

## TASMANIA

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# OCCUPATIONAL LICENSING AMENDMENT BILL 2016

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**OCCUPATIONAL LICENSING AMENDMENT  
BILL 2016**

*(Brought in by the Minister for Building and Construction, the  
Honourable Adam Richard Brooks)*

**A BILL FOR**

**An Act to amend the *Occupational Licensing Act 2005***

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

**1. Short title**

This Act may be cited as the *Occupational Licensing Amendment Act 2016*.

**2. Commencement**

This Act commences on the day on which section 4 of the *Building Act 2016* commences.

**3. Principal Act**

In this Act, the *Occupational Licensing Act 2005*\* is referred to as the Principal Act.

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\*No. 47 of 2005

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**4. Section 3 amended (Interpretation)**

Section 3 of the Principal Act is amended as follows:

- (a) by inserting the following definitions after the definition of *body corporate* in subsection (1):

***building services licence*** means a licence issued under Division 3A of Part 4;

***building services provider*** means a person who is the holder of a building services licence;

***building services work*** means any prescribed work that is –

- (a) prescribed in the regulations as building services work; and
- (b) not excluded from the application of this Act by the regulations;
- (b) by omitting “practitioner” twice occurring from the definition of *fit and proper* in subsection (1) and substituting “practitioner, building services provider”;
- (c) by inserting the following definitions after the definition of *licence* in subsection (1):

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***licensed entity*** means a body corporate, partnership or municipal council that holds a building services licence in accordance with section 37C;

***licensed person***, of a licensed entity, means –

- (a) in the case of a body corporate that is a licensed entity, a director of the body corporate who holds a building services licence as an individual; or
- (b) in the case of a partnership that is a licensed entity, a partner of the partnership who holds a building services licence as an individual; or
- (c) in the case of a municipal council that is a licensed entity, a person employed or engaged by the municipal council who holds a building services licence as an individual;

***National Construction Code*** means the National Construction Code series published by the Australian

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Building Codes Board, as amended or substituted from time to time;

- (d) by omitting the definition of *owner* from subsection (1) and substituting the following definitions:

***owner*** – see section 3A;

***owner builder*** means a person who holds an owner builder permit;

***owner builder permit*** means a permit issued under Part 3A;

- (e) by omitting “work” from the definition of *practitioner* in subsection (1) and substituting “work other than building services work”;

- (f) by omitting subsection (3) and substituting the following subsections:

(3) Unless the contrary intention appears, an expression used in this Act that is defined in the *Building Act 2016* has the same meaning in this Act as in section 4 of the *Building Act 2016*.

(4) A reference in this Act to the class of a building is a reference to that class as set out in the National Construction Code.



**5. Section 3A inserted**

After section 3 of the Principal Act, the following section is inserted in Part 1:

**3A. Meaning of *owner***

For the purposes of this Act, a person is an owner, in respect of any premises –

- (a) in the case of an owner as referred to in sections 22A and 29B, if the person is an owner within the meaning of section 4 of the *Building Act 2016*; or
- (b) in any other case, if the person –
  - (i) is entitled to any interest in the premises; or
  - (ii) has contracted to buy the premises; or
  - (iii) is entitled to receive, or is in receipt of, the rents and profits of the premises, whether as beneficial owner, trustee, mortgagee in possession or otherwise; or
  - (iv) has, or is entitled to have, the management or control of any premises.

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**6. Section 4 amended (Meaning of continuing professional development)**

Section 4 of the Principal Act is amended by omitting “practitioner” and substituting “practitioner, or building services provider.”

**7. Section 7 amended (Application of Act to occupations, trades and callings)**

Section 7 of the Principal Act is amended by inserting after subsection (1B) the following subsection:

(1BA) This Act applies to the occupation, trade or calling that is performance of building services work as described in Part 4 of Schedule 2.

**8. Section 9 amended (Application of other Acts)**

Section 9(1)(a) of the Principal Act is amended by omitting “practitioners” and substituting “practitioners, building services providers”.

**9. Section 13 amended (Power to obtain information)**

Section 13(2) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or

- (b) an individual, a fine not exceeding 50 penalty units.

**10. Section 14 amended (Occupational Licensing Advisory Board)**

Section 14 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “contractors and practitioners” and substituting “contractors, practitioners and building services providers”;
- (b) by omitting from subsection (2)(c) “practitioners” and substituting “practitioners, building services providers”;
- (c) by omitting from subsection (4) “practitioners” and substituting “practitioners, building services providers”.

**11. Section 16 amended (Appointment of authorised officers)**

Section 16 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

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(a) a body corporate, a fine not exceeding 150 penalty units; or

(b) an individual, a fine not exceeding 75 penalty units.

(b) by omitting the table from subsection (5) and substituting the following penalty:

Penalty: Fine not exceeding 20 penalty units.

**12. Section 19 amended (Powers of authorised officers)**

Section 19(c) of the Principal Act is amended by omitting “practitioners” and substituting “practitioners, or building services providers,”.

**13. Section 20 amended (Offences relating to authorised officers)**

Section 20 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 400 penalty units; or

(b) an individual, a fine not exceeding 200 penalty units.

