

CLAUSE NOTES***Occupational Licensing Amendment Bill 2026*****PART 1 PRELIMINARY****Clause 1 Short title**

This clause specifies the short title of the proposed Act.

Clause 2 Commencement

This clause provides that the Act commences on a day or days to be proclaimed.

This will ensure commencement of the new requirements aligns with administrative readiness and any necessary subordinate legislation.

PART 2 OCCUPATIONAL LICENSING ACT 2005 AMENDED**Clause 3 Principal Act**

This clause provides that the Principal Act being amended by Part 2 of this Act is the *Occupational Licensing Act 2005*.

Clause 4 Section 3 amended (Interpretation)

This clause amends section 3 to insert two key definitions used in the new provisions.

- *excluded person* – a person excluded for the purposes of the Act under the proposed new section 37A.
- *permanently excluded person* – a person permanently excluded for the purposes of the Act under the under the proposed new section 37G.

Clause 5 Section 22A amended (Obligation to hold building services licence)

This provision inserts a new subsection (2A) in section 22A to provide that the exemptions to holding a licence contained in subsections (2)(b), (ba) and (bb) do not extend to an excluded person or permanently excluded person for the purposes of carrying out, or entering into a contract to manage or carry out, building services work under the authority of another licensee.

This will close an avoidance pathway whereby disqualified individuals might otherwise try to operate through a third party.

Clause 6 Section 28 amended (Insurance cover for contractors)

This provision amends section 28(2) to provide that if a contractor has their licence cancelled under section 37F due to being considered an excluded person, this cancellation does not affect the insurance cover for any work carried out before notice of that cancellation was given.

Clause 7 Sections 37AB, 37AC, 37AD, 37AE and 37AF inserted**Section 37AB (Interpretation of Division)**

This new provision contains new definitions required for the purposes of the amendments to Division 3A.

- *bankruptcy event* – occurs if the person applies to take advantage of any bankruptcy laws or becomes bankrupt.
- *construction company* means either an incorporated and unincorporated organisation that directly or indirectly carries out construction work in Tasmania or another state or territory, or carried out such work in the last two years before a bankruptcy or insolvency event.
- *construction work* includes building services work for the purposes of the Act and building work for the purposes of the *Building Act 2016*.
- *excluded licence* is a prescribed type of building services licence for the purposes of the definition.
- *influential person* is defined in section 37AD.
- *insolvency event* – occurs if a provisional liquidator, liquidator, administrator or controller is appointed to a body corporate, or the body corporate is wound up or ordered to be wound up.
- *permitted individual* is an individual declared as such under section 37AE.
- *prescribed building services licence* – the classes of building services licences to which the new provisions apply are as prescribed for the purposes of this definition
- *specified event* includes both a bankruptcy event and an insolvency event.

Section 37AC (Excluded person)

This provision establishes who becomes excluded under the new provisions, and for how long. An individual is excluded for 3 years following a bankruptcy event. An individual is also excluded for 3 years where they were a director, secretary or influential person of a construction company at the time of, or within two years before, an

insolvency event, unless the Administrator determines the company was solvent when they ceased to hold the relevant role.

An organisation (incorporated or unincorporated) becomes excluded if it experiences an insolvency event and less than three years have passed since the insolvency event occurred. An organisation also becomes excluded if it has a director, secretary, partner or influential person who is excluded or permanently excluded, unless the organisation did not and could not reasonably know of the person's status, or removes them within 28 days of becoming aware.

Section 37AD (Influential person)

Defines an influential person to be an individual who is in a position to control or substantially influence the conduct of an organisation. This definition does not include a regulator, or a professional or an administrator, controller, provisional liquidator or liquidator within the meaning of the Corporations Act.

'Professional' and 'regulator' are defined for the purposes of the provision.

Subsection (4) lists a number of circumstances that may lead to a person being an influential person.

Section 37AE (Permitted individual)

Under this provision, an individual may apply to the Administrator to be declared a 'permitted person' in respect of a specified insolvency or bankruptcy event.

If the Administrator is satisfied the individual took all reasonable steps to avoid the occurrence of the circumstances that led to bankruptcy or insolvency, they may declare the individual to be a 'permitted individual' meaning they are taken not to be an excluded individual for the event.

This mechanism provides a pathway for individuals who encounter insolvency events despite having acted prudently to avoid licence exclusion.

Section 37AF (Applications for determinations under section 37AC)

This provision sets out the process under which applicants may apply for the Administrator's determination for the purposes of section 37AC(4) that the company was solvent when the person ceased to be a director, secretary or influential person.

This provides a pathway to avoid exclusion where an applicant exited a company that remained solvent at that time.

