or is faulty or unsatisfactory. Work that is considered faulty or unsatisfactory or is not proper and proficient can be measured against relevant building codes and standards. “Regulated building service” covers the full process of construction, including design, building, certification and maintenance.

“Building Services Account” is the Building Commission’s special purpose account as defined under clause 92(1) and established under section 16 of the Financial Management Act.

“Building Services Board” the Board is established under clause 65 of the Registration Bill to oversee registration and disciplinary matters of eligible persons.

“building services levy” clause 94(1) of the Bill provides that the levy may be in the nature of a tax, which is payable for permits and building approval certificates.

The levy is established under the Levy Bill.

“committee” a committee is appointed under clause 89 by the Building Commissioner to assist in the performance of the Building Commissioner’s functions.

“complaint” a building service complaint is a complaint in relation to a regulated building service under clause 5(1).

A HBWC complaint is a complaint about a breach of the HBC Act under clause 5(2).

A disciplinary complaint is one that is set out under clause 15(1), or a matter that the Building Commissioner has decided under clause 17 to deal with.

“Department” on proclamation will be the Department of Commerce, which will assist the Minister for Commerce in the administration of the Bill.

“disciplinary complaint” clause 15(1) allows a person to make a complaint to the Building Commissioner about a disciplinary matter in relation to a registered building service provider or an approved owner-builder. Clause 17 allows the Building Commissioner to deal with a disciplinary complaint despite no complaint having been made under clause 15(1).

“disciplinary matter” clause 53 of the Registration Bill sets out disciplinary matters that apply to registered building service providers. Clause 50 of the Registration Bill sets out the grounds for cancelling an owner-builder approval.

“HBWC complaint” clause 5(2) provides that an owner or a builder can make a HBWC to the Building Commissioner about matters referred to under the HBC Act such as:

- section 17 ‘compensation in respect of breach of entitlement to compensation’; or
- section 20 ‘adjustment of rights in certain cases’; or
- schedule 1 clause 5 ‘consequence of non-fulfilment of conditions.’

Once a HBWC complaint has been made to the Building Commissioner, the Commissioner has the ability to issue a HBWC remedy order under 41(1), 41(3) or 41(4) of the Bill.

“HBWC remedy order” is defined at clause 41(2) as an order, issued by the Building Commissioner or the SAT that requires one party to fulfil an obligation in accordance with the HBC Act.

“home building work” section 3(1) of the HBC Act defines home building work to mean the whole or part of the work that is:

- (a) constructing or re-constructing a dwelling including an existing dwelling and/or strata-titled dwelling;
- (b) placing a dwelling on land;
- (c) altering, improving or repairing a dwelling, including a strata-titled dwelling;
- (d) constructing or carrying out any associated work in connection with -
 - (i) any work referred to in paragraph (a) or (b); or
 - (ii) an existing dwelling, including a strata-titled dwelling.

“home building work contract” section 3(1) of the HBC Act defines a HBWC as a contract between a builder and an owner for the performance of home building work. Home building work does not include a cost plus contract, a sub-contract arrangement where the builder is already performing the work under another contract or a contract valued at \$500,000 or above, unless otherwise prescribed by regulation.

“interim building service order” clause 30 allows the Building Commissioner to make an order in relation to a building service complaint that is accepted by the Building Commissioner. The order can stop further regulated building service works from being carried out and stipulate that a registered building provider comply with any conditions that the Building Commissioner considers necessary under the circumstances.

“interim disciplinary order” clause 31 allows the Building Commissioner, on the recommendation of the Board, to make an interim disciplinary order to a registered building service provider for matters concerning a disciplinary offence. An interim disciplinary order will be issued where, in the circumstances, immediate action is required to prevent loss or damage from occurring in accordance with clause 31(3).

“interim order” is a short-term order that is to be made if there is a sense of urgency in responding to a pending building service complaint (clause 30) or a disciplinary complaint (clause 31).

“owner” is defined to ensure that when dealing with a home building work contract, “owner” has the meaning defined under section 3(1) of the HBC Act as the person under the contract for whom home building work is performed.

“permit authority” clause 3(5) of the Building Bill defines a permit authority to be:

- In relation to a building, to mean the State if the Minister has agreed that the State should be the permit authority;
- A special permit authority if one has been designated by regulation;
- Or otherwise, the relevant Local Government Authority.

“place” a place is somewhere capable of being inspected or investigated for the purposes of the Bill.

“plumbing work” section 59I of the Water Act defines “plumbing work” to mean water plumbing supply, sanitary plumbing or drainage plumbing.

“prescribed” where something is to be prescribed, this denotes it will be set out in regulations.

“record” a record includes electronic data, paper based documents, software or systems on which information is stored and any mobile device or removable media such as hard drives and USB sticks.

“registered building service provider” is defined in section 3 of the Registration Bill as either of the following:

- (a) a building service practitioner; or
- (b) a building service contractor.

This specifically excludes building service providers registered or licensed under other Acts, such as architects and plumbers.

Registered building service practitioners will initially be prescribed by regulation under section 10 of the Registration Bill as a builder, painter, building surveyor or technical certifier.

Registered building service contractors will initially be prescribed by regulation under clause 11 of the Registration Bill as a builder, painter or building surveyor.

“regulated building service” regulated building services are those services for which the Building Commissioner can deal with a complaint and/or initiate disciplinary action (through the relevant registration or licensing Act).

This will cover the work of all registered or licensed practitioners, approved owner-builders and other providers who are regulated through legislation administered by the Building Commission division of the Department of Commerce.

“respondent” refers to a person who is the subject of a building service complaint or a disciplinary complaint that is made against them.

“vocational regulatory body” means the Architects Board of Western Australia, the PLB or any other body or person to be prescribed under the regulations.

Clause 4 Crown bound

The provisions of this Bill apply to the Crown, which means State Government Agencies. The Crown is not required to be registered under the Registration Bill to carry out building services, and therefore a complaint under Part 2 cannot be made against the Crown. The Building Commissioner can, however, make orders and carry out investigations in respect of building work carried out by the Crown.

PART 2 –COMPLAINTS AND CONCILIATION

This Part contains the complaints process that will replace the BDT with the SAT, which currently operates under the BR Act and which will be repealed by clause 107 of the Registration Bill. The new process is broadened to allow complaints about any regulated building service to be addressed initially by the Building Commissioner and, if a formal tribunal process is warranted, by the SAT.

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

Clause 5 Making a complaint about a building service or home building work contract matter

5(1) allows any person to make a complaint regarding a regulated building service. Regulated building services are:

1. Building services by a registered person or approved owner-builder; or
2. Home building work carried out under a contract; or
3. Any other service or work prescribed in the regulations (e.g. plumbing work).

This allows not only a consumer of a building service to make a complaint, but also any person adversely affected, such as a neighbour, a subcontractor, or another regulatory agency.

“Home building work carried out under a contract” does not have any monetary limit unlike a “home building work contract” defined in the current HBC Act which has a lower limit of \$7,500 and an upper limit of \$500,000.

A complaint about a regulated building service hinges upon the quality of performance of the regulated building service. If the quality of the service was not carried out in a proper and proficient manner or is faulty or unsatisfactory, then the making of a complaint is warranted.

5(2) allows an owner or builder, as defined under the HBC Act, to make a complaint about a home building work contract.

- HBC Act section 17 deals with a breach of contract;
- HBC Act section 20 deals with payments if a contract is terminated;
- HBC Act Schedule 1 clause 5 deals with excessive or unjustified cost increases.

5(3) allows complaints to be made about regulated building services carried out under the repealed Acts, so that there is continuity of coverage for complaints. Part 10 Division 3 of the Bill sets out the transitional arrangements for complaints.

5(4) Division 1 deals with complaints about how a service is carried out, where the outcome sought is to remedy the service or pay compensation.

Division 2 clause 15 deals with complaints about the conduct of a registered building service provider where the outcome sought is disciplinary action against the provider. Clause 15(2) confirms that an initial complaint that seeks both a remedy and disciplinary action can be dealt with as a complaint under each division.

5(5) allows regulations to narrow the scope of who may make complaints, should the process be overwhelmed or misused in future by minor building service or HBWC complaints.

Regulations can also set out preliminary action required before a complaint is formalised. This will be based on current requirements where the complainant is required to demonstrate that the complaint has been drawn to the attention of the practitioner but has not been resolved to the satisfaction of the complainant.

5(6) allows the Building Commissioner to approve the manner and form in which complaints are lodged, such as evidence of preliminary action required under clause 5(5). This will avoid current problems where failure to comply strictly with procedure and notice requirements in the BR Act can result in a complaint being rejected on technical grounds when it reaches a tribunal hearing.

The fee to lodge a complaint acts as a threshold to prevent the complaints process being abused through frivolous or minor issues. Fees will be prescribed in regulations for particular cases of complaint. Where no fee is prescribed in the regulations, no fee is payable. The current fee to access the BDT process is \$32. The future fee will be prescribed under clause 5(6)(b) of the Bill.

Clause 6 Time limit for complaint

6(1) places a six year time limit on making a building service complaint. This reflects the common law and existing statutory time limits under the BR Act.

6(2) provides processes for determining when the six-year limit is reached. Regulations may prescribe criteria, but otherwise the contractual date of completion can be followed. If the date cannot be ascertained under contract, the time will run from the last day in which the building service was carried out.

6(3) preserves the existing times in which a HBWC complaint is barred from being made when made out of time.

