

LEGISLATIVE ASSEMBLY

Design and Building Practitioners Bill 2019

First print

Proposed amendments

No. 1 **Regulated designs**

Page 3, clause 5, lines 31–34. Omit all words on those lines. Insert instead—

For the purposes of this Act, *regulated design* means—

- (a) a design that is prepared for a building element for building work, or
- (b) a design that is prepared for a performance solution for building work (including a building element), or
- (c) any other design of a class prescribed by the regulations that is prepared for building work.

No. 2 **Building elements**

Page 3, clause 6. Insert after line 42—

- (e) the services for a building, as prescribed by the regulations,

No. 3 **Documents with building compliance declarations**

Page 9, clause 16(1), line 7. Insert “, contractor document” after “building work”.

No. 4 **Documents with building compliance declarations**

Page 9, clause 16(2), line 12. Insert “, contractor document or other required document” after “building compliance declaration”.

No. 5 **Documents with building compliance declarations**

Page 9, clause 16(3), line 17. Insert “, contractor documents and other required documents” after “building compliance declarations”.

No. 6 **Issue of occupation certificate**

Page 9, clause 16. Insert after line 21—

- (5) A person who is provided with a building compliance declaration under subsection (1) must provide the declaration to the principal certifier who is responsible for issuing an occupation certificate for the building work before or when the application for the certificate is made.
Maximum penalty—300 penalty units (in the case of a body corporate) or 100 penalty units (in any other case).

No. 7 **Documents with building compliance declarations**

Page 9, clause 16(5). Insert after line 22—

contractor document means the following—

- (a) a list of persons who have agreed under a contract or arrangement with the registered building practitioner to do any of the building work,
- (b) a list of any other persons prescribed by the regulations who have done building work on the building,
- (c) a list of the work done by each of the persons referred to in paragraphs (a) and (b) in relation to the building work,
- (d) copies of final designs used for the building work that are not regulated designs and are designs of a class prescribed by the regulations for the purposes of this paragraph,
- (e) other documents prescribed by the regulations.

No. 8 **Issue of occupation certificate**

Page 13. Insert after line 10—

26 Principal certifier must consider compliance certificates

- (1) A principal certifier who is responsible for issuing an occupation certificate for building work must not determine an application for an occupation certificate unless the principal certifier is satisfied that all compliance declarations required for the building work have been lodged in accordance with this Act.
- (2) A principal certifier who is responsible for issuing an occupation certificate for building work must consider any instances of non-compliance specified in the compliance declarations provided to the certifier relating to the building work when deciding whether to issue the certificate.
- (3) Nothing in this section prevents a regulation from being made under section 25 that prohibits the issue of occupation certificates unless compliance declarations are provided.

No. 9 **Statutory home building warranties**

Page 42, Schedule 2.2. Insert after line 15—

[1] Section 3A Application of provisions to developers

Insert “or (2A)” after “subsection (2)” wherever occurring in section 3A(1) and (1A).

[2] Section 3A(2A) and (2B)

Insert after section 3A(2)—

- (2A) The circumstances are the residential building work is done in connection with an existing or proposed building with 4 or more existing or proposed dwellings or in connection with an existing or proposed retirement village or accommodation specially designed for the disabled and the individual, partnership or corporation manages—
 - (a) the development of the land on which the residential building work is carried out on behalf of the owner of the land, another person who is a developer in relation to the residential building work or a person who is connected with a developer in relation to the residential building work, or
 - (b) the carrying out of the residential building work on behalf of the owner of the land, another person who carries out the residential building work or a person who is connected with a developer in relation to the residential building work.

-
- (2B) For the purposes of subsections (1), (2) and (2A)—
- (a) a reference to an individual includes a trust that is not a corporation and a trustee of any trust, and
 - (b) a person is connected with a developer if the person is a close associate of the developer or in the circumstances described by the regulations for the purposes of this subsection.

[3] Section 18CA

Insert after section 18C—

18CA Warranties as to work by arms-length developers

- (1) This section applies in respect of residential building work on land if the developer in relation to the work is an individual, partnership or corporation referred to in section 3A(2A).
- (2) Section 18C applies to the work as if the owner of the land when the work was completed was the immediate successor in title to the individual, partnership or corporation.

[4] Section 18D Extension of statutory warranties

Insert after section 18D(1A)—

- (1AA) To avoid doubt, the rights conferred on a non-contracting owner under subsection (1A) extend to the rights conferred in relation to subcontractors (including subcontractors of subcontractors) under section 18B(2).

[5] Section 18F Defences

Insert after section 18F(3)—

- (3A) The defence provided by this section does not extend to a defendant who is a developer, a close associate of a developer or a person who is connected with a developer in the circumstances described by the regulations for the purposes of this subsection.

No. 10 **Statutory home building warranties**

Page 42, Schedule 2.2. Insert before line 20—

[2] Section 18G Warranties may not be excluded

Insert at the end of the section—

- (2) In any proceedings for a breach of statutory warranty or in other proceedings relating to a breach of a duty of care relating to residential building work, the court may determine that a person is entitled to enforce the statutory warranties against another person (including a trust) (the *principal*), whether or not the warranties may be otherwise enforced against the person under this Act or may be enforced against another person under this Act, if the court is satisfied that—
 - (a) the principal is a party to a contract or arrangement, or 1 or more contracts or arrangements, that have the effect of removing the principal or a person connected with the principal from liability for statutory warranties under this Act, and
 - (b) the principal has or had a substantial role in the development of the land on which the residential building work is carried out, or in facilitating the residential building work or is connected with another person who has or had a role of that kind.

-
- (3) A court that makes a determination under subsection (2) may make orders, as it thinks fit, relating to the enforcement of the statutory warranties.
 - (4) For the purposes of subsection (2)—
 - (a) a reference to a person includes a trust that is not a corporation and a trustee of any trust, and
 - (b) a person is connected with the principal if the person is a close associate of the principal or in the circumstances described by the regulations for the purposes of this subsection.
 - (5) Subsections (2)–(4) have effect despite any other provision of this Act.

[3] Schedule 1 Definitions and other interpretative provisions

Insert after clause 5—

5A Leasehold strata schemes

In this Act, a reference to an owner includes, in the case of a leasehold strata scheme (within the meaning of the *Strata Schemes Management Act 2015*)—

- (a) the owners corporation, and
- (b) each person who is an owner (within the meaning of that Act) of a lot in the scheme.