Clause 8 Section 37A amended (Application for building services licence)

This provision helps ensure the Administrator is alerted to relevant bankruptcy/insolvency history by requiring applicants for building services licences to disclose details of

- any specified events (bankruptcy/insolvency) relevant to themselves
- in the case of an organisation, any specified events in relation to a director, secretary or influential person of that organisation, and
- any specified events that have occurred in relation to a construction company that the applicant has been a director, secretary or influential person of.

Subsection (5) clarifies the Administrator's power to make reasonable inquiries and investigations when deciding whether to issue a licence.

Clause 9 Section 37B amended (Determination of application)

This provision amends section 37B to require the Administrator to refuse an application for a prescribed building services licence where the applicant is an excluded person (unless exceptional circumstances are established) or is a permanently excluded person. This mandatory ground sits alongside the Administrator's discretion under section 38B to issue or refuse licences.

Clause 10 Section 37C amended (Certain organisations may apply for building services licence)

This provision amends section 37C to prevent organisations from nominating an excluded or permanently excluded person as the licensed nominee for a prescribed licence.

Subsection (4A) requires the Administrator to refuse applications for organisational licences where either the applicant or nominee is excluded (subject to exceptional circumstances) or permanently excluded.

The licenced nominee becoming excluded or permanently excluded is added as a ground for a licence ceasing to have effect under s 37C(5).

Clause 11 Section 37D amended (Continuation of building services licence held by certain organisations)

This clause amends section 37D which deals with continuation of organisational building services licences where a 'relevant event' has occurred that may cause the licence to cease to have effect.

The clause closes a potential gap by expressly prohibiting the Administrator from accepting a replacement person who is themselves an excluded or permanently excluded person.

Clause 12 Section 37E amended (Deemed registration of holder of business services licence)

Requires the Administrator to disqualify a person from holding a prescribed licence by virtue of deemed registration if they are an excluded person, subject to exceptional circumstances.

Before disqualifying a person under this provision, the Administrator must provide notice, state reasons and invite and consider submissions. Disqualification does not render unlawful any prescribed work that was undertaken prior to notice being given.

Clause 13 Sections 37F, 37G, 37H, 37I and 37J inserted

Section 37F inserted (Cancellation of prescribed building services licence)

Obliges the Administrator to cancel an existing prescribed licence if the holder is an excluded person, unless exceptional circumstances apply. The Administrator must give notice, state reasons and invite and consider submissions before deciding. Cancellation does not render prior work unlawful.

Section 37G inserted (Permanent exclusion of persons)

This new provision empowers the Administrator to declare a person permanently excluded where, on a second occasion within five years, a prescribed licence held by the person is cancelled under section 37F.

Before declaring a person to be permanently excluded, the Administrator must give notice, state reasons and invite and consider submissions. Multiple licence cancellations arising out of the same set of circumstances may be treated as one.

Section 37H inserted (Revocation of declaration)

Provides a process whereby a person declared to be permanently excluded may apply for a revocation. This provision provides the Administrator with a broad discretion to revoke permanent exclusion if the Administrator considers it appropriate in the circumstances.

Section 37I inserted (Publication of details of excluded persons and permanently excluded persons)

Authorises the Administrator to publish on an official website *relevant details* of persons who are refused licences under section 37B(1A) or 37C(4A), who have been disqualified under section 37E(6A) from

holding licences via deemed registration, who have had licences cancelled under section 37F, or who have been declared permanently excluded under section 37G.

The Administrator must give notice and invite submissions before making a decision whether to publish some, all or none of the person's relevant details. Relevant details may only be published after any appeal period for applying for a review of the decision has ended and any such review or appeal has concluded.

Section 37J inserted (Offences if excluded person or permanently excluded person employed)

Creates offences for organisations holding prescribed licences that appoint or engage excluded or permanently excluded persons as directors, secretaries, partners of influential persons (subject to defences where the organisation could not reasonably know or removed the person within 28 days of awareness); for individuals acting in those roles while excluded/permanently excluded; and for organisations contracting using a prescribed licence while a listed office holder or influential person is excluded or permanently excluded.

Clause 14 Section 49 amended (Registers)

This is a consequential amendment to section 49 to remove the requirement to publish in a register the constitution, meetings and procedures of disciplinary panels.

Clause 15 Section 79 amended (Reviewable decisions)

Extends internal review rights to decisions of the Administrator under the following new provisions: section 37AC(4), section 37AE, section 37B(1A), section 37C(4A), section 37E(6A), section 37F(1), section 37G(1), section 37H(2) and section 37I(4)(a) or (c). Note, section 82 provides a right of appeal to the Tasmanian Civil and Administrative Appeals Tribunal in respect of any decision that directly affects a person.