**14. Section 21 amended (Obligation to hold contractor's licence)**

Section 21 of the Principal Act is amended as follows:

- (a) by omitting “work” and substituting “work, other than building services work,”;
- (b) by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

**15. Section 22 amended (Obligation to hold practitioner's licence)**

Section 22 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “work” first occurring and substituting “work, other than building services work,”;
- (b) by omitting the penalty from subsection (1) and substituting the following penalty:

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (c) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (d) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

**16. Section 22A inserted**

After section 22 of the Principal Act, the following section is inserted in Part 3:

**22A. Obligation to hold building services licence**

- (1) A person must not manage, carry out, or enter into a contract to manage or carry out, any building services work unless the person holds a building services licence of the occupation and class relevant to the building services work.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (2) Subsection (1) does not apply to –
- (a) a person managing and carrying out building services work if –
    - (i) the person is an owner builder; and
    - (ii) the building services work is carried out under the authority of the owner builder permit held by the person; and

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- (iii) each owner, that has attained the age of 18 years, of the premises where the building services work is, or is to be, carried out is an owner builder in relation to the premises; or
- (b) a person managing or carrying out building services work, if the person is employed or engaged to manage or carry out that work by –
  - (i) a building services provider who holds a building services licence of the occupation and class relevant to the building services work; or
  - (ii) a licensed entity that holds a building services licence of the occupation and class relevant to the building services work; or
  - (iii) an owner builder who holds an owner builder permit that authorises the building services work to be so managed or carried out; or



- (c) a licensed plumber practitioner managing or carrying out –
    - (i) the replacement of roof decking; or
    - (ii) any other class of prescribed plumbing work –  
  
that is also building work, or demolition work, under the *Building Act 2016* that requires a certificate of likely compliance under that Act; or
  - (d) a licensed electrical practitioner managing or carrying out prescribed electrical work that is building work, or demolition work, under the *Building Act 2016* that requires a certificate of likely compliance under that Act; or
  - (e) a prescribed person, a class of prescribed persons, or a person in prescribed circumstances.
- (3) A building services provider must ensure that he or she acts only in the area of his or her competence.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

**17. Section 23 amended (Duties of licence holders and nominated managers relating to prescribed work)**

Section 23 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

- (b) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or

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(b) an individual, a fine not exceeding 50 penalty units.

(c) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 125 penalty units.

(d) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 125 penalty units.

(e) by omitting the penalty from subsection (5) and substituting the following penalty:

Penalty: In the case of –

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(a) a body corporate, a fine not exceeding 250 penalty units; or

(b) an individual, a fine not exceeding 125 penalty units.

**18. Section 24 amended (Duties of owners and occupiers relating to prescribed work)**

Section 24 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 50 penalty units; or

(b) an individual, a fine not exceeding 20 penalty units.

**19. Section 25 amended (Duties of licence holders)**

Section 25 of the Principal Act is amended as follows:

(a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 250 penalty units; or
  - (b) an individual, a fine not exceeding 125 penalty units.
- (b) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
  - (b) an individual, a fine not exceeding 125 penalty units.
- (c) by inserting the following subsection after subsection (2):

(2A) A licensed entity must ensure that any building services work prescribed for the purposes of this subsection, that is carried out under the licence of the licensed entity, is carried out by a person who is the holder of a building services licence of the relevant occupation and class.

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 250 penalty units; or
- (b) an individual, a fine not exceeding 125 penalty units.
- (d) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
- (b) an individual, a fine not exceeding 125 penalty units.

**20. Section 26 amended (Obligation to ensure that contractor's business is properly managed)**

Section 26 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (b) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (c) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

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**21. Section 29 amended (Offences relating to insurance cover)**

Section 29 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

- (b) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 150 penalty units; or
- (b) an individual, a fine not exceeding 75 penalty units.

- (c) by inserting the following subsections after subsection (3):



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(3A) A building services provider must not carry out any building services work, or allow any building services work to be carried out under his or her licence, unless he or she holds, or is taken to hold, the insurance cover as required under section 27.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 500 penalty units; or
- (b) an individual, a fine not exceeding 100 penalty units.

(3B) A building services provider must not represent that he or she holds, or is taken to hold, the insurance cover as required under section 27, unless that is the case.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 150 penalty units; or
- (b) an individual, a fine not exceeding 75 penalty units.

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- (3C) A court that convicts a person of an offence under subsection 3A is to order, in addition to any other penalty imposed in respect of the offence, that the person pay into the Fund an amount equal to the total of any insurance premiums which the court is satisfied the person has avoided by failing to maintain the insurance cover as required under section 27.
- (d) by omitting from subsection (4) “practitioner” and substituting “practitioner, or building services provider,”;
- (e) by omitting the penalty from subsection (4) and substituting the following penalty:
- Penalty: In the case of –
- (a) a body corporate, a fine not exceeding 150 penalty units; or
- (b) an individual, a fine not exceeding 75 penalty units.
- (f) by omitting from subsection (5) “contractor” and substituting “contractor, or building services provider,”;

- (g) by omitting the penalty from subsection (5) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 300 penalty units; or
- (b) an individual, a fine not exceeding 150 penalty units.