Clause 7 Preliminary decision by Building Commissioner

7(1) allows the Building Commissioner, having received a complaint under clause 5, to refuse it if it does not meet the requirements set out in clause 7(3) or under 8(3) when the complainant does not comply with a requirement. Otherwise the Building Commissioner must accept it.

7(2) allows an early sorting of complaints and gives the Building Commissioner flexibility to advise on deficiencies in an application without triggering the formal process of dealing with a complaint.

7(3) and (4) set out the criteria that the Building Commissioner will follow when determining whether a complaint is to be refused.

7(5) confirms that HBWC complaints or building services complaints can be treated in parallel with a disciplinary complaint about the same matter.

Clause 8 Further information and verification

The Building Commissioner can seek further information or verify details of a complaint rather than refuse it under clause 7 thereby avoiding red tape.

Clause 9 Investigation

9(1) requires the Building Commissioner to appoint an inspector (an authorised person) to investigate a building service or HBWC complaint and report as required under clause 10.

9(2) allows the Building Commissioner also to refer the complaint to a permit authority for enforcement action under the Building Bill, or to a registration or licensing board for disciplinary action.

It is possible that a single set of facts may trigger a series of parallel processes. The Building Commissioner and/or SAT may make remedy orders to fix unsatisfactory work under this Bill, a permit authority under the Building Bill may take action for failure to obtain or comply with a relevant permit, and a registration board may take disciplinary action for a person doing work without being appropriately registered.

Clause 10 Report on complaint

10(1) requires the authorised person to investigate the complaint and, where appropriate, to make recommendations for dealing with the complaint or resolving any related disputes. The inspector must prepare a report based on the investigation and give a copy of the report to the Building Commissioner.

10(2) allows the Building Commissioner to distribute the report to a permit authority, a registration or licensing board, as well as to the parties to the dispute where appropriate.

Clause 11 Action after report

Once informed by the report provided under clause 10, the Building Commissioner can assess the most appropriate way of dealing with and resolving the matter.

Clause 11(1) allows the Building Commissioner to decide to:

11(1)(a) take no further action - where the complaint is not founded or supported by the investigation;

11(1)(b) instigate conciliation - where either or both parties do not accept the report, but where it seems that the parties can be helped to reach a compromise;

11(1)(c) make a building remedy order or a HBWC remedy order where it is clear that the building services practitioner is at fault, even though the practitioner may not accept the report;

11(1)(d) send the matter to the SAT for a formal tribunal hearing— where the matter is technically or legally difficult, or the parties are unable to come to a compromise through conciliation;

11(2) gives the Building Commissioner discretion in accepting recommendations in a report provided under clause 10.

11(3) requires the Building Commissioner to dismiss a complaint if it is out of time in accordance with clause 6.

11(4) provides where an owner makes a complaint about a breach of section 15 or 15A of HBC Act concerning unconscionable, harsh or oppressive conduct or contractual terms, the complaint is to be referred to the SAT. The SAT is to then deal with the complaint under section 43. However, the complaint will be dismissed if it is made out of time under clause 6.

11(5) allows regulations to prescribe when matters must be referred to the SAT for dealing with under clause 38 or 43. This allows the process to be fine-tuned as experience demonstrates what matters are most effectively dealt with by the SAT rather than the Building Commissioner.

When matters are referred to the SAT under this clause, SAT is exercising its original jurisdiction under section 15 of the SAT Act. The parties to the dispute become the parties arguing the case before the SAT (clause 12). The costs of SAT when exercising this original jurisdiction are funded by the building services levy and paid to SAT under clause 85(3)(a). As is currently the case with the BDT, the initial fee under clause 6(6) will allow access to the full tribunal process if needed. It is possible to fine-tune the process to allow a second fee to be prescribed under the SAT Act to act as a threshold for parties requesting a matter to go directly to the SAT rather than being dealt with by the Building Commissioner.

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

Confirms that the applicant and not the Building Commissioner is the applicant for proceedings referred to the SAT. Section 38 of the SAT Act allows the Building Commissioner or an authorised person to appear in proceedings before the SAT as an expert witness.

Clause 13 Withdrawal of complaint

Allows a complainant to withdraw a complaint before it is referred to the SAT. Section 46 of the SAT Act allows a person to withdraw a complaint with the leave of the SAT or for the SAT to dismiss a complaint for want of prosecution.

Division 2 — Complaints about disciplinary matters

Clause 14 Application of this Division

Disciplinary proceedings about people registered under the repealed Acts and/or matters that occur before the commencement of the Bill can be dealt with under the provisions of this Bill. It also allows disciplinary matters to be dealt with even after registered providers relinquish their registration.

Clause 15 Making a complaint about a disciplinary matter

15(1) allows any person to make a complaint regarding a disciplinary matter. This allows not only a consumer of a building service to make a complaint, but also any person affected by it, such as a neighbour, a subcontractor, or another regulatory agency.

Unlike building services complaints made under clause 5, this clause limits a complaint about disciplinary matters to people registered or approved under the Registration Bill. These will be builders, painters, building surveyors and approved owner-builders, as well as any other class of people specified in regulations. Disciplinary matters for people registered under other Acts will be dealt with under the relevant legislation. This will apply to architects and plumbers.

15(2) confirms that an initial complaint that seeks both a remedy and disciplinary action can be dealt with as a complaint under both Division 1 and Division 2. Division 1 (that includes clause 5) deals with complaints about how a service is carried out and a HBC Act complaint, where the outcome sought is to remedy the service or pay compensation. Division 2 deals with complaints about the conduct of a registered building service provider where the outcome sought is disciplinary action against the provider.

15(3) allows regulations to narrow the scope of who may make complaints, should the process be overwhelmed or misused in future by minor complaints.

15(4) allows the Building Commissioner to approve the manner and form in which complaints are lodged.

Clause 16 Preliminary decision by Building Commissioner

The Building Commissioner can refuse to accept a complaint if it does not meet the requirements set out in 16(3) or under 18(3) if further information is not provided. This allows an early sorting of complaints and gives the Building Commissioner flexibility to advise on deficiencies in an application without triggering the formal process of dealing with a complaint.

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

Allows the Building Commissioner to commence a disciplinary action even if no complaint is made. This may arise from an inspection carried out by an authorised person under Part 4 or from information received by the Building Commissioner.

Clause 18 Further information and verification

The Building Commissioner can seek and verify further information rather than refuse a complaint under clause 16.

Clause 19 Action in respect of accepted disciplinary complaint

19(1) requires the Building Commissioner to appoint an inspector (an authorised person) to investigate the complaint once it is accepted, or pass the matter straight to the Board for a decision under clause 56 of the Registration Bill.

19(2) allows the Building Commissioner discretion to continue investigation of a complaint referred by the Building Commissioner to the Board, but obliges the Building Commissioner arrange an investigation of a complaint referred to the Building Commissioner by the Board.

Clause 20 Report on complaint

20(1) requires an authorised person to report on the investigation of the complaint, provide a copy of the report to the Building Commissioner and where appropriate, to make recommendations for dealing with the complaint along with the requirement to give a copy of the report to the Building Commissioner.

20(2) allows the Building Commissioner to give the report to any other vocational regulatory body. This allows for information to be provided to regulatory bodies in other States, or a national regulator for their own disciplinary action.

Clause 21 Action after report

21(1) requires the Building Commissioner to consider the report provided under clause 20 and then decide whether to dismiss the complaint or refer the matter to the Board.

21(2) allows the Building Commissioner discretion in accepting recommendations in a report provided under clause 20.

21(3) allows the Building Commissioner to recommend to the Board that the matter be referred to the SAT for disciplinary action.

Clause 22 Withdrawal of complaint

22(1) allows the complainant to withdraw a disciplinary complaint before it is referred to the SAT.

22(2) provides that the complaint can only be withdrawn with the leave of the Board. Section 46 of the SAT Act allows a person to withdraw a complaint with the leave of SAT or for SAT to dismiss a complaint for want of prosecution.

22(3) allows a disciplinary complaint to be withdrawn entirely or in part whichever the case may be.

Division 3 — Conciliation

Clause 23 Role of conciliator

“conciliator” means a public servant who is responsible for carrying out conciliation duties, or someone who the Building Commissioner appoints to act as a conciliator.

23(1) provides flexibility to use public service officers or private sector conciliators. This allows management of workload fluctuations and selection of conciliators to suit specific types of complaint.

23(2) reflects the use of conciliation for both building service and HBWC complaints (30(2)(a)) and disciplinary complaints (30(2)(b)).

23(3) allows the Building Commissioner to require conciliation rather than force all contested matters to the SAT. Clause 25 provides powers to compel attendance at conciliation.

23(4) gives the conciliator necessary powers to encourage settling the complaint in support of the conciliator’s functions.

23(5) allows the conciliator to consider an investigation report to narrow down the issues of dispute and to suggest appropriate remedies.

Clause 24 Parties to conciliation proceeding

24(1) confirms that the parties to a conciliation for building service or HBWC complaint are the complainant (a person under clause 5(1)(2) or (5)) and a respondent (person who is the subject of the complaint under clause 5).

24(2) confirms that the parties to a conciliation for a disciplinary matter are the Board as well as the complainant and the respondent. This means the Board must be satisfied with the outcome of a conciliated disciplinary matter.

Clause 25 Attendance at conciliation proceeding

25(1) provides the Building Commissioner with power to require a party to attend a conciliation hearing.

25(2) provides a penalty of a fine of \$5,000 for not attending without a reasonable excuse.

