

CLAUSE NOTES

Occupational Licensing Amendment Bill 2016

Clause 1: Short title

Clause 2: Commencement

The Act will commence on proclamation to enable administrative processes to be developed to support the moving of building practitioners accredited under the *Building Act 2000* to become licenced building services providers under the amended *Occupational Licensing Act 2005*.

Clause 3: Principal Act

Identifies the *Occupational Licensing Act 2005* as the Principal Act being amended.

Clause 4: Section 3 amended (Interpretation)

The introduction to this Act of the licensing of *building services providers* requires additions to the Interpretation section:

(a) The definition of “*building services work*” is included as a subset of “prescribed work” which is defined in this Act.

The definition of “*building services provider*” is also inserted to allow for the inclusion of categories of building practitioners and permit authority staff into the *Occupational Licensing Act 2005*.

(b) References to “*building services providers*” are inserted (such as builders, architects and designers who may employ other tradespeople) as distinct from the existing occupational “practitioners” such as plumbers, electricians and gas-fitters.

(c) A definition of “*licensed entity*” is inserted to provide for the licensing of a body corporate or partnership that contracts to provide building services work.

A definition of the National Construction Code (NCC) is included and any future amendment of the NCC will also be covered by that definition.

(d) Definitions of “*owner builder*” and “*owner builder permit*” are inserted.

(e) This clarifies that “*practitioner*” retains the original meaning of this Act, i.e. plumber, electrician, gas-fitter or automotive gas-fitter.

(f) Subsection (3) is inserted to clarify that the same definitions used in the *Building Act 2000* apply in this Act. Subsection (4) is inserted to clarify that any reference to the class of a building should be interpreted as a reference to building class as defined in the National Construction Code.

- Clause 5: Section 3A inserted**
Defines who is an owner for the purposes of this Act including the persons who may apply for an owner builder permit.
- Clause 6 Section 4 amended (Meaning of continuing professional development)**
Requirements for Continuing Professional Development activities are to apply to the building services providers.
- Clause 7: Section 7 amended (Application of the Act to occupations, trades and callings)**
New subsections are inserted to ensure the Act also applies to the occupations of a building services provider and a council permit authority, as provided in the amended Schedule 2. An owner builder is exempt from a building services provider licence, but applies for a separate type of permit.
- Clause 8: Section 9 amended (Application of other Acts)**
Building services providers are included in addition to the existing “practitioners” (plumbers, electricians and gas-fitters) who are currently subject to this Act.
- Clause 9: Section 13 amended (Power to obtain other information)**
The Penalty Level has been removed and replaced by the equivalent penalty units.
The Act had provided in Schedule 1 for five Penalty Levels that equated to a set amount of Penalty Units. All Penalty Levels have been removed throughout the Act and replaced by specific penalty units for each individual offence.
- Clause 10: Section 14 amended (Occupational Licensing Advisory Board)**
Building services providers are included in addition to practitioners in relation to the oversight of the licensing administration performed by the Occupational Licensing Advisory Board.
- Clause 11: Section 16 amended (Appointment of authorised officers)**
Reference to building services providers is included in addition to practitioners.
Penalty levels have been replaced by equivalent penalty units.
- Clause 12: Section 19 amended (Powers of authorised officers)**
Reference to building services providers is included in addition to practitioners.

- Clause 13: Section 20 amended (Offences relating to authorised officers)**
The Penalty Levels have been removed from this section and replaced by specific penalty units.
Penalty levels have been replaced by equivalent penalty units.
- Clause 14: Section 21 amended (Obligation to hold contractor's licence)**
Section 21 is amended to ensure that the obligation to hold a contractor's licence to carry out "prescribed work" (which applies to electricians, plumbers and gas-fitters etc.) does not include types of "building services work".
Penalty levels have been replaced by equivalent penalty units.
- Clause 15: Section 22 amended (Obligation to hold a practitioner's licence)**
Section 22 is amended to ensure that the obligation to hold a practitioner's licence to carry out "prescribed work" (which applies to electricians, plumbers and gas-fitters etc.) does not include "building services work".
Penalty levels have been replaced by equivalent penalty units.
- Clause 16: Section 22A inserted**
A new section is inserted to provide the requirement to hold a licence as a building services provider in order to perform prescribed building services work.
The exemptions listed are in line with those in the current *Building Act 2000*.
Penalty levels have been replaced by equivalent penalty units.
- Clause 17: Section 23 amended (Duties of licence holders and nominated managers relating to prescribed work)**
Penalty levels have been replaced by equivalent penalty units.
- Clause 18: Section 24 amended (Duties of owners and occupiers relating to prescribed work)**
Penalty levels have been replaced by equivalent penalty units.
- Clause 19: Section 25 amended (Duties of licence holders)**
Penalty levels have been replaced by equivalent penalty units.
A new subsection 2A is inserted to clarify the duties of a body corporate or partnership ("licensed entities") that holds a building services provider licence, a new type of licence introduced in this amendment.