**22. Part 3A inserted**

After section 29 of the Principal Act, the following Part is inserted:

**PART 3A – PERMITS FOR OWNER BUILDERS**

**29A. Building work for which an owner builder permit may be issued**

- (1) An owner builder permit may only be issued under this Part to a person who intends to manage or carry out building work on a Class 1a building under the authority of the permit.
- (2) Despite subsection (1), a person does not require an owner builder permit under this Part if the person intends to manage or carry out building work –

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- (a) that is excluded from the application of this Part by the regulations; or
- (b) that is building services work that is excluded from the application of this Act by the regulations.

**29B. Eligibility for owner builder permit**

- (1) A person is eligible to hold an owner builder permit if the person –
  - (a) meets the prescribed criteria; and
  - (b) is, or will be, covered by the insurance required under section 29F(1) at the time the permit is issued; and
  - (c) has successfully completed an owner builder training course, approved under subsection (3), within the 12-month period immediately before he or she is the subject of an application for an owner builder permit; and
  - (d) has engaged a building surveyor in respect of the work to be performed as an owner builder as required under the *Building Act 2016*.
- (2) Subsection (1)(c) does not apply to a person if –

- (a) he or she intends to manage or carry out building work as an owner builder in respect of premises; and
  - (b) an owner of those premises is also an owner builder in relation to those premises and has complied with subsection (1)(c).
- (3) The Administrator may, by notice in the *Gazette*, approve a specific training course, or a training course provided by a person or body specified in the notice, as an owner builder training course for the purposes of subsection (1)(c).
- (4) A notice under subsection (3) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

**29C. Application for owner builder permit**

An application for an owner builder permit –

- (a) must be made by a building surveyor engaged on behalf of the person intending to hold the owner builder permit; and
- (b) is to be in the approved form; and
- (c) is to be accompanied by the prescribed fee.

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**29D. Determination of applications for owner builder permit**

- (1) On receipt of an application under section 29C, the Administrator must consider the application and –
  - (a) issue a permit to the person intending to hold the owner builder permit, which may be unconditional or subject to any conditions that the Administrator considers appropriate; or
  - (b) refuse the application.
- (2) Unless otherwise agreed with the applicant, the Administrator is to make a decision within 21 days after receiving the application.
- (3) The Administrator may only issue a permit under subsection (1)(a) to a person if the Administrator is satisfied that the person –
  - (a) has engaged a building surveyor in respect of the work to be performed by the person as an owner builder under the owner builder permit; and
  - (b) is eligible under section 29B to hold an owner builder permit.
- (4) Despite subsection (3)(b), the Administrator may issue a permit under

subsection (1)(a) to a person who is not eligible under section 29B to hold an owner builder permit if the Administrator considers that special circumstances exist.

- (5) If the Administrator refuses to issue an owner builder permit under this section, the Administrator is to give the applicant written notice setting out the reasons for the refusal.
- (6) An applicant may request the Administrator to review the decision and, if he or she is not satisfied with the review, the applicant may appeal to the Magistrates Court (Administrative Appeals Division) under section 82.

**29E. Cancellation of owner builder permit**

The Administrator may cancel an owner builder permit if he or she is satisfied that –

- (a) the owner builder permit was obtained by fraud or by making a false or misleading statement; or
- (b) the holder of the owner builder permit did not manage, or carry out, the building work to which that permit related; or
- (c) the holder of the owner builder permit did not obtain a building

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- permit under the *Building Act 2016*, in relation to the building work to be performed under the owner builder permit, within 12 months of the owner builder permit being issued; or
- (d) a building permit obtained under the *Building Act 2016*, in relation to the building work to be performed under the owner builder permit, has expired or has been cancelled; or
  - (e) the building work to be performed under the owner builder permit is detrimental to public safety; or
  - (f) the holder of the owner builder permit does not hold the insurance required under section 29F; or
  - (g) the holder of the owner builder permit has committed an offence under –
    - (i) this Act; or
    - (ii) the *Building Act 2016*.

**29F. Insurance for owner builders**

- (1) The Administrator may, by notice published in the *Gazette*, require an



owner builder to be covered by insurance of a type and to an amount specified in the notice.

- (2) A notice published under this section may be combined with a notice published under section 27.
- (3) A person must not manage or carry out building work under an owner builder permit unless he or she holds, or is taken to hold, the insurance required under this section.

Penalty: Fine not exceeding 200 penalty units.

**23. Part 4: Heading amended**

Part 4 of the Principal Act is amended by omitting “**CONTRACTORS AND PRACTITIONERS**” from the heading to that Part and substituting “**CONTRACTORS, PRACTITIONERS AND BUILDING SERVICES PROVIDERS**”.

**24. Section 30 amended (Classes of prescribed work)**

Section 30(1) of the Principal Act is amended by omitting “licences” and substituting “licences or permits”.

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**25. Section 32 amended (Publication of determinations and amendments)**

Section 32(1) of the Principal Act is amended as follows:

- (a) by omitting “must” and substituting “may”;
- (b) by omitting “may consult with”.