Although successful conciliation is more likely with willing parties, the Building Commissioner can judge whether a compulsory conciliation conference may advance some matters.

Clause 26 Representation at conciliation proceeding

26(1) requires conciliation to be between the parties and without legal representation. However, it allows representation where the Building Commissioner determines it is necessary such as when, one party does not speak English, lives overseas, is incapacitated, etc.

26(2) allows for officers of corporations to represent the corporation and for third parties, such as interpreters or expert witnesses, to attend the proceedings.

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

27(1) provides that if an agreement is reached during conciliation, the Building Commissioner can confirm that agreement by issuing an order.

27(2)(a) stipulates orders are binding and cannot be overturned.

27(2)(b) allows orders for disciplinary complaints to include actions that the Board can take under section 57 of the Registration Bill (amend registration particulars, caution or reprimand, obtain an undertaking or impose a fine not exceeding \$5,000).

27(2)(c) allows orders for building service complaints to include a building remedy order under clause 37 (remedy the building service, pay the costs of remedying by another person, or pay compensation).

27(2)(d) allows orders for HBWC complaints to include actions that can be included under clause 42 (requiring work to be performed, prohibiting action in breach of contract).

Making an order to give effect to a building remedy order or a HBWC order allows the order to be enforced under clauses 50, 51 or 52. Failure to comply with an order is an offence under clause 53.

Clause 28 Evidence of certain things inadmissible

This continues the well-established principle that discussions in the course of non-court proceedings are conducted on a without prejudice basis. The exception is when the parties agree to the admission of evidence, it is contested that the parties to the dispute consented to the making of a conciliation agreement or it is evidence that an agreement exists in order for it to be enforced.

Clause 29 Action if conciliation fails

29(1) requires the Building Commissioner to make a further decision under clause 11(1) in relation to a building service or HBWC complaint if conciliation fails to result in an appropriate resolution of a building services complaint. The Building Commissioner must then decide to dismiss the complaint, caution or reprimand the respondent, refer the complaint to the SAT or issue a building remedy order (clause 11(1)).

29(2) requires the Building Commissioner to refer a disciplinary complaint to the Board if conciliation fails to result in an appropriate resolution.

PART 3 – ORDERS

This Part establishes the type of orders that can be granted on both an interim and final basis for complaints regarding building services, HBWC matters and disciplinary matters. It allows for the Building Commissioner to be able to deal with, as early as possible, complaints by issuing an appropriate order and where the Building Commissioner cannot deal with the complaint, remit it to the SAT for consideration.

Division 1 - Interim Orders

Clause 30 Interim building service order

An interim building service order allows a rapid response to a complaint where there is a high likelihood that the matter complained about will continue and may result in significant loss or damage.

30(1) allows the Building Commissioner to issue an interim building service order when the Building Commissioner is satisfied that:

- (a) the service is not proper, proficient or is faulty/unsatisfactory;
- (b) it is likely to continue; and
- (c) there is a high risk of loss or damage that could be suffered by persons.

30(2) allows the order to require work to stop or to specify conditions such as protect, make-safe or restore function.

30(3) sets out the minimum requirements for the order. Reasons for the order and a reference to the limited life of an interim order under clause 31(4) must be given.

30(4) allows for the order to be in effect for a maximum of 28 days unless revoked. In that time the Building Commissioner must either revoke the order (because the need for the order has passed or it has been superseded by a building remedy order) or, refer the complaint to the SAT.

30(5) keeps the interim order in force until the SAT makes a decision to revoke it or, makes a final determination of the complaint.

Clause 31 Interim disciplinary order

An interim disciplinary order allows a rapid response to a disciplinary complaint where there is a high likelihood that the matter complained about will continue.

31(1) requires the Board to exercise its powers under clause 55 of the Registration Bill to require the Building Commissioner to issue the interim disciplinary order. The interim order is pending a formal decision of the Board.

31(2) allows the interim disciplinary order to suspend registration either in whole or in part. Otherwise suspension requires a decision by the SAT under clause 58(1)(g) of the Registration Bill.

31(3) sets out the minimum requirements for the order. The order must state the reasons for the order and advise the provider that the life-span of the order is 28 days unless the order is revoked or an allegation is made to the SAT.

31(4) requires the Building Commissioner to give a copy of the order within seven days to the Board and seek its recommendation for further action, such as referral of the matter to the SAT.

31(5) allows for the order to be in effect for a maximum of 28 days. In that time the Building Commissioner must either revoke the order because the need for the order has passed or, refer the complaint to the SAT.

31(6) keeps the interim disciplinary order in force until the SAT makes a decision to revoke it or makes a final determination of the complaint.

Clause 32 Effect of interim order

32(1) confirms that an interim order can be made even though the complaint is being dealt with through other processes. The interim order is a “holding position” pending more formal investigation and determination of a complaint.

32(2) confirms the order has effect as soon as it is given, and does not require the person to whom it is issued to be given an opportunity to make any representation before it is given.

Clause 33 Revocation or variation of interim order

33(1) gives the Building Commissioner power to revoke or vary a building service order or a disciplinary order up to the point at which its validity expires or it is referred to the SAT.

33(2) provides that the Board can require the Building Commissioner to vary or revoke an interim disciplinary order.

33(3) prevents the Building Commissioner from varying or revoking an interim disciplinary order under subclause (2) if the order has been referred to SAT.

Clause 34 Jurisdiction of State Administrative Tribunal

When an interim order is referred to the SAT, it can decide that the order remain in force until it deals with the complaint or, decide that the order is neither appropriate nor warranted and revoke or vary it.

Clause 35 Publication of interim order

Allows the Building Commissioner to advise people who may be affected by the interim order. These may include the person making the original complaint, a permit authority, a vocational regulatory body or a person who may otherwise be affected by the order, such as an owner.

Division 2 – Building remedy orders

Clause 36 Building remedy order

Building remedy orders can be made by the Building Commissioner (clause 37) or the SAT (clause 38).

36(1) allows a building remedy order to require the person who carried out the service to:

- remedy it within a reasonable specified time (36(1)(a)); or
- pay the cost of someone else remedying it (36(1)(b)); or

- pay compensation for the faulty service without it being remedied (36(1)(c)). This allows for a third party, such as a neighbour who has been adversely affected by the building work, to seek compensation for any consequential damage caused.

36(2) allows 37(4) allows a building remedy order to specify a completion time.

36(3) deals with the situation where remedial work requires a prescribed building service, but the respondent to whom the order is made is not an appropriately registered building service contractor authorised under section 7 of the Registration Bill to carry out, or *arrange to carry out*, the relevant service. The defaulting party does not commit an offence in *arranging for* an appropriately registered building service contractor to carry out the remedial work. It remains an offence to carry out the work if not registered.

If it is not appropriate for remedial work to be arranged by the respondent under subclause (2), the building remedy order can be made in accordance with (1)(b) or (1)(c): ordering costs to the aggrieved party for the rectification works or compensation for non-conformance with adequate standards respectively.

Clause 37 Building remedy order by Building Commissioner

37(1) allows the Building Commissioner to make a building remedy order. This is one of the options allowed under clause 11(1)(c). Another option under clause 11(1)(a) is to dismiss the complaint. Regulations under clause 11(3) may restrict the circumstances in which the Building Commissioner can make orders.

37(2) limits the value of work or amount of compensation that the Building Commissioner can order to \$100,000, unless a greater amount is prescribed. If the Building Commissioner believes that higher a value of work or compensation is appropriate, the Building Commissioner can refer the complaint to the SAT under clause 11(1)(d).

37(3) makes the monetary limits consistent with the monetary limits under the HBC Act.

37(4) allows the Building Commissioner to make any incidental orders as may be appropriate.

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

38(1) gives the SAT the options of dealing with a building services complaint by either dismissing the matter by not making an order or by making a building remedy order.

38(2) limits the value of work or amount of compensation that the SAT can order an unregistered person to do or pay \$500,000, unless a greater amount is prescribed. A building services complaint may be made about a regulated building service (clause 5(1)). A regulated building service includes home building work done under a contract. Unregistered people may lawfully carry out work (for example, cabinet work, tiling, concrete or brickwork) that is classed as home building work.

No limit applies to an order in respect to a prescribed building service, whether lawfully carried out by a building service contractor or unlawfully carried out by an unregistered person (Registration Bill, clause 7).

38(3) makes the monetary limits consistent with the monetary limits under the HBC Act.

38(4) preserves the right of the SAT to use its compulsory conference or mediation powers to obtain an agreement between the parties.

Clause 39 Order for payment before building remedy order

Clause 39 preserves the normal power of courts to require a party to give security for costs, or to prevent funds being distributed so that a party loses the capacity to pay a potential award. Any money ordered to be paid to the Building Commissioner or the SAT is to be held in the Account.

Clause 40 Building remedy order does not prevent disciplinary action

Confirms that disciplinary action can take place in parallel to resolving building services complaints.

Division 3 - HBWC remedy orders

Clause 41 HBWC remedy orders

41(1) provides that the SAT can make a HBWC remedy order with respect to a complaint:

- by an owner or a builder under the HBC Act section 17 of (subclause (1));
- a complaint by an owner under section 17 about a breach of section 15 of the HBC Act (subclause (2)); and
- by an owner or builder under section 20 of the HBC Act (subclause (3)).

These powers are transferred from the HBC Act by clause 117.