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

Penalty levels have been replaced by equivalent penalty units.

Clause 21: Section 29 amended (Offences relating to insurance cover)

Penalty levels have been replaced by equivalent penalty units.

This section is amended to include building services providers.

This section is also amended by inserting a new section to ensure that building services providers have insurance cover. It is similar to the current provisions in the *Building Act 2000* requiring insurance of accredited building practitioners.

Clause 22: Part 3A inserted

This new Part brings across from the *Building Act 2000* the requirements and conditions for owner builders.

A major change in this Bill is restricting owner builders to work on a detached residential building ("Class 1a building"), whereas in the *Building Act 2000* an owner builder could do work on any type of commercial property.

Instead of registration, an eligible owner builder is granted an "owner builder permit" to perform specific work on a residential building project.

A person does not need an owner builder permit for work on a Class 7b farm building or Class 10 building.

This part also details the process for obtaining an owner builder permit, assessment of applications and appeal processes.

This part also details the circumstances under which an owner builder permit might be cancelled.

Clause 23: Part 4: Heading amended

The heading is amended to include reference to building services providers.

Clause 24: Section 30 amended (Classes of prescribed work)

This section is amended to include a reference to "permits" in addition to "licences" to allow granting of owner builder permits. These apply to each specific owner builder project, rather than being an ongoing licence to perform work.

Clause 25: Section 32 amended (Publication of determinations and amendments)

This amendment corrects an anomaly in the Act which states that the Administrator *must* consult with "the Board", in contradiction of section 14 which does not make it compulsory for the Administrator to have appointed such a Board.

- Clause 26: Section 33 amended (Application for contractor's licence)**
This amendment adds the requirement for an applicant to have a sound and stable financial background.
- Clause 27: Section 34 amended (Determination of application)**
Reasons for a determination will be automatically provided to an applicant for a licence or permit. Previously, the applicant had to request the reasons.
- Clause 28: Section 35 amended (Enforceability of contracts)**
This section is amended to include a reference to the new section 22A that refers to building services providers.
- Clause 29: Section 36 amended (Application for practitioner's licence)**
This amendment adds the requirement for an applicant to have a sound and stable financial background.
- Clause 30: Section 37 amended (Determination of application)**
Reasons for determination will be provided to applicant. Previously, the applicant had to request the reasons.
- Clause 31: Part 4, Division 3A inserted**
A new Division is inserted to carry across from the *Building Act 2000* the process of applying for, and the granting of licences to work as a building services provider.
A reform in this amendment Act is the ability for a body corporate or a partnership to apply for a licence as a building services provider. It will then receive a licence as "licensed entity". There is still a requirement that a natural person (a company director, or a partner) must also hold a licence. If that licensed person leaves or loses their licence, the licensed entity then has a period of time to appoint their replacement.
There are no other changes to this licensing process, other than replacing references to "accreditation" with "licensing", and the use of the term "building services work" instead of "work of a building practitioner."
- Clause 32: Section 38 amended (Offences)**
This section is amended to include offences relating to the licensing of building services providers.
Penalty levels have been replaced by equivalent penalty units.

Clause 33: Section 39 amended (Vicarious liability)

This section has been amended to make reference to offences by a body corporate.

A new section provides for the liability of directors, partners, building services providers and others for offences by bodies corporate, partnerships or employees. The introduction of a licence for bodies corporate or partnerships allows the introduction of greater responsibility and liability at the management level of the licensed entities, and not just at the lower level of the persons performing the licensed work.

Specific defences to this provision may be raised as to why a defendant is not responsible for an offence, including that they exercised due diligence and care to prevent its commission.

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

Penalty levels have been replaced by equivalent penalty units.

Clause 35: Section 41 amended (Certificate of identification)

Penalty levels have been replaced by equivalent penalty units.

Clause 36: Section 42 amended (Term of licence)

This section is amended to include licencing of building services providers.

Clause 37: Section 44 amended (Surrender of licence)

Penalty levels have been replaced by equivalent penalty units.

Clause 38: Section 47 amended (Production of certificate of identification)

Penalty levels have been replaced by equivalent penalty units.

Clause 39: Section 49 amended (Registers)

This section is amended to ensure that the requirement to keep registers of building services providers and owner builder permits is performed by the Administrator.