**26. Section 33 amended (Application for contractor’s licence)**

Section 33(2)(b)(i) of the Principal Act is amended by omitting “class” and substituting “class, including whether the applicant has a sound and stable financial background”.

**27. Section 34 amended (Determination of application)**

Section 34(3) of the Principal Act is amended by omitting “, on the request of the applicant, must” and substituting “is to”.

**28. Section 35 amended (Enforceability of contracts)**

Section 35(1) of the Principal Act is amended as follows:

- (a) by omitting “section 21, 22 or 26” first occurring and substituting “section 21, 22, 22A or 26 ”;

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- (b) by omitting from paragraph (c) “section 21, 22 or 26” and substituting “section 21, 22, 22A or 26”.

**29. Section 36 amended (Application for practitioner’s licence)**

Section 36(2)(b)(ii) of the Principal Act is amended by omitting “fitness” and substituting “fitness, including whether the applicant has a sound and stable financial background,”.

**30. Section 37 amended (Determination of application)**

Section 37(3) of the Principal Act is amended by omitting “Administrator, on the request of the applicant, must give him or her” and substituting “Administrator is to give the applicant”.

**31. Part 4, Division 3A inserted**

After section 37 of the Principal Act, the following Division is inserted in Part 4:

***Division 3A – Building services licences***

**37A. Application for building services licence**

- (1) An application for a building services licence is to be –
- (a) made to the Administrator in an approved form; and

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- (b) accompanied by the prescribed fee.
- (2) The application –
- (a) is to state the occupation and class of building services work for which the licence is sought; and
  - (b) is to be accompanied by any information required by the Administrator relating to –
    - (i) the applicant’s qualifications, experience and competence to perform the functions of, or carry out the work of, the relevant occupation and class; and
    - (ii) the applicant’s capacity, competence and fitness, including whether the applicant has a sound and stable financial background, to carry out building services work of that occupation and class; and
    - (iii) the maintenance of the applicant’s skills and continuing professional development.

- (3) The Administrator may, as a condition of issuing a building services licence, require the applicant to show satisfactory completion of an approved course of training.

**37B. Determination of application**

- (1) On receipt of an application for a building services licence, the Administrator must consider the application and –
- (a) issue an appropriate licence to the applicant, which may be unconditional or subject to any conditions that the Administrator considers appropriate; or
  - (b) refuse the application if satisfied that the applicant –
    - (i) does not have the qualifications, experience or competence to perform the functions of, or carry out the work of, a building services provider as appropriate for the occupation and class of the licence being sought by the applicant; or
    - (ii) is not, or is not likely to be, covered by the

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- insurance required under section 27; or
  - (iii) does not satisfy the prescribed requirements; or
  - (iv) has previously had a licence, or similar accreditation as a building services provider refused, suspended or cancelled, in Tasmania or in another State or a Territory.
- (2) Unless otherwise agreed with the applicant, the Administrator is to make a decision within 21 days after receiving the application.
- (3) If the Administrator refuses the application, the Administrator is to give the applicant written notice setting out the reasons for the refusal.
- (4) The applicant may request the Administrator to review the decision and, if he or she is not satisfied with the review, the applicant may appeal to the Magistrates Court (Administrative Appeals Division) under section 82.

**37C. Certain organisations may apply for building services licence**

- (1) The following organisations may apply for a building services licence:
  - (a) a body corporate;
  - (b) a partnership;
  - (c) a municipal council.
- (2) An application under subsection (1) is to –
  - (a) be made to the Administrator in an approved form; and
  - (b) be accompanied by the prescribed fee; and
  - (c) nominate a person to be the licensed person of the licensed entity; and
  - (d) be accompanied by any information required by the Administrator in relation to the application.
- (3) A person may only be nominated as a licensed person under subsection (2)(c) if –
  - (a) in the case of a body corporate, the person is a director of the body corporate who holds a building services licence; or

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- (b) in the case of a partnership, the person is a partner of the partnership who holds a building services licence; or
  - (c) in the case of a municipal council, the person is a person employed or engaged by the municipal council who holds a building services licence.
- (4) The Administrator is to –
  - (a) only issue a building services licence in respect of an application under subsection (1) if the Administrator accepts the nominated person as the licensed person of the licensed entity; and
  - (b) otherwise deal with an application made in accordance with this section as if the application were made by a natural person.
- (5) Unless otherwise specified in this Act, a building services licence, issued in respect of a licensed entity, ceases to have effect if the licensed person of the licensed entity –
  - (a) ceases, or is to cease, to be the licensed person of the licensed entity; or
  - (b) dies; or



- (c) has been disqualified from managing corporations under Part 2D.6 of the Corporations Act.

**37D. Continuation of building services licence held by certain organisations**

- (1) In this section –

*prescribed period* means 28 days or such other period prescribed in the regulations, if any;

*relevant event*, in relation to a licensed person of a licensed entity, means an event specified in section 37C(5).

