

PARLIAMENT OF VICTORIA

Engineers Registration Bill 2018

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PARLIAMENT OF VICTORIA

Introduced in the Assembly

Engineers Registration Bill 2018

A Bill for an Act to establish a scheme for the registration of professional engineers to promote best practice in providing professional engineering services, to provide for the endorsement of registration, to provide protection to consumers of professional engineering services and to make consequential amendments to other Acts and for other purposes.

The Parliament of Victoria enacts:

Part 1—Preliminary

1 Purposes

The purpose of this Act is to establish a scheme for the registration of professional engineers—

5

- (a) to promote best practice in providing professional engineering services; and

- 5
- (b) to ensure that professional engineering services are provided only by suitably qualified and experienced engineers; and
- (c) to provide for the endorsement of registration authorising a registered engineer to be engaged in the building industry; and
- 10 (d) to provide appropriate protection to consumers of professional engineering services provided by registered engineers; and
- (e) to make consequential amendments to other Acts.

2 Commencement

- 15 (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
- (2) If a provision of this Act has not come into operation by 1 July 2020, it comes into operation on that day.

3 Definitions

- 20 (1) In this Act—
- assessment entity*, for an assessment scheme that has been approved under Part 3, means the entity administering the scheme;
- 25 *assessment scheme* means a scheme approved under Part 3;
- Building account* has the same meaning as it has in the **Building Act 1993**;
- 30 *Business Licensing Authority* means the Business Licensing Authority established under the **Business Licensing Authority Act 1998**;

- 5 ***Director*** means the person who, for the time being, is employed as Director of Consumer Affairs Victoria under the **Public Administration Act 2004**;
- endorsed building engineer*** means a registered engineer whose registration is endorsed under Part 2;
- 10 ***endorsement*** means an endorsement under Part 2 authorising a registered engineer to engage in the building industry;
- inspector*** means an inspector appointed under the **Australian Consumer Law and Fair Trading Act 2012**;
- 15 ***Licensing Registrar*** means the Registrar of the Business Licensing Authority appointed under the **Business Licensing Authority Act 1998**;
- 20 ***non-practising engineer*** means a registered engineer who does not carry out, and is not responsible for the carrying out of, professional engineering services;
- officer***, in relation to a body corporate, has the same meaning as officer of a corporation has in section 9 of the Corporations Act;
- 25 ***practising engineer*** means a registered engineer who carries out, or is responsible for the carrying out of, professional engineering services;
- 30 ***prescriptive standard*** means a document that states procedures or criteria—
- (a) for carrying out a design, or a construction or production activity, relating to engineering; and

5 (b) the application of which, to the carrying out of the design, or the construction or production activity, does not require advanced scientifically based calculations;

professional engineering service means an engineering service that requires, or is based on, the application of engineering principles and data—

10 (a) to a design relating to engineering; or
(b) to a construction, production, operation or maintenance activity relating to engineering—

15 other than an engineering service that is provided only in accordance with a prescriptive standard;

Register means the Register kept under section 28;

20 **registered engineer** means a person who is registered under Part 2;

suitable for approval, in relation to an assessment scheme, means an assessment scheme that complies with the requirements of section 34;

25 **unsatisfactory professional conduct**, for a registered engineer, includes the following—

30 (a) conduct that is of a lesser standard than that which might reasonably be expected of the registered engineer by the public or by the engineer's professional peers;

35 (b) conduct that demonstrates incompetence, or a lack of adequate knowledge, skill, judgement or care, in the practice of engineering;

- (c) misconduct in a professional respect;
- (d) fraudulent or dishonest behaviour in the practice of engineering;
- (e) other improper or unethical conduct;

5 ***Victorian Building Authority*** means the
Victorian Building Authority established
under the **Building Act 1993**.

10 (2) In determining whether or not a document is a
prescriptive standard, regard may be had to any
practice notes prepared and published by the
Director.

4 What are areas of engineering?

15 (1) In this Act, ***area of engineering*** means any of the
following—

- (a) structural engineering;
- (b) civil engineering;
- (c) mechanical engineering;
- (d) electrical engineering;
- (e) fire safety engineering;
- 20 (f) any other prescribed area of engineering.

(2) The Business Licensing Authority must publish
the areas of engineering on the Internet.