Clause 40: Section 53 amended (Codes of practice)

This section is amended to ensure that specific Codes of Practice also apply to licenced building services providers.

Clause 41: Section 54 amended (Certification of prescribed work)

Penalty levels have been replaced by equivalent penalty units.

- Clause 42: Section 57 amended (Power to make rectification order)**
Penalty levels have been replaced by equivalent penalty units.
- Clause 43: Section 58 amended (Power of authorised officers in emergency)**
Penalty levels have been replaced by equivalent penalty units.
- Clause 44: Section 59 amended (Complaints)**
Provides for a complaint to be made to the Administrator of Licensing regarding the conduct or work of a building services provider.
The time limit of 6 years for making of a complaint applies from when the work was commenced.
The Administrator may dismiss complaints without further investigation if it is determined that the respondent has no case to answer.
- Clause 45: Section 79 amended (Reviewable decisions)**
Amended to enable the review of decisions by the Administrator regarding building services licences or owner builder permits.
- Clause 46: Section 86 amended (Evidentiary provisions)**
Amended to include reference to licenced building services providers.
- Clause 47: Section 90 amended (Proper cause for disciplinary action)**
Amended to include reference to licenced building services providers.
- Clause 48: Section 91 substituted**
This amendment introduces a “notice of intent” with regard to disciplinary action. This requires the Administrator to give a licence holder notice if the Administrator believes there may be cause for disciplinary action, so that the licence holder can show cause why such an action should not be taken.
This avoids any negative impact on a licensee if a course of action can be demonstrated to be reasonable under the circumstances.
If the licensee does not provide a satisfactory response as to why disciplinary action should not be taken, the Administrator may then proceed with the action.
- Clause 49: Section 92 amended (Disciplinary panels)**
Replaces “show cause notice” with “notice of intent to take disciplinary action”. This addresses concerns that “show cause” indicated a finding of guilt had already been made.

- Clause 50: Section 97 amended (Confidentiality)**
Penalty levels have been replaced by equivalent penalty units.
- Clause 51: Section 98 amended (Contractors to keep register)**
Penalty levels have been replaced by equivalent penalty units.
- Clause 52: Section 99 amended (Exemptions)**
Penalty levels have been replaced by equivalent penalty units.
- Clause 53: Section 100 repealed**
Requirement for quoting a practitioner's licence number on advertising or business stationery has been repealed. This was not delivering the intended outcome of reducing unlicensed operators. This will continue to be addressed through increased audits and consumer awareness.
- Clause 54: Section 103 amended (Regulations)**
Amended to include reference to building services licences and owner builder permits. Consumers will be able to check the licensing status of a practitioner through the Consumer, Building and Occupational Services website.
- Clause 55: Section 104 amended (Transitional and Savings)**
Amended to include provisions for transferring of accredited building practitioners and registered owner builders from the provisions of the *Building Act 2000*, and conversion of their accreditation into a building services licence, or an owner builder permit.
- Clause 56: Schedule 1 repealed (Penalties)**
The Act provided in Schedule 1 for five Penalty Levels that equated to a set amount of Penalty Units. All Penalty Levels have been removed throughout the Act and replaced by specific penalty units for each individual offence created. This system is easier to administer and to calculate the amount of a fine.
- Clause 57: Schedule 2 amended (Occupations, trades and callings to which this Act applies)**
A new Part 4 of Schedule 2 is inserted to cover the broad types of building services work to which this Act is to apply. The amended Act will apply to:
- the same building types of building practitioners as are now accredited by the *Building Act 2000* (designers, building surveyors and builders); and
 - owner builders (who are an exception from being a licensed builder and will receive an "owner builder permit" under Part 3A); and
 - with the new addition of the Permit Authority staff of councils.

The specific thresholds for the various types of work that will require persons or entities to be licensed as building services providers will be prescribed in the regulations.

Clause 58: Schedule 4 amended (Constitution, Membership and Meetings of Board)

The constitution of the Board is amended to include the Administrator and up to 8 others.

The Administrator will be the chairperson of the Board.

Board membership has been amended to include reference to building services providers.

Clause 59: Schedule 5 amended (Transitional and Savings Provisions)

Saves certain rights granted to accredited building practitioners and registered owner builders. Their accreditation or registration is now a licence or a permit under the *Occupational Licencing Act 2005*.

The schedule also preserves the existing rights of:

- A body corporate or partnership operating as a building practitioner
- Complaints made against a practitioner
- Insurance requirements of practitioners
- Appeals lodged relating to accreditation

Clause 60: Repeal of Act

Allows for the repeal of this Act 365 days after it commences as it will no longer be required once the amendments have been made.