- (2) A licensed entity must notify the Administrator in writing as soon as practicable after becoming aware that a relevant event has occurred, or is to occur, in respect of the licensed person of the licensed entity.
- (3) A notice under subsection (2) –
  - (a) is to specify the date on which the relevant event occurred or is to occur; and
  - (b) may include –
    - (i) the surrender of the building services licence of the licensed entity; or

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- (ii) a nomination of a person to be the licensed person of the licensed entity; or
  - (iii) a nomination of a permanent employee of the licensed entity, who holds a building services licence, to be the temporary licensed person of the licensed entity.
- (4) At any stage before the expiry of the prescribed period after a relevant event notified by a licensed entity under subsection (2), the licensed entity may, by notice in writing to the Administrator –
  - (a) surrender the building services licence of the licensed entity; or
  - (b) nominate a person to be the licensed person of the licensed entity; or
  - (c) nominate a permanent employee of the licensed entity, who holds a building services licence, as the temporary licensed person of the licensed entity.
- (5) The Administrator must cancel the building services licence of a licensed entity at the expiry of the prescribed period after a relevant event notified under subsection (2) unless –

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- (a) the licence has been surrendered;  
or
  - (b) the Administrator accepts the person nominated under subsection (3)(b)(ii) or subsection (4)(b) as the licensed person of the licensed entity; or
  - (c) the Administrator accepts the person nominated under subsection (3)(b)(iii) or subsection (4)(c) as the temporary licensed person of the licensed entity.
- (6) If the Administrator accepts a person nominated under subsection (3)(b)(iii) or subsection (4)(c), the licensed entity must, within three months of that nomination, nominate a person as the licensed person of the licensed entity.
- (7) If the Administrator does not accept a person nominated as the licensed person under subsection (6), the Administrator must cancel the building services licence held by the licensed entity.
- (8) The Administrator is to notify a licensed entity of the cancellation of the building services licence held by the licensed entity under subsection (5) or (7) by notice in writing to the licensed entity that specifies –
- (a) that the licence is cancelled; and

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- (b) the reason for cancelling the licence.

**32. Section 38 amended (Offences)**

Section 38 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “practitioner” and substituting “practitioner, building services provider”;
- (b) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 150 penalty units; or
- (b) an individual, a fine not exceeding 75 penalty units.

- (c) by omitting the penalty from subsection (2) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or

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(b) an individual, a fine not exceeding 200 penalty units.

(d) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 150 penalty units; or

(b) an individual, a fine not exceeding 75 penalty units.

(e) by omitting the penalty from subsection (4) and substituting the following penalty:

Penalty: In the case of –

(a) a body corporate, a fine not exceeding 150 penalty units; or

(b) an individual, a fine not exceeding 75 penalty units.

(f) by omitting the penalty from subsection (5) and substituting the following penalty:

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- (a) a body corporate, a fine not exceeding 150 penalty units; or
  - (b) an individual, a fine not exceeding 75 penalty units.
- (g) by omitting the penalty from subsection (6) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 200 penalty units; or
  - (b) an individual, a fine not exceeding 125 penalty units.
- (h) by inserting the following subsections after subsection (6):
- (7) A person must not use a building services licence granted to another person for the purposes of –
    - (a) entering into a contract for building services work; or
    - (b) managing or carrying out building work; or

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- (c) making an application under the *Building Act 2016*; or
- (d) providing notification or other information under the *Building Act 2016*; or
- (e) obtaining authorisation under the *Building Act 2016* to start work.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (8) The holder of a building services licence must not permit the use of that licence by any other person for the purposes of the other person –
- (a) entering into a contract for building services work; or
  - (b) managing or carrying out building work; or

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- (c) making an application under the *Building Act 2016*; or
- (d) providing notification or other information under the *Building Act 2016*; or
- (e) obtaining authorisation under the *Building Act 2016* to start work.

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 400 penalty units; or
  - (b) an individual, a fine not exceeding 200 penalty units.
- (9) Subsections (7) and (8) do not prohibit the use of a building services licence by a person as part of the ordinary business activities of the holder of that building services licence.

**33. Section 39 amended (Vicarious liability)**

Section 39 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):



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(1A) If a licensed entity commits an offence under this Act –

- (a) if the licensed entity is a body corporate, each director or manager of the licensed entity; or
- (b) if the licensed entity is a partnership, each partner of the licensed entity; or
- (c) if the licensed entity is a municipal council, each person who has the management or control of the licensed person for the licensed entity –

is taken to have committed the offence and is punishable accordingly, whether or not proceedings have been brought against the licensed entity.

- (b) by omitting from subsection (2) “subsection (1)” and substituting “subsection (1) or (1A)”;
- (c) by omitting from subsection (3) “subsection (1)” and substituting “subsection (1) or (1A)”;
- (d) by omitting from subsection (4) “If a body corporate commits” and substituting “Subject to subsection (1A), if a body corporate commits”.

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**34. Section 40 amended (Power to add, &c., conditions of licence)**

Section 40(2) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 150 penalty units; or
- (b) an individual, a fine not exceeding 75 penalty units.

**35. Section 41 amended (Certificate of identification)**

Section 41(3) of the Principal Act is amended by omitting the table and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 150 penalty units; or
- (b) an individual, a fine not exceeding 75 penalty units.