HBC Act section 17 of allows for an owner or a builder to make a complaint under 5(2) of the Bill if there has been a breach of the contract, or a breach of a provision in Part 2 of the HBC Act, for example, where a builder receives from an owner a deposit that is greater than 6.5% of the total contract price.

HBC Act section 15 prohibits a builder from varying a contract after execution, or engaging in conduct that is unconscionable, harsh or oppressive when carrying the terms of the contract. The builder also must not enter into a contract with an owner that contains any provision that is unconscionable, harsh or oppressive.

HBC Act section 20 allows an owner or a builder to make a complaint under clause 5(2) of the Bill if a contract is terminated under section 4(5), 10(4) or 14(3) or Schedule 1 of the HBC Act.

HBC Act section 4(5) allows an owner to terminate a contract if it is not in writing setting out all contractual terms and conditions, shows the date of the contract and is signed by the builder and the owner or an agent.

HBC Act section 10(4) gives an owner the option to terminate the contract in accordance with section 19 if the builder accepts from the owner a deposit that is higher than the prescribed amount (6.5%).

HBC Act section 14(3) allows an owner to terminate a contract should the builder enter into a cost plus contract that is not in writing, does not contain a heading with the words “cost plus contract” and fails to contain an acknowledgement from the parties.

41(1) allows a HBWC remedy order (other than one relating to a breach of section 15 of the HBC Act which is dealt with under clause 41(2)), to require that a party restrains from action, performs work, pays an outstanding amount, reverses a payment already made or orders compensation.

41(2) allows a HBWC remedy order in respect to a complaint about a breach of section 15 of the HBC Act to declare the contract void from the beginning, modify the contract as the SAT considers fit, or require the builder to repay to the owner any amount paid by the owner under contract or part of a contract that SAT has declared to be void.

41(3) allows a HBWC remedy order in respect to a compliant under section 20 of the HBC Act to require the repayment of money to the owner, or the payment of money to the builder for materials supplied, work done or costs or overheads incurred by the builder.

41(4) allows a HBWC remedy order in respect of a price increase claimed under Schedule 1 of the HBC Act to vary, affirm or disallow the amount of the increase.

41(5) modifies the contract to the extent necessary to apply the price determined by a HBWC remedy order issued under clause 41(4).

Clause 42 HBWC remedy order by Building Commissioner

Allows for the Building Commissioner, subject to regulation, to make a HBWC remedy order in relation to a HBWC complaint (other than one dealing with section 15 or 15A of the HBC Act, that must be referred to the SAT under clause 11(4)), provided the order does not exceed \$100,000. The Building Commissioner may only make an order exceeding \$100,000 where the party to be bound consents to the making of the order. The Building Commissioner may make an ancillary or incidental order if needed to give practical effect to a HBWC order.

Clause 43 How State Administrative Tribunal may deal with HBWC complaint

Allows for the SAT to make a HBWC remedy order in relation to a HBWC complaint provided the order does not exceed \$500,000. The SAT may only make an order exceeding \$500,000 where the party to be bound consents to the making of the order. The SAT can also deal with a HBWC compliant through a compulsory conference or mediation.

Clause 44 Order for payment before HBWC remedy order

“responsible adjudicator” means either the Building Commissioner or the SAT depending on who has dealt with the complaint.

Allows either the Building Commissioner or the SAT to order parties to a HBWC complaint to pay money to the Account before a HBWC remedy order is made. A party that does not comply with such an order may have an adverse order made against them.

Clause 45 HBWC remedy order does not prevent disciplinary action

Provides that the SAT or the Board can deal with a disciplinary complaint even though a HBWC remedy order is made about the same matter.

Division 4 — Procedure, costs and enforcement of orders

Clause 46 Procedure of Building Commissioner

The Building Commissioner is expected to act quickly and expertly to determine the facts of a complaint and what the appropriate remedy may be. The Building Commissioner is not a court and is not bound by court-like processes. Clause 46 is comparable to section 32 of the Construction Contracts Act and the role of the Building Commissioner is similar to that of an adjudicator under section 31 of that Act.

Clause 47 Provision of information and documents to Building Commissioner

47(1) provides the Building Commissioner with powers to obtain information needed to determine the facts of a complaint.

47(2) provides a penalty for people who do not provide information.

47(3) confirms that the Building Commissioner can make an order even if one party has not cooperated in the process.

47(4) preserves the Building Commissioner's powers to inspect and investigate for audit or compliance functions under Part 4.

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

Allows the SAT to join as a party to a proceeding a person who has or may have a beneficial interest or who has a share in the profits, such as a partner of the business. This avoids multiplicity of proceedings for parties seeking recourse.

Clause 49 Costs and expenses

49(1) gives both the Building Commissioner and the SAT the power to make orders for costs. This preserves the normal right of a successful litigant to seek an order for costs.

49(2) restricts the power of the Building Commissioner to award costs for representation (that is, lawyer's fees) in circumstances where the party has been forced to incur the costs because of the inappropriate actions of the other party, or as a result of a weak claim. In general, it is expected that parties dealing with the Building Commissioner will not require representation, and the costs incurred in responding to a complaint and providing information will be minor.

49(3) allows both the Building Commissioner and the SAT to recover their own costs if they were unnecessarily incurred as a result of the conduct by one or both parties.

49(4) confirms that the Building Commissioner or the SAT can recover costs even when no other order is made.

49(5) allows the Building Commissioner or the SAT to take into account the refusal of a party to comply with other orders or directions.

49(6) allows the Building Commissioner to recover the money, even when the costs order is made by the SAT, and for the costs to be credited to the Account. Note that the costs of the SAT in dealing with complaints under this Bill are paid out of the Account.

49(7) preserves the separate powers of the SAT to award and recover costs under its own legislation.

Clause 50 Enforcement of order requiring payment of money

Clause 50 allows a party to a complaint to enforce orders for payment through the court system. To give courts confidence that an order given by the Building Commissioner is enforceable without the need for formal process, the Building Commissioner is required to certify a copy of the order under clause 50(1)(a)(i). A similar process is used for adjudicators' determinations under section 43 of the Construction Contracts Act.

Clause 51 Failure to comply with order to do work: new order

Clause 51 allows for follow-up action when a person issued with a building remedy order to perform remedial work fails to do the work.

51(1) defines "*responsible adjudicator*" to mean the Building Commissioner if the original order was made by the Building Commissioner or the SAT if it made the original order.

51(2) allows a building remedy order to do work to be changed to a building remedy order to pay the cost of someone else to do the work.

51(3) and (4) allow a HBWC remedy order to do work to be changed to a HBWC order to pay money in compensation.

51(5) allow substitute orders to be made in parallel with prosecution for failure to comply with the original order.

51(6) requires substitute orders to comply with the requirements for building remedy orders given by the Building Commissioner (clause 37) or SAT (clause 38), or HBWC orders given by the Building Commissioner (clause 42) or SAT (clause 43). These include the financial limits of orders by the Building Commissioner (\$100,000) or the SAT (\$500,000).

If it appears to the Building Commissioner that the cost of getting someone else to do the work may exceed the Building Commissioner's financial limit under clauses 37 or 42 the Building Commissioner may seek the SAT's approval to transfer the proceeding to the SAT under clause 55. If it appears that the cost of getting someone else to do the work may exceed the SAT's financial limit under clauses 38 or 43, the SAT may order the matter transferred to a court of competent jurisdiction under clause 55.

51(7) ensures that disciplinary actions are not affected by the substitute order.

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

Clause 52 allows a party to a complaint to enforce non-monetary orders by the Building Commissioner through the Supreme Court. The similarly worded section 86 of the SAT Act allows a party to a complaint to enforce non-monetary orders of the SAT through the Supreme Court.

To give the Supreme Court confidence that an order given by the Building Commissioner is enforceable without the need for formal process, the Building Commissioner is required to certify a copy of the order under clause 52(2)(a). A similar process is used for adjudicator's determinations under section 43 of the Construction Contracts Act.

52(5) ensures that disciplinary actions are not affected by enforcement.

Clause 53 Failure to comply with order: offence

Clause 53 makes it an offence to fail to comply with any order of the Building Commissioner or a building remedy order or HBWC order of the SAT. An exception (clause 53(2)) is that it is not an offence under this Bill to fail to pay an order that is being enforced as an order of a court. Failure to pay such orders is enforced by the relevant court.

Section 95 of the SAT Act provides the SAT with equivalent powers for a breach of an order of the SAT.

Clause 54 Avoidance of concurrent proceedings

Making a building service complaint or a HBWC complaint under this Bill prevents the same matter from being dealt with concurrently by another court. Exceptions are allowed where the matter was already before the court or where the complaint is not dealt with under this Bill.

Clause 55 Transfer of proceeding

55(1) allows the Building Commission to transfer a matter to the SAT.

55(2) allows a court to transfer a matter to the Building Commissioner to be dealt with under this Bill. Note that the transfer is to the Building Commissioner to commence processes under this Bill, and that the Building Commissioner may transfer the matter to SAT under 55(1).

55(3) allows SAT to transfer a matter to a court of competent jurisdiction.

Clause 56 Effect on other remedies

Clause 56 confirms that the existence of a complaint resolution process under this Bill does not affect a person's right to deal with the matter under another process (for example, arbitration, litigation or adjudication under the Construction Contracts Act) or the remedies available under that process. The only exception is the avoidance of concurrent processes under clause 54 of the Bill.

A court or tribunal may take into account a building remedy order or HBWC order when dealing with a related matter.