5 Extraterritorial application of Act

25 This Act applies within and outside Victoria to the
full extent of the extraterritorial legislative power
of the Parliament.

6 Functions of the Business Licensing Authority

The functions of the Business Licensing Authority under this Act are—

- 5 (a) to determine applications for registration and endorsement and renewals of registration and endorsement; and
- (b) to refer certain applications for endorsement of registration to the Victorian Building Authority for report; and
- 10 (c) to approve assessment entities and assessment schemes; and
- (d) to liaise with and assist the Director and the Victorian Building Authority in carrying out their functions in relation to this Act; and
- 15 (e) to refer relevant matters for investigation by the Director or any other relevant body; and
- 20 (f) any other function conferred on the Business Licensing Authority by or under this Act, the regulations or any other Act or regulations.

7 Functions of the Director

The functions of the Director under this Act are—

- 25 (a) to liaise with and assist the Business Licensing Authority and the Victorian Building Authority in carrying out their functions in relation to this Act; and
- (b) to monitor compliance with, and investigate and prosecute alleged contraventions of, this Act; and
- 30 (c) to refer registered engineers to VCAT for disciplinary action; and

- 5
- (d) to refer to other bodies for investigation, if appropriate, any allegation, complaint or information in relation to registered engineers; and
 - (e) any other function conferred on the Director by or under this Act, the regulations or any other Act or regulations.

8 Functions of the Victorian Building Authority

10 The functions of the Victorian Building Authority under this Act are—

- 15
- (a) to provide reports in relation to applications for endorsement; and
 - (b) to liaise with and assist the Business Licensing Authority and the Director in carrying out their functions in relation to this Act; and
 - (c) any other function conferred on the Victorian Building Authority by or under this Act, the regulations or any other Act or regulations.

20 9 Delegation

- 25
- (1) The Director, by instrument, may delegate any of the Director's functions or powers under this Act to either or both of the following—
 - (a) a person engaged or appointed under section 7(2) or 15 of the **Business Licensing Authority Act 1998**;
 - (b) a person or class of person employed under Part 3 of the **Public Administration Act 2004** in the administration of this Act.
 - (2) The Victorian Building Authority, by instrument, may delegate any of its functions or powers under this Act to any person.
- 30

Part 2—Registration of engineers

Division 1—Procedure for obtaining registration and endorsement

10 Application for registration

- 5 (1) A natural person may apply to the Business Licensing Authority to be registered as an engineer.
- (2) The application must—
- 10 (a) be in writing; and
- (b) state each area of engineering for which registration is sought; and
- (c) state whether the applicant is seeking registration as a practising or non-practising engineer; and
- 15 (d) be accompanied by the prescribed information; and
- (e) be accompanied by—
- (i) the prescribed application fee; and
- (ii) the prescribed registration fee; and
- 20 (f) be in accordance with the regulations.

11 Application for endorsement

- 25 (1) A natural person who has applied for registration, or is registered, under section 12 may apply to the Business Licensing Authority for an endorsement of the registration authorising the person to practise as a registered engineer who is engaged in the building industry.

- 5
- (2) The application must—
- (a) be in writing; and
 - (b) be accompanied by the prescribed information; and
 - (c) be accompanied by the prescribed endorsement application fee; and
 - (d) be in accordance with the regulations.
- (3) The application may be made at the same time as, or after, an application under section 10.
- 10 (4) The Business Licensing Authority must pay any endorsement application fees received under this section into the Building account.

12 Registration

- 15 (1) The Business Licensing Authority must register an applicant in an area of engineering applied for if—
- (a) it is satisfied that the applicant is eligible for registration in that area; and
 - (b) the prescribed application fee and prescribed registration fee have been paid.
- 20 (2) In determining whether an applicant is eligible for registration, the Business Licensing Authority must be satisfied of the following—
- (a) that the applicant has the required qualifications and experience relevant to each area of engineering for which the applicant has applied, as prescribed or provided for in an assessment scheme (as the case may be);
 - (b) that the applicant is not subject to disqualification or cancellation of registration as an engineer in Victoria, or another State or a Territory;
- 25
- 30