**36. Section 42 amended (Term of licence)**

Section 42 of the Principal Act is amended by omitting “licence” first occurring and substituting “licence, a building services licence”.

**37. Section 44 amended (Surrender of licence)**

Section 44(2) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

**38. Section 47 amended (Production of certificate of identification)**

Section 47 of the Principal Act is amended as follows:

- (a) by omitting the penalty from subsection (1) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

- (b) by omitting the penalty from subsection (2) and substituting the following penalty:

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Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 50 penalty units; or
- (b) an individual, a fine not exceeding 20 penalty units.

**39. Section 49 amended (Registers)**

Section 49 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(e) “practitioner,” and substituting “practitioner or building services provider,”;
- (b) by inserting the following subsections after subsection (5):
  - (5A) For the purposes of this Act, the Administrator is to keep a separate register of –
    - (a) the details of each owner builder permit issued under Part 3A; and
    - (b) such other information relating to the permit holder as the Administrator considers appropriate for the purposes of this Act.

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(5B) The register kept under subsection (5A) is to only be made available to the Director of Building Control, and building surveyors and permit authorities within the meaning of the *Building Act 2016*.

**40. Section 53 amended (Codes of practice)**

Section 53 of the Principal Act is amended as follows:

- (a) by omitting from subsection (4)(b) “work.” and substituting “work; and”;
- (b) by inserting the following paragraph after paragraph (b) in subsection (4):
  - (c) building services providers, in relation to –
    - (i) professional conduct, competence, diligence and integrity; and
    - (ii) professional responsibilities of each occupation and class of building services providers; and
    - (iii) compliance with legislation related to building services work; and

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- (iv) communication with all parties involved in building services work; and
  - (v) performance management of holders of a building services licence; and
  - (vi) conduct and behaviour of the holder of a building services licence.
- (c) by omitting from subsection (5) “practitioners” and substituting “practitioners or building services providers.”.

**41. Section 54 amended (Certification of prescribed work)**

Section 54(2) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

**42. Section 57 amended (Power to make rectification order)**

Section 57 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “work” and substituting “work, that is not building services work,”;
- (b) by omitting the penalty from subsection (3) and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 250 penalty units; or
- (b) an individual, a fine not exceeding 125 penalty units.

**43. Section 58 amended (Powers of authorised officers in emergency)**

Section 58(3) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 150 penalty units; or

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- (b) an individual, a fine not exceeding 75 penalty units.

**44. Section 59 amended (Complaints)**

Section 59 of the Principal Act is amended as follows:

- (a) by omitting paragraph (c) from subsection (2) and substituting the following paragraph:

- (c) if the complaint relates to defective work that is prescribed work, is to be made within 1 year of the completion of the prescribed work to which it relates.

- (b) by omitting paragraph (b) from subsection (4) and substituting the following paragraph:

- (b) after preliminary inquiries, the Administrator has determined that the person against whom the complaint is made has no case to answer; or

**45. Section 79 amended (Reviewable decisions)**

Section 79(1)(a) of the Principal Act is amended as follows:

- (a) by inserting “section 29D, section 29E,” after “section 13,”;



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- (b) by inserting “section 37A(3), section 37B(1)(a) or (b),” after “section 37(1)(a) or (b),”.

**46. Section 86 amended (Evidentiary provisions)**

Section 86(5) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “person or a practitioner” and substituting “person, practitioner or building services provider”;
- (b) by omitting from paragraph (b) “person or a practitioner” and substituting “person, practitioner or building services provider”;
- (c) by omitting from paragraph (d) “practitioner” and substituting “practitioner or building services provider”.

**47. Section 90 amended (Proper cause for disciplinary action)**

Section 90(2) of the Principal Act is amended as follows:

- (a) by omitting “practitioner” and substituting “practitioner, or building services provider,”;

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- (b) by omitting from paragraph (c) “licence.” and substituting “licence, building services licence; or”;
- (c) by inserting the following paragraph after paragraph (c):
  - (d) if the building services provider is a licensed entity, the Administrator is satisfied that a licensed person, employee or agent of the licensed entity –
    - (i) would be guilty of improper conduct; or
    - (ii) would not be a fit and proper person –if he or she were a building services provider.

**48. Section 91 substituted**

Section 91 of the Principal Act is repealed and the following section is substituted:

**91. Notice of intent to take disciplinary action**

- (1) If the Administrator believes, on reasonable grounds, that there may be cause for disciplinary action against a licence holder under this Part, the Administrator is to give the licence holder a notice of intent to take disciplinary action.

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- (2) A notice of intent under subsection (1) is to –
- (a) be in writing; and
  - (b) specify –
    - (i) that the Administrator believes there is cause for disciplinary action; and
    - (ii) the reasons the Administrator has for believing that there is cause for disciplinary action against the licence holder; and
    - (iii) that the Administrator intends to refer the matter to the disciplinary panel under section 92; and
    - (iv) that the licence holder, within 28 days after receiving the notice of intent, may make a written response to the Administrator as to why the disciplinary action should not be taken; and
    - (v) the procedure to be followed by the licence holder in making such a written response.