Division 5- Review

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

57(1) gives a person a right to apply to SAT for a review of any order given by the Building Commissioner. The SAT is exercising its review jurisdiction.

57(2) requires a person to obtain leave of the SAT to apply for a review of a decision by the Building Commissioner to refuse to accept a complaint.

Clause 58 State Administrative Tribunal internal review

58(1) provides that the terms "*judicial member*", "*legally qualified member*", "*President*" and "*senior member*" all share the same meaning in the SAT Act.

58(2) allows for a party to a dispute to apply for leave to review an order given by the SAT when exercising its original jurisdiction. The review is to be conducted as an internal review by a differently constituted panel. This clause provides an alternative to forcing parties to higher courts.

58(3) allows an internal review to confirm, vary or replace an original order.

58(4) confirms that an order under clause 58(3) has effect as if it were the original order made under clauses 38 or 43.

58(5) requires leave of the SAT for an internal review and requires the application to be made within 30 days from when the original order was made.

58(6) preserves the ordinary provisions of the SAT Act for review of decisions.

58(7) allows for the regulations to modify ordinary provisions should this prove necessary in future.

PART 4 – INSPECTIONS AND INVESTIGATIONS

This Part sets out the powers of inspectors and investigators (“authorised persons”) to enter premises, obtain information and gather evidence. The powers for authorised persons are set out broadly to support the flexibility in the Registration Bill which allows different classes of building services and building service providers to be introduced through regulations. The powers given to an authorised person can be limited under regulation or by the Building Commissioner so that the different types of inspector or investigator are only given powers appropriate to their functions.

Division 1 — Preliminary

Clause 59 Terms used

Sets out the meaning of the terms used in this subdivision of the Bill.

“*compliance purposes*” is defined by reference to clause 64(1) of the Bill to include monitoring, compliance with a Building Service Act, investigating a suspected contravention of a building service Act and examining records.

“*entry warrant*” division 5 provides that a warrant can be issued to an authorised person to carry out an investigation of a building service complaint or a disciplinary complaint.

“*occupier*” is defined to include a person who has apparent control or management of a place so that entry with consent under clauses 65(5) or 66(2) is not unlawful if the person providing the consent is not the occupier, as defined in other legislation.

“*place*” is defined to include a vehicle so that, for example, documents or materials kept in a practitioner’s vehicle can be inspected.

“*public place*” is defined to allow authorised persons to enter such places under clauses 65(5) or 66(2).

“*relevant record*” is defined to mean a record or document that is required to be kept under a Building Service Act. The record or document may contain information that could be relevant to a contravention of one of these Bills or it may relate to the carrying out of a regulated building service.

Division 2 — Authorised persons

Clause 60 Authorised persons

Authorised persons are limited to any public servant (clause 60(1)(a)) and people engaged under a public service contract (clause 60 (1)(b)) in the Department. The Building Commissioner must designate each authorised person in writing.

Clause 61 Identity cards

Identity cards are issued by and must be returned to the Building Commissioner. An authorised person must carry the identity card when exercising functions as an authorised person.

Clause 62 Production or display of identity card

Requires an authorised person to identify him or herself by producing the identity card before exercising a power, or as soon as possible after exercising a power if prior identification is not practicable under the circumstances.

Clause 63 Limitation on powers of authorised person

The Building Commissioner will authorise people for a wide range of building related inspection and compliance tasks, and may limit the powers to suit both the task and the qualifications of the person authorised.

63(1) requires an authorised person to act within the directions of the Building Commissioner and the limitations on powers under 63(2).

63(2) allows the powers of an authorised person to be limited by regulations, the instrument of designation or a written notice by the Building Commissioner.

63(3) allows the Building Commissioner to revoke or vary the instrument or written notice referred to in 63(2).

Division 3 — Inspections

Clause 64 Compliance inspections

Compliance inspections are carried out to determine if laws or standards are being complied with. Authorised persons carrying out compliance inspections will have entry and other powers set out in Divisions 4 and 5.

64(1) sets out compliance purposes as:

- (a) monitoring compliance with building service Acts. These are defined in clause 3 as this Bill, the Building Bill, the Registration Bill, the HBC Act, the Construction Contracts Act and Part 5A of the Water Act;
- (b) monitoring compliance of registered building service providers with conditions of registration or other disciplinary matters; i.e. individuals or bodies registered under the Registration Bill;
- (c) monitoring payment of the Levy;
- (d) investigating a contravention of a building service Act;
- (e) examining the records of a permit authority regarding applications for and the grant of permits and building approval certificates under the Building Bill; and
- (f) assisting in the determination of an application or other matter before the Board.

64(2) requires the Building Commissioner to arrange an inspection when requested by the Board.

Clause 65 General inspections

General inspections are made to inform the Building Commissioner on how services are being and have been carried out, whether standards are being applied to building services and if a building service Act which is administered by the Department is operating effectively.

65(2) allows a building services provider to ask the Building Commissioner to inspect the building service. This is generally requested when a consumer has questioned the quality of a service and the provider seeks an independent inspection to demonstrate that appropriate standards have been met. An inspection by an authorised person under this clause may avoid a complaint under clause 5.

Authorised persons carrying out general inspections cannot exercise entry and other powers set out in Divisions 4 and 5. Sufficient entry powers are given to authorised persons under clauses 66(1) and (2).

Division 4 — Powers in relation to inspections and investigations

Clause 66 Entry powers

Entry powers can be exercised for compliance purposes (clause 67(1)) or to investigate an accepted building service or HBWC complaint (clause 9(1)) or an accepted disciplinary complaint (clause 19(1)).

66(1) allows access at a reasonable time to places where:

- (a) a building service is or has been carried out. For building and painting work this will be the building site or places where building services are carried out. For building surveyors or certification work this will be the place where they carry out their business; or
- (b) there are relevant records. These may be needed to confirm compliance or to obtain evidence of non-compliance; or
- (c) a registered building service provider carries on business. This would include builders' and painters' offices and depots; or
- (d) where a breach of a building service Act is taking place. This may be a building site or place of business of a registered building service provider.

66(2) does not allow entry to a private place or residence without the occupier's consent or a warrant, unless the place is not occupied and a building service is being carried out.

Clause 67 Powers after entry for compliance purposes or investigation

Sets out broad powers consistent with other occupational legislation that may be needed to determine whether an offence has occurred or to gather evidence for court or disciplinary proceedings. The Building Commissioner will allocate and limit powers under clause 67 to those necessary for the particular person and task. For example, a painting inspector carrying out an inspection following a building service complaint (clause 9) would only be authorised to inspect, photograph and take a sample (clauses 67 (1)(a)(c) and (e)).

Clause 68 Obtaining information and documents

Sets out broad powers consistent with other occupational legislation needed to require providers to provide information and answer questions that may assist in an investigation of a building services or disciplinary complaint. The Building Commissioner can allocate and limit the exercise of these powers under clause 68(2) and (3).

Clause 69 Use of force and assistance

Force or assistance may be needed to gain access to a site, or a place where records are being kept.

An authorised person can only use reasonable force (clause 69(1)) and cannot cause significant damage to property without first obtaining the specific authority of the Building Commissioner (clause 69(2)) in each particular case.

An authorised person may require help to gain access and can obtain this from a police officer or other person (clause 69(3)). A person assisting has the same powers and limitations as an authorised person (clause 69(4)), but a police officer's normal powers are unaffected (clause 69(5)).

Clause 70 Obstruction

Provides that obstructing an authorised person is an offence.

Clause 71 Directions generally

Allows directions to be given orally or in writing and makes failure to comply with a direction an offence.

Division 5 — Entry warrants

Clause 72 Warrant to enter place

An authorised person can obtain an entry warrant from a justice of the peace for compliance purposes or for investigating a building service or HBWC complaint under clause 9 or a disciplinary complaint under clause 19. Clause 72 contains the usual provisions for authorising persons when applying for a warrant.

Clause 73 Issue of warrant

Contains the usual provisions relating to when a justice of the peace to issue an entry warrant.

Clause 74 Effect of entry warrant

Contains the usual provisions for the effect and force of an entry warrant.

Clause 75 Execution of warrant

Operational requirements may mean that the authorised person who obtained the warrant may not be available to execute it. Another authorised person may execute the warrant instead.

PART 5 – REMEDYING DANGEROUS AND OTHER SITUATIONS

Building Commission inspectors and investigators may come across situations on building sites, or in buildings, that represent an immediate danger to people on the site or in the building, or to the people in the vicinity. This Part provides inspectors and investigators with sufficient powers to allow a dangerous situation to be remedied and to keep people away from dangerous situations pending more formal action through either the complaints process under Part 2 of this Bill or enforcement procedures under Part 8 of the Building Bill.

Clause 76 Terms used

Sets out the meaning of the terms used in this subdivision of the Bill.

“dangerous situation” is defined to be a situation where there is an imminent and high risk to people, property or the environment from the carrying out of a building service anywhere throughout the State.

“remediation notice” is defined under clause 80 as a notice that a person is acting without a building or demolition permit, or that a person is acting to create a dangerous situation.

Clause 77 Dangerous situation, emergency remedial measures

77(1) empowers an authorised person to take emergency action, but only when satisfied that a dangerous situation exists and immediate measures are needed.

77(2) sets out the extent of an authorised person’s powers, which are confined to entering and taking possession of a place, isolating the place (clause 78) or taking other action that is necessary and incidental.

77(3) confirms that these powers are in addition to other powers under the Bill and can be exercised in addition to other remedies under the Bill.