Clause 16 Section 91 amended (Notice of intent to take disciplinary action)

This clause amends section 91 to remove reference to the disciplinary pane process from notices of intent to take disciplinary action. A new subsection 91(6) is inserted, that empowers the Administrator to undertake investigations for the purpose of determining whether disciplinary action should be taken.

Clause 17 Section 92 repealed (Disciplinary panels)

This clause removes the disciplinary panel mechanisms from the disciplinary process by repealing section 92. This will simplify the disciplinary process and reduce delay, while maintaining procedural fairness and review pathways.

Clause 18 Section 93 amended (Disciplinary action)

Amends section 93 by replacing reliance on a disciplinary panel recommendation with the licence holder's written response to a section 91 notice. Disciplinary panel-related cost references are also omitted from the section.

Clause 19 Section 94 repealed (Constitution, meetings and procedure of disciplinary panels)

Removes redundant provisions relating to disciplinary panel meetings and procedures.

Clause 20 Section 104A inserted (Review of amendments made by Occupational Licensing Amendment Act 2026)

Provides for a review of the amendments in respect of the 5-year period after commencement, with a copy of a completed report to be laid before each House of Parliament within 6 years after commencement.

Clause 21 Schedule 5 amended (Transitional and Savings Provisions)

This clause inserts a new Part 5 into Schedule 5 to deal with transitional arrangements relating to the commencement of the amendments.

PART 5 – PROVISIONS RELATING TO THE OCCUPATIONAL LICENCING AMENDMENT ACT 2026 inserted

Clause 1 inserted (Interpretation of Part)

Inserts new definitions used in the new Part 5 of the Schedule, namely *commencement day* and *former Act*.

Clause 2 inserted (Transitional provision for specified events)

Provides that a specified event does not include a bankruptcy or insolvency event that occurred or commenced before the commencement day.

The effect of this provision is that the new scheme is not retrospective. Therefore, for any applications for prescribed building services licences received after commencement, the Administrator may not consider a bankruptcy or insolvency event, or the applicant's involvement with an insolvency event that occurred prior to commencement day. Similarly, a bankruptcy or insolvency event that occurred prior to commencement

will not trigger a cancellation of a licence or, in the case of deemed registration, disqualification of licence.

Clause 3 (Transitional provision for disciplinary panel)

This provision deals with transitional arrangements for disciplinary matters that were, before commencement, referred to a disciplinary panel under the former Act. On commencement, any such referral is automatically revoked, and the panel is dissolved for that matter. The panel must transfer all documents, materials and draft work to the Administrator. The Administrator then assumes responsibility for dealing with the matter under the amended Act as if it had never been referred to a panel and may rely on the material provided and take disciplinary action accordingly.

PART 3 BUILDING ACT 2016 AMENDED

Clause 22 Principal Act

This clause provides that the Principal Act being amended by Part 3 of this Act is the *Building Act 2016*.

Clause 23 Section 99A inserted (Excluded persons not to perform notifiable building work)

This clause prohibits excluded persons or permanently excluded persons under the *Occupational Licensing Act 2005* from performing notifiable building work. Notifiable building work is medium risk building work that the Director of Building Control determines must be notified to a building surveyor for assessment and certification, rather than requiring a full building permit.

For a body corporate, the penalty for an offence under this section is a fine not exceeding 500 penalty units and for an individual the penalty is a fine of up to 100 penalty units.

Clause 24 Section 148A inserted (Excluded persons not to perform permit building work)

This clause prohibits excluded persons or permanently excluded person under the *Occupational Licensing Act 2005* from performing permit building work. Permit building work is high risk work requiring a planning permit that must be approved by council through a formal Building Permit process.

For a body corporate, the penalty for an offence under this section is a fine not exceeding 500 penalty units and for an individual the penalty is a fine up to 100 penalty units.

**PART 4 RESIDENTIAL BUILDING WORK CONTRACTS AND DISPUTE
RESOLUTION ACT 2016 AMENDED**

Clause 25 Principal Act

Provides that the Principal Act being amended by Part 4 of this Act is the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

**Clause 26 Section 78A inserted (Excluded persons not to enter into
residential building work contracts)**

This clause inserts a new section 79A to prohibit a building contractor from entering into a residential building work contract if, at the time, they are an excluded or permanently excluded person under the *Occupational Licensing Act 2005*. The penalty for a body corporate is a fine of up to 800 penalty units and for an individual the penalty is a fine of up to 300 penalty units.

PART 5 REPEAL OF ACT

Clause 27 Repeal of Act

This clause provides the Act is repealed one year after the date its last uncommenced provision. This will allow for the possibility that not all provisions may commence on the same day