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- (3) A licence holder who has been given a notice of intent may apply, in writing, to the Administrator for an extension of the period specified in subsection (2)(b)(iv) in respect of that notice of intent.
- (4) After receiving a written application under subsection (3), the Administrator may, in respect of a notice of intent –
  - (a) grant a single extension of the period specified in subsection (2)(b)(iv) by such further period, not exceeding 14 days, as the Administrator considers appropriate in the circumstances; or
  - (b) refuse to grant an extension of the period specified in subsection (2)(b)(iv).
- (5) After taking into account any written response made by a licence holder in accordance with subsection (2)(b), the Administrator may refer the matter specified in the notice of intent to the disciplinary panel under section 92.

**49. Section 92 amended (Disciplinary panels)**

Section 92(2)(b)(i) of the Principal Act is amended by omitting “show cause notice” and substituting “notice of intent to take disciplinary action”.

**50. Section 97 amended (Confidentiality)**

Section 97 of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

**51. Section 98 amended (Contractors to keep register)**

Section 98(4) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

- (a) a body corporate, a fine not exceeding 100 penalty units; or
- (b) an individual, a fine not exceeding 50 penalty units.

**52. Section 99 amended (Exemptions)**

Section 99(4) of the Principal Act is amended by omitting the penalty and substituting the following penalty:

Penalty: In the case of –

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- (a) a body corporate, a fine not exceeding 400 penalty units; or
- (b) an individual, a fine not exceeding 200 penalty units.

**53. Section 100 repealed**

Section 100 of the Principal Act is repealed.

**54. Section 103 amended (Regulations)**

Section 103(2) of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) and substituting the following paragraph:
  - (b) contractors' licences, practitioners' licences, building services licences and owner builder permits;
- (b) by inserting the following paragraph after paragraph (m):
  - (ma) any matter that is necessary or desirable arising from the *Occupational Licensing Amendment Act 2016*;

**55. Section 104 amended (Transitional and savings provisions)**

Section 104 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (4) Part 4 of Schedule 5 has effect.

**56. Schedule 1 repealed**

Schedule 1 to the Principal Act is repealed.

**57. Schedule 2 amended (Occupations, Trades and Callings to Which this Act Applies)**

Schedule 2 to the Principal Act is amended by inserting after Part 3 the following Part:

**PART 4 – PERFORMANCE OF BUILDING SERVICES WORK**

1. Performance of building work including the construction, or demolition, of buildings or temporary structures.
2. Design of premises, buildings, building work, temporary structures, plumbing work or plumbing installations.
3. Inspection, testing, assessment and certification of premises, buildings, building work, temporary structures, plumbing work or plumbing installations.
4. Providing authorisations or approvals to perform building work, or plumbing

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work, on premises, buildings, temporary structures or plumbing installations.

**58. Schedule 4 amended (Constitution, Membership and Meetings of Board)**

Schedule 4 to the Principal Act is amended as follows:

- (a) by omitting clause 1 and substituting the following clause:

**1. Constitution of Board**

The Board is to consist of –

- (a) the Administrator; and
  - (b) at least 6, but not more than 8, other members appointed by the Minister on the advice of the Administrator.
- (b) by inserting in clause 2(1) “under clause 1(b)” after “Board”;
- (c) by inserting in clause 2(2) “building services providers,” after “practitioners,”;
- (d) by omitting clause 3 and substituting the following clause:

**3. Chairperson**

The Chairperson of the Board is the Administrator.



- (e) by inserting in clause 4(1) “appointed under clause 1(b)” after “Each member of the Board”;
- (f) by inserting in clause 4(2) “appointed under clause 1(b)” after “Board”;
- (g) by inserting in clause 4(3) “appointed under clause 1(b)” after “Board”.

**59. Schedule 5 amended (Transitional and Savings Provisions)**

Schedule 5 to the Principal Act is amended by inserting after clause 3 in Part 3 the following Part:

**PART 4 – PROVISIONS RELATING TO THE *OCCUPATIONAL LICENSING AMENDMENT ACT 2016***

***Division 1 – Savings and transitionals for accredited building practitioners and related matters***

**1. Savings for building practitioners accredited under the *Building Act 2000***

- (1) In this clause –

***transitioned licence*** means a building services licence that is taken to be issued by virtue of subclause (2).

- (2) If, immediately before the commencement of Division 3A of Part 4 of this Act, a person was accredited under Part 4 of the *Building Act 2000* as an accredited building practitioner –

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- (a) that person is taken to be, on and after the commencement of that Division, the holder of a building services licence issued under this Act on the same terms and conditions; and
  - (b) a certificate of accreditation issued to the person under section 27 of the *Building Act 2000*, and in force immediately before the commencement of that Division, is taken to be a licence issued to the person by the Administrator under section 37B(1)(a) of this Act on the same terms and conditions.
- (3) If a transitioned licence is to expire within 3 months of the commencement of Division 3A of Part 4 of this Act, the transitioned licence remains in effect until the expiry of the period of 3 months after the commencement of that Division unless sooner renewed, surrendered or cancelled under this Act.
- (4) The holder of a transitioned licence is taken to hold the insurance required under section 27 of this Act if the holder of a transitioned licence holds insurance cover that complies with the order under section 48 of the *Building Act 2000* while that order remains in effect in accordance with clause 8 of this Part.