77(4) stops an authorised person from exercising a power under this section where the same power has already been exercised under a different law. This prevents duplication of the same task.

Clause 78 Restricting access to dangerous situations

“Unauthorised person”

Is defined as a person who is not an authorised person or someone who is not authorised by an authorised person.

78(1) allows an authorised person to authorise another person to help deal with a dangerous situation.

78(2) allows an authorised person to restrict access to a place where a dangerous situation exists.

78(3) requires the authorised person to tell or notify people that the restricted site exists and what its boundaries are.

78(4) limits the area of the restricted access site to what is reasonably necessary.

78(5) allows the boundaries to be adjusted when required.

78(6) requires an authorised person to remove restrictions on the site when the need for the restrictions has passed.

78(7) empowers an authorised person to guard the site, remove people from the site or prevent vehicles being moved if necessary to ensure that there is the minimum disturbance to the site as possible.

78(8) makes for an offence for unauthorised people to enter a restricted site without a reasonable excuse.

78(9) makes for an offence for an unauthorised person to disturb something at a restricted site.

Clause 79 Recovering costs

79(1) allows the Building Commissioner to recover costs of taking necessary measures for dealing with a dangerous or urgent situation. Costs may be incurred in hiring people to watch over the site, hire of fencing or other barriers, etc.

79(2) allows the costs to be recovered from the owner, the relevant building service provider and the person who caused the dangerous situation.

79(3) provides for a defence against recovery when a person or a person affiliated with that person such as a subcontractor is not at fault.

79(4) confirms other agencies can also recover their costs. This may occur when the Fire and Emergencies Authority, the Environmental Protection Authority or the like are also called to deal with a dangerous situation.

79(5) allows the Building Commissioner's statement of costs to be taken as proof of the costs in court action.

Clause 80 Remediation notice

80(1) empowers an authorised person to give a remediation notice to prevent a breach of the building laws (for example, building or demolishing without a permit, undertaking a building service without being registered) or to prevent a person doing something that will cause a dangerous situation. Note that these powers are only to be exercised in dealing with an urgent or dangerous situation. Once the dangerous situation has been dealt with, the normal enforcement processes through the Bill, Building Bill or the Registration Bill will take place.

80(2) sets out the requirements for a remediation notice. Unless changed under clause 81(1), the notice must give at least seven days for compliance.

80(3) limits the measures in a remediation notice to those that are reasonable in the circumstances.

80(4) confirms that a remediation notice can be used to stop work or isolate a dangerous place.

80(5) prevents an authorised person from duplicating a power already exercised under this section by another written law.

80(6) allows an authorised person to cancel or amend a remediation notice any time.

80(7) makes it an offence to fail to comply with a remediation notice.

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

81(1) allows the Building Commissioner to approve a remediation notice to be issued under clause 80 with a date for compliance less than seven days from the date of the notice.

81(2) requires the Building Commissioner to give written reasons for a shorter compliance period.

81(3) where immediate action is necessary, allows an authorised person to guard the site until a notice requiring immediate action has been given to the relevant person.

Clause 82 Contravention of remediation notice, action by authorised person

82(1) empowers an authorised person to take action if a notice under clause 80 is not complied with.

82(2) confirms that action can include taking possession of a place.

82(3) confirms that an authorised person's powers are in addition to other powers under this Bill.

82(4) allows the Building Commissioner to recover costs incurred in taking action.

82(5) allows the Building Commissioner's statement of costs to be taken as proof of the costs in a court action.

Clause 83 Review by Building Commissioner

83(1) allows the Building Commissioner to review a remediation notice issued by an authorised person and if appropriate, amend, cancel or confirm it.

83(2) allows a person given a remediation notice to ask the Building Commissioner to review it. As remediation notices are for emergency responses to dangerous situations, an application to the SAT for a review would most likely take too long. However applications to the SAT are provided as an alternative under clause 84.

83(3) requires a request for review to be made promptly, and in writing.

83(4) allows the Building Commissioner to suspend a remediation notice while reviewing it.

83(5) requires the Building Commissioner to respond to a request for a review.

83(6) gives effect to any amendments to the remediation notice required by the review.

83(7) requires the Building Commissioner to give reasons for a review decision.

Clause 84 Review by State Administrative Tribunal

Allows a person to ask the SAT to review the decision to issue a remediation notice (clause 83) or the Building Commissioner's decision on a request for review (clause 83).

PART 6 – ADMINISTRATION

This Part sets out the administrative functions that are exercised independently by the Building Commissioner under this Bill. The Building Commissioner will also administer the Building Commission division of the Department as Executive Director under the normal control of the Director General and the Minister. This reflects existing arrangements in the Department of Commerce for the Consumer Protection Commissioner and the Worksafe Commissioner.

Clause 85 Building Commissioner

The Minister must designate a Building Commissioner to head the Building Commission. This person will also normally be the Executive Director of the Department.

Clause 86 Functions

As a statutory office-holder, the Building Commissioner:

- (a) monitors building regulation;
- (b) monitors and reviews operation of the building service Acts;
- (c) administers registration and approval schemes under the Registration Bill;
- (d) administers collection of the building services levy ;
- (e) conducts and promotes research and training;
- (f) advises the Minister on building services;
- (g) provides information on registration and approval of owner-builders;
- (h) provides advice, education and information regarding building standards and codes and consumer protection of building services;
- (i) audits the work of registered building service providers (for example, the Building Commissioner can audit the business practices);
- (j) deals with complaints;
- (k) reviews the cause of complaints and how to reduce them;
- (l) provides advice on making, handling and dealing with complaints under the Bill;
- (m) performs another functions under relevant laws.

Clause 87 Powers

Provides the Building Commissioner with necessary powers, including power to investigate, collaborate in research and use information.

Clause 88 Warning about unsatisfactory or dangerous services

Provides the Building Commissioner with power to warn about building services or practices that may affect consumers or the community. This reflects similar powers given to the Consumer Protection Commissioner under section 17 of the Consumer Affairs Act.

Clause 89 Committees

Allows the Building Commissioner to establish and manage committees to assist in the performance of the Commissioner's functions. This power can also be used to establish or continue advisory committees, such as the Building Regulation Advisory Committee which advises on building standards or, access panels contemplated by the Disability Discrimination Act to provide relief from the application of the Access to Premises Standard in cases of unreasonable hardship.

Clause 90 Disclosure of material personal interest

Provides for declarations of interest by members of committees.

Clause 91 Delegation

Allows the Building Commissioner to delegate powers to officers of the Department or to committees established by the Commissioner. The Building Commissioner must obtain the approval of the Minister to delegate powers to a committee where any member of that committee is not an officer of the Department. This ensures Ministerial accountability for the actions of the Building Commissioner and any committees is maintained.

A person or committee with delegated powers can exercise those powers without direction from the Building Commissioner but cannot delegate those powers.

PART 7 – FINANCIAL PROVISIONS

This Part sets out the provisions for collecting the building services levy and managing the Account. As the levy is in the nature of a tax, its collection is authorised under the Levy Bill.

Division 1 — Building Services Account

Clause 92 Building Services Account

Established the Account as an agency special purpose account to hold money raised by the Levy and other income source, to fund the operations of the Building Commission. Clause 92(3) to (5) outlines the purposes for which money held in the Account may be applied.

Money raised from the Levy and held will also be used to fund the operations of the SAT in dealing with complaints under Part 2 (clause 92(3)). The amount of funding provided to the SAT is to be determined by the Treasurer (clause 92(4)).

Division 2 — Building services levy

Clause 93 Terms used

Sets out the meaning of the terms used in this subdivision of the Bill.

“building approval certificate” is defined under the Building Bill and is available for single-residential and non-habitable buildings where an occupancy permit is not appropriate.

“permit” building, demolition and occupancy permits are defined under clause 3 of the Building Bill. The permit authority may not issue a building permit, a demolition permit, an occupancy permit or a building approval certificate unless satisfied that the relevant Levy has been paid.

Clause 94 Building services levy may be prescribed

94(1) allows for the amount of the Levy to be set out in regulations.

94(2) provides for the Levy to be set at different rates for different circumstances and to prescribe who is to pay it and when it will be paid. This provides flexibility to adjust for changing circumstances, such as the funding needs of the Building Commission and the amount of building activity to which the Levy is applied. At commencement it is expected that the Levy will be:

- applied to building permits as well as occupancy permits and building approval certificates used to retrospectively approve unauthorised building work (Building Bill, clause 49). It will not be applied to demolition permits or other occupancy permits;
- applied at a rate of 0.125% of the value of the building covered by the building permit (the benchmark rate for the comparable Victorian Building Commission is 0.128%);
- doubled for occupancy permits and building approval certificates used to retrospectively authorise building work to act as a disincentive to undertaking work without a building permit; and

- collected by the relevant permit authority and remitted to the Building Commission.

PART 8 – CODES AND STANDARDS

This Part provides the Building Commissioner with the ability to issue industry codes and standards to supplement those issued under Part 3 of the Building Bill and to provide the industry and consumers with a clear indication of standards and conduct to be expected and where appropriate, specified in contracts.

Clause 95 Terms used in this Part

Sets out the meaning of the terms used in this subdivision of the Bill.

“Commissioner code” refers to a code issued by the Building Commissioner under clause 96(1). Building service codes can be developed to provide guidance on various building service practices.

“Commissioner standard” refers to a standard issued by the Building Commissioner under clause 96(1). Building service standards can be prepared to standardise technical construction and demolition practices.