- (5) For the purpose of determining the continuing professional development of the holder of a transitioned licence, the Administrator may take into account any professional development undertaken by such a licence holder, before the commencement of Division 3A of Part 4 of this Act, as part of his or her accreditation as a building practitioner under the *Building Act 2000*.

**2. Applications under the *Building Act 2000* for accreditation as building practitioner**

- (1) An application made to the Director of Building Control under section 26 of the *Building Act 2000* to be an accredited building practitioner that had yet to be determined under that Act before the commencement of Division 3A of Part 4 of this Act –
- (a) is taken to be an application to the Administrator under section 37A of this Act for a building services licence of the relevant occupation and class; and
  - (b) may be considered, dealt with and determined in all respects under this Act as if the application were originally made under this Act.
- (2) The Administrator may issue a building services licence of the relevant

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occupation and class, in respect of an application referred to in subclause (1), if the Director of Building Control may have granted the application under the *Building Act 2000* had the application been determined before the commencement of Division 3A of Part 4 of this Act.

***Division 2 – Savings and transitionals for owner builders  
and related matters***

**3. Savings for owner builders under *Building Act 2000***

(1) In this clause –

***relevant Acts*** means –

- (a) this Act; and
- (b) the *Building Act 2016*.

(2) Where, immediately before the commencement of Part 3A of this Act, a person was registered as an owner builder under Division 3 of Part 4 of the *Building Act 2000*, the provisions of that Act, except section 30E, as in force immediately before the commencement of the *Building Act 2016* are to remain in effect in respect of that registration.

(3) The relevant Acts do not apply to work performed under a registration referred to

in subclause (2) if that work is performed in accordance with –

- (a) that registration; and
- (b) the *Building Act 2000* as in force immediately before the commencement of the *Building Act 2016*.

**4. Applications for registration as owner builder under *Building Act 2000***

- (1) If an application made to the Director of Building Control under section 30C of the *Building Act 2000*, to be registered as an owner builder, had yet to be determined under that Act before the commencement of Part 3A of this Act, the provisions of that Act, as in force immediately before the commencement of the *Building Act 2016*, are to remain in effect in respect of that application until the application is determined.
- (2) If a person is registered as an owner builder as a result of an application referred to in subclause (1), clause 3 of this Part applies to that person as if the person had been registered as an owner builder before the commencement of Part 3A of this Act.

**5. Owner builder training courses**

A course that, on the day immediately before the day on which Part 3A of this Act commences, was an approved course for the purposes of section 30B of the *Building Act 2000* is taken, on and after the commencement of that Part, to have been approved under section 29B(3) of this Act as an owner builder training course for the purposes of section 29B(1)(c) on the same terms and conditions.

***Division 3 – Other savings and transitionals***

**6. Bodies corporate and partnerships operating as building practitioners under *Building Act 2000***

- (1) A body corporate, or partnership, that, immediately before the commencement of Division 3A of Part 4 of this Act, was operating as a building practitioner in accordance with section 25 of the *Building Act 2000* is, on and after the commencement of that Division –
  - (a) not a building services provider for the purposes of this Act; and
  - (b) not a licensed entity for the purposes of this Act.
- (2) Subclause (1) does not affect –

- (a) the application of this Schedule, on and after the commencement day, to the accreditation of the director, partner or permanent employee referred to in section 25 of the *Building Act 2000*; and
- (b) the ability for the body corporate or partnership to apply, on and after the commencement day, under section 37C of this Act to be a licensed entity for the purposes of this Act.

**7. Complaints under section 32 of *Building Act 2000***

Where a complaint to the Director of Building Control has been made under section 32 of the *Building Act 2000* and the complaint had not been determined before the commencement of the *Occupational Licensing Amendment Act 2016*, the provisions of the *Building Act 2000* continue to apply to the complaint as if the relevant provisions of that Act had not been repealed.

**8. Insurance orders under section 48 of *Building Act 2000***

- (1) The order under section 48 of the *Building Act 2000* in force immediately before the commencement of the

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*Occupational Licensing Amendment Act 2016* remains in force until –

- (a) revoked by order by the Minister under this Act; or
  - (b) notice is given by the Administrator requiring licence holders to be covered by a certain type and amount of insurance under section 27.
- (2) An order under subclause (1) is a statutory rule for the purposes of the *Rules Publication Act 1953*.

**9. Appeals under *Building Act 2000***

Where an appeal has been lodged under the *Building Act 2000* in respect of an accredited building practitioner, or an owner builder, and the appeal had not been determined before the commencement of the *Occupational Licensing Amendment Act 2016*, the provisions of the *Building Act 2000* continue to apply to the appeal as if the relevant provisions of that Act had not been repealed.

**60. Repeal of Act**

This Act is repealed on the three hundred and sixty fifth day from the day on which this Act commences.