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

Commissioner codes are intended to provide industry and consumers with guidance on conduct required to safely, fairly and economically deliver building services. An example is the *Code of Practice for the Western Australian Building and Construction Industry*.

Commissioner standards are intended to provide industry and consumers with objective measures of building performance, installation and workmanship to promote good quality work and to help in managing contracts and resolving disputes over quality.

Building standard required for the health, safety, amenity and sustainability of buildings, such as the Building Code of Australia, that are checked under Parts 2 and 4 of the Building Bill will normally be specified under Part 3 of that Bill.

96(1) allows the Building Commissioner to develop and issue codes on the carrying out of building services and the conduct of practitioners, and standards about technical matters.

96(2) confirms that codes and standards are subject to normal rules of statutory interpretation.

96(3) requires the Building Commissioner to ensure that the public has access to codes.

96(4) allows the Building Commissioner to advise on the interpretation of codes.

96(5) ensures that simply breaching a code is not a disciplinary matter, but a breach can be considered in dealing with disciplinary matters.

96(6) confirms that a breach of a code is not a criminal or civil offence.

Clause 97 Codes and standards may refer to published documents

This allows reference to published documents such as the Building Code of Australia, Australian Standards and the like.

97(1) allows for a specific edition of a Commissioner standard or Commissioner code to be referenced, or to automatically adopt standards as they are updated.

97(2) allows flexibility in referencing another document.

97(3) recognises that some standards themselves reference other standards. For example, the Australian Standard dealing with steel structures contains references to other Australian Standards dealing with welding, bolting, etc.

97(4) requires the Building Commissioner to ensure that the public has access to referenced documents.

PART 9 – GENERAL PROVISIONS

This Part contains general provisions needed to clarify and ensure the smooth operation of this Bill and the other building services Bills.

Clause 98 Incriminating information

This is a standard provision used to uphold a person’s common-law right of privilege against self-incrimination.

98(1) requires a person to answer a question or provide information to help the Building Commissioner issue a remedy order (clause 47) or help an authorised person in a compliance investigation (clauses 67(1) and 68). This ensures that dealing with complaints can proceed quickly and efficiently.

98(2) protects a person from being prosecuted on the basis of self-incriminating information given in answering any question or providing information to help the Building Commissioner or an authorised person.

Clause 99 Legal professional privilege

Protects the right a person has to claim legal professional privilege.

Clause 100 Protection from liability

Protects people such as the Building Commissioner, authorised persons and people assisting authorised persons from civil action for performing functions under this Bill in good faith.

The State remains vicariously liable for the actions of its servants and employees, and civil action can be taken against the State.

People performing complaint resolution functions have equivalent immunities to people involved in court actions.

Clause 101 Exchange of information

Allows the exchange of information between the Building Commissioner, the Consumer Protection Commissioner and the Board.

Clause 102 Protection for compliance with Act

Provides immunity for people including building service providers and the public where they have complied in good faith with a requirement under the Bill. If a person is required to produce information or a document, the production of such document will not render the person civilly or criminally liable.

Clause 103 Confidentiality

Requires people carrying out functions under this Bill to maintain confidentiality except where required by law.

Clause 104 False or misleading information

104(1) makes it an offence to provide false or misleading information in relation to complaints, compliance and conciliation procedures under this Bill.

104(2) sets out the particular circumstances that makes it an offence in providing false or misleading information.

Clause 105 Offences by body corporate — liability of officers

105(1) defines an “*officer*” of a body corporate to be a director or a person that is involved in its management.

105(2) allows officers of a body corporate to be charged with an offence if the body corporate is also charged.

105(3) convicts the officers of a body corporate charged under 105(2) if the body corporate is also convicted.

105(4) allows officers of a body corporate to be charged with an offence committed by the body corporate even if the body corporate is not charged.

105(5) convicts the officers of a body corporate charged under 105(4) if it is proved the body corporate committed the offence.

105(6) provides a defence for an officer not knowing of or involved in the offence if the officer took all reasonable measures to prevent the offence from being committed.

Clause 106 Prosecutions

Provides that only the Building Commissioner or a person authorised by the Building Commissioner can prosecute under this Bill, and that prosecution must commence within 3 years of the alleged offence and heard by a magistrate.

Clause 107 Service of documents

These are standard provisions for the service of documents on a registered building service provider, natural person or body corporate.

Clause 108 Evidentiary matters

These are standard provisions to streamline court proceedings by not requiring additional proof of procedural matters for any offence under the Bill.

Clause 109 Regulations

Regulations are used in the Registration Bill to provide flexibility in registering different groups of building service providers and in prescribing building services that must only be carried out by registered contractors. Regulations are used under this Bill to provide complementary flexibility in dealing with complaints, making inspections and enforcing compliance. The use of regulations in both Bills is important to allow flexibility in administrative processes to help the building industry adapt to new technology and respond to community demand.

109(1) provides the general regulation-making power.

109(2) confirms that regulations can be made for:

- the complaints process;
- conciliation proceedings;
- investigations and inspections;
- fees and charges;
- when and how fees and charges must be paid; and
- providing information.

109(3) to (5) provide more details on regulations in respect of fees.

109(6) allows the regulations to specify offences for which a penalty of up to \$5,000 may be applied.

Clause 110 Forms

Allows forms to be specified by either the regulations or the Building Commissioner.

Clause 111 Review of Act

This is a standard provision requiring legislative review every 5 years.

PART 10 – CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS

The BR Act and the Painters' Act are repealed by Part 9 Division 2 of the Registration Bill. The greater part of the consequential amendments under this Bill are to the HBC Act to replace references in that Act to the BDT and replace them with references to the Building Commissioner, the SAT or to other processes under this Bill.

Division 1 — *Home Building Contracts Act 1991* amended

Clause 112 *Home Building Contracts Act 1991* amended

Consequential amendments are to the HBC Act under this Division.

Clause 113 Section 3 amended

Deletes reference to the BDT and provides new definitions to suit this Bill and the Registration Bill.

Clause 114 Section 8 amended

Deletes the existing section 8(3) of the HBC Act and replaces it with a new section 8(3) to make for improved drafting.

Clause 115 Section 15 amended

Substitutes the SAT for the BDT as the body that approves forms of contracts that equates to home building work.

Under section 15(4) of the HBC Act the Building Commissioner can receive a form of contract and submit it to the SAT to provide an opinion on whether a contract contains any provision that is unconscionable, harsh or oppressive in accordance with 15(1)(b).

Clause 116 Section 16 deleted

Replaces the former section 16 that limited the jurisdiction of the BDT. Equivalent limits are provided under this Bill for the Building Commissioner (clause 42) and the SAT (clause 43).

Clause 117 Section 17 replaced

Replaces the former section 17 that referred to the BR Act and the BDT with a new section 17 that refers to this Bill and the Building Commissioner. Applications under the new clause 17 will be made to the Building Commissioner.

Clause 118 Section 18 deleted

Section 18 is deleted. The process for making a complaint about a home building work contract under the HBC Act, is included in clause 5(2) of this Bill.

Clause 119 Section 20 replaced

Replaces section 20, which refers to the right of an owner or builder to seek an order from the BDT for termination of a contract, with a new section 20 that allows the owner or builder to make a complaint under clause 5(2) of this Bill.

Clause 120 Sections 21, 22, 23 and 24 deleted

Replaces the former sections 21, 22, 23 and 24 of the HBC Act that relate to procedure of the BDT as these provisions have been incorporated into this Bill.

Clause 121 Section 25D amended

Deletes references to the former BR Act and replaces it with a reference to this Bill.

Clause 122 Section 25G amended

Deletes references to the former BR Act to and replaces it with a reference to this Bill.

Clause 123 Section 27 amended

Deletes references to sections 21(3)(a) of the HBC Act that allowed the BDT to declare a contract void and replaces it with reference to clause 41(3)(a) of this Bill that allows the SAT to declare a contract or any provision of the contract void.

Clause 124 Section 31 replaced

Replaces references to the Registrar and the BRB with references to the Building Commissioner or a person an authorised by the Commissioner with respect to prosecutions. It confirms that all prosecution proceedings under the HBC Act are to commence in a court of summary jurisdiction constituted by a magistrate.

Clause 125 Section 31A deleted

Deletes reference to the BRB and provides for the Building Commissioner to be paid or recover any fees and costs under the HBC Act which are to be credited to the Account.

Clause 126 Schedule 1 amended

Adjusts the wording of Schedule 1 to refer to this Bill.

Division 2 — Other amendments and repeal

Subdivision 1 — Acts amended

Clause 127 *Constitution Acts Amendment Act 1899* amended

Deletes a reference to the BDT.

Clause 128 *Construction Contracts Act 2004* amended

Deletes the definition of Registrar and inserts a definition of “Building Commissioner” to enable that officer to carry out the functions under that Act.

Clause 129 *Magistrates Court (Civil Proceedings) Act 2004* amended

Replaces references to the BDT to the Building Commissioner and the SAT.

Clause 130 *Water Services Licensing Act 1995* amended

Amends the Water Act to require reporting in accordance with the Financial Management Act of the PLB to be made through the department assisting the Minister in the administration of this Part of the Bill. It also allows all fees paid or recovered under the regulations of the Water Act to be credited to the Account, established under this Bill.

Subdivision 2 — Regulations repealed

Clause 131 *Building Disputes Committee Regulations 1992* repealed

Repeals the former Building Disputes Committee Regulations.

Division 3 — Transitional and savings provisions

Clause 132 **Terms used**

This provision outlines the terms used in the transitional provisions.

“*commencement day*” refers to the day in which the Registration Bill under section 107 which repeals the BR Act comes into operation.

“*former tribunal*” refers to the BDT constituted under the repealed Act.

“*repealed Act*” means the BR Act repealed by the Registration Bill.

Clause 133 **Transfer of jurisdiction**

Transfers the functions of the BDT to the Building Commissioner and the SAT.

Save for anything provided under clause 134, upon the commencement day:

- Any matter of the BDT is to be transferred and handled by the Building Commissioner; and
- Any complaint or other matter given to the BDT has effect as if it were given to the Building Commissioner under this Bill.

Clause 134 **Current proceedings continued**

134(1) defines a “*current proceeding*” to mean a hearing that has commenced but has not been concluded by the BDT.

134(2) allows the President of the SAT to declare that a proceeding is a current proceeding, thus allowing it to be finalised under the repealed provisions.

134(3) allows a current proceeding to be finalised under the repealed provisions.

134(4) allows the BDT to continue in existence to deal with a current proceeding.

Clause 135 **Decisions and actions of former Tribunal**

135(1) provides that any decisions of the BDT that would normally have been reviewable to the SAT are to continue to be dealt with under the repealed provisions.

135(2) provides that any decisions or orders of the BDT continue to have effect as if the repealed provisions remained in effect.

Clause 136 **Construction of written laws and other instruments**

Provides that any previous references to a remedy under the former BR Act section 12A continues on after the commencement of this Bill as a reference to a building remedy order under this Bill.

Clause 137 *Construction Contracts Act 2004* amendments: transitional provisions

Any matter commenced by the Registrar under the Construction Contracts Act may be continued by the Building Commissioner.

Clause 138 Regulations for transitional matters

Allows for regulations to deal with transitional matters, in the event there is not a sufficient provision in this Bill to deal with those matters.

APPENDIX: PENALTIES

Introduction

The schedule below lists all penalties in the following bills

- *Building Bill*;
- *Building Services (Complaint Resolution and Administration) Bill*; and
- *Building Services (Registration) Bill*.

The penalties are based on Building Commission assessment of the severity of the offence, consistency with national licensing legislation, and in consideration of Parliamentary Counsel suggestions. A general guide to the penalties as assessed is provided in Table 1.

Penalties for offences are listed at the maximum level for an individual. The maximum levels for a corporation are 5 times that level under the provisions of the *Sentencing Act 1995*.

Parliamentary Counsel has advised that the State Administrative Tribunal and the courts have discretion to tailor penalties to fit the severity of the offence and the risk factors peculiar to the occupation. It is envisaged, therefore, that maximum penalties applied in relation to unregistered painting would be significantly less than offences by builders, given that breaches of the law by builders would be likely to have greater consequences on the public.

TABLE 1: Guide to Penalties:

<i>Severity of Offence</i>	<i>Proposed Penalty</i>
Low	<ul style="list-style-type: none"> • \$5 000 fine.
Medium	<ul style="list-style-type: none"> • \$10 000 fine.
High	<ul style="list-style-type: none"> • \$25 000 fine.
Severe	<ul style="list-style-type: none"> • For a first offence: \$50 000; • For a second offence: \$75 000; and • For a third or subsequent offence: a fine of \$100 000 and 12 months imprisonment (as per section 42 of the <i>Sentencing Act 1995</i>).

Infringement Notices

Some provisions of the bills will be enforced through the issuing of infringement notices in accordance with the *Criminal Procedure Act 2004* and the *Fines, Penalties and Infringement Notices Enforcement Act 1994*. Generally, infringement notices can be issued for non indictable or less serious offences and where guilt is a clear matter of fact, such as failure to display a sign. In such cases, a modified penalty of not more than 20% of the offence may be applied.

SCHEDULE

Building Bill

Clause No.	<i>Clause Title</i>	Severity of Offence	Penalty in Bill
9	<i>No building work without a building permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
10	<i>No demolition work without a demolition permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
29	<i>Compliance with building or demolition permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
30	<i>Display of building or demolition permit details</i>	Medium	A fine of \$10 000.
33	<i>Notice of completion</i>	Medium	A fine of \$10 000.
34	<i>Notice of cessation</i>	Medium	A fine of \$10 000.
37	<i>All buildings to comply with applicable building standards</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
38	<i>All demolition work to comply with applicable building standards</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
41	<i>Certain buildings not to be occupied or used without an occupancy permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
42	<i>Display etc. of, occupancy permit details</i>	Medium	A fine of \$10 000.

Clause No.	Clause Title	Severity of Offence	Penalty in Bill
43	<i>Occupation, use of buildings to comply with occupancy permits</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
44	<i>Compliance with occupancy permit</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
76	<i>No encroachment without consent or court order</i>	High	A fine of \$25 000.
77	<i>Other land not to be adversely affected without consent or court order</i>	High	A fine of \$25 000.
78(1), (2) & (3)	<i>No protection structure in or on other land without consent or court order</i>	78(1) High 78(2) & (3) Medium	A fine of \$25 000. A fine of \$10 000.
79(1) & (2)	<i>Certain work not to affect party walls etc, without consent or court order</i>	79(1) High 79(2) Medium	A fine of \$25 000. A fine of \$10 000.
80(1), (2) & (3)	<i>Fences etc, not to be removed without consent or court order</i>	80(1) Medium 80(2) & (3) Low	A fine of \$10 000. A fine of \$5 000.
81(2), (3) to (6)	<i>No access to other land without consent or court order, and notification</i>	81(2) Medium 81(3) to (6) Low	A fine of \$10 000. A fine of \$5 000.
84	<i>When notice about effect on other land required</i>	Medium	A fine of \$10 000.
86	<i>Application for court orders if no consent</i>	Medium	A fine of \$10 000.
97	<i>Identity cards</i>	Low	A fine of \$5 000.

Clause No.	Clause Title	Severity of Offence	Penalty in Bill
104	<i>Directions generally</i>	Medium	A fine of \$10 000.
105	<i>Obstruction of authorised persons etc</i>	Medium	A fine of \$10 000.
115	<i>Compliance with building order</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
116	<i>Obstruction in relation to building order</i>	Medium	A fine of \$10 000.
146	<i>Confidentiality</i>	High	A fine of \$25 000.
147	<i>False or misleading information</i>	High	A fine of \$25 000.
149	<i>Regulations</i>	Low	A fine not exceeding \$5 000.

Building Services (Complaint Resolution and Administration) Bill

Clause No.	Clause Title	Severity of Offence	Penalty in Bill
25	<i>Attendance at conciliation proceeding</i>	Low	A fine of \$5 000.
47	<i>Provision of information and documents to Building Commissioner</i>	Medium	A fine of \$10 000.
53	<i>Failure to comply with order: offence</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
61	<i>Identity cards</i>	Low	A fine of \$5 000.
70	<i>Obstruction</i>	Medium	A fine of \$10 000.
71	<i>Directions Generally</i>	Medium	A fine of \$10 000.
78	<i>Restricting access to dangerous situations</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
80	<i>Remediation notice</i>	Severe	For a first offence, a fine of \$50 000. For a second offence, a fine of \$75 000. For a third or subsequent offence, a fine of \$100 000 and imprisonment for 12 months.
90	<i>Disclosure of material personal interest</i>	High	A fine of \$25 000.
103	<i>Confidentiality</i>	High	A fine of \$25 000.
104	<i>False or misleading information</i>	High	A fine of \$25 000.
109	<i>Regulations</i>	Low	A fine not exceeding \$5 000.

Building Services (Registration) Bill

Clause No.	Clause Title	Severity of Offence	Penalty
4	<i>Restriction on use of titles</i>	High	A fine of \$25 000.
5	<i>Claims as to registration</i>	High	A fine of \$25 000.
6	<i>Advertising entitlement to carry out prescribed building service when not registered</i>	High	A fine of \$25 000.
7	<i>Carrying out prescribed building service when not registered</i>	High	A fine of \$25 000.
8	<i>Advertisements by building service contractor</i>	Low	A fine of \$5 000.
22(1) & (3)	<i>Effect of not having nominated supervisor</i>	(1) High (3) Medium	A fine of \$25 000. A fine of \$10 000.
25	<i>Compliance with conditions</i>	High	A fine of \$25 000.
32	<i>Notification of change of address</i>	Medium	A fine of \$10 000.
33	<i>Notification of change in eligibility</i>	Medium	A fine of \$10 000.
34	<i>Notification of financial difficulty</i>	Medium	A fine of \$10 000.
35	<i>Notification of certain offences</i>	Medium	A fine of \$10 000.
36	<i>Notification of disciplinary action</i>	Medium	A fine of \$10 000.
37	<i>Return of registration certificate</i>	Low	A fine of \$5 000.
49	<i>Compliance with conditions</i>	High	A fine of \$25 000.
57	<i>Board may deal with certain complaints</i>	Low	A fine of a specified amount not exceeding \$5 000.
58	<i>Jurisdiction of State Administrative Tribunal</i>	High	A fine not exceeding \$25 000.
89	<i>Disclosure of interest</i>	High	A fine of \$25 000.
99	<i>False or misleading information</i>	High	A fine of \$25 000.

Clause No.	Clause Title	Severity of Offence	Penalty
100	<i>Confidentiality of information</i>	High	A fine of \$25 000.
104	<i>Regulations</i>	Low	A fine of \$5 000.