- 5 (c) that the applicant is not a represented person within the meaning of the **Guardianship and Administration Act 1986**;
- 10 (d) that the applicant has complied with any other prescribed requirement.
- (3) For the purposes of satisfying itself of the matters referred to in subsection (2)(a), the Business Licensing Authority must have regard to a report from an assessment entity that administers an approved assessment scheme under this Act or the regulations.
- 15 (4) Despite subsection (1), the Business Licensing Authority may refuse to register an applicant if it is satisfied that the applicant is not a fit and proper person to provide professional engineering services in an area of engineering.
- 20 (5) In determining whether an applicant is eligible for registration or is a fit and proper person, the Business Licensing Authority may make any inquiries that the Business Licensing Authority considers to be appropriate to enable the proper consideration of the application.
- 25 (6) The Business Licensing Authority may register an applicant as a practising or non-practising engineer.

13 When a person is a fit and proper person

30 In determining whether a person is a fit and proper person to provide professional engineering services in an area of engineering, the Business Licensing Authority may have regard to the following—

- 35 (a) whether the person, within the preceding 10 years, has been convicted or found guilty of—

- 5
- (i) an indictable offence; or
- (ii) an offence that, if committed in Victoria, would constitute an indictable offence; or
- 10
- (iii) an offence under any law of the Commonwealth, or another State or a Territory, regulating the provision of professional engineering services;
- (b) if the person has been a registered engineer under this Act, or registered to practise as an engineer under a law of the Commonwealth or another State or a Territory, and the registration was suspended, the reason for the suspension;
- 15
- (c) whether the person, or a body corporate of which the person is or was an officer, is or has been insolvent or an externally-administered company under the Corporations Act;
- 20
- (d) whether the person has failed to comply with—
- (i) an order by a court or VCAT under this Act; or
- 25
- (ii) an order by a court or tribunal of the Commonwealth or another State or a Territory under a law regulating the provision of professional engineering services;
- (e) any other prescribed circumstances.

30 **14 Endorsement**

- (1) The Business Licensing Authority must, on application under section 11, endorse a registration authorising the applicant as a registered engineer who is engaged in the building industry if—
- 35
-

- 5
- (a) it is satisfied that the applicant is registered, or is eligible for registration, under section 12; and
- (b) the prescribed endorsement application fee has been paid; and
- 10 (c) it is satisfied that the applicant is a fit and proper person within the meaning of the **Building Act 1993** to carry on business as a registered engineer who is engaged in the building industry.
- (2) For the purposes of satisfying itself of the matters referred to in subsection (1)(c), the Business Licensing Authority must rely on a report from the Victorian Building Authority.

15 **15 Referral of endorsement applications to Victorian Building Authority**

- 20 (1) Before making a decision on an application for endorsement, the Business Licensing Authority may refer the application to the Victorian Building Authority.
- (2) On a referral under this section, the Victorian Building Authority—
- 25 (a) may make any inquiries in relation to the application that the Victorian Building Authority considers to be appropriate to enable the proper consideration of the application; and
- (b) must give the Business Licensing Authority a report on the results of those inquiries.
- 30 (3) The Victorian Building Authority—
- (a) must include in a report a recommendation whether the registration should be endorsed; and

- (b) may include in a report any other recommendations relating to the application that the Victorian Building Authority thinks fit.

5 **16 Business Licensing Authority may conduct inquiries and require further information**

- (1) In considering an application under this Division, the Business Licensing Authority may—
 - 10 (a) conduct any inquiries in relation to the application that it thinks fit; and
 - (b) require an applicant to provide further information in relation to the application.
- (2) The Business Licensing Authority may refuse to register an applicant or endorse an applicant's registration (as the case may be) if the applicant fails to comply with a requirement under subsection (1)(b) within a reasonable time after the requirement is made.
- 15 (3) Each of the Business Licensing Authority and the Victorian Building Authority may specify how any information supplied to it under this Division is to be verified, and without limiting the scope of this power, may require that the information be supplied in the form of, or be verified by, a
20 statutory declaration.
25

17 Certificates

- 30 (1) As soon as is practicable after registering an applicant under section 12, the Business Licensing Authority must cause a certificate of registration to be issued to the applicant.
- (2) If the Licensing Registrar is satisfied that a certificate has been lost or destroyed, the Licensing Registrar, on payment of the prescribed fee (if any), may issue a duplicate certificate.

(3) A registered engineer must, on request, produce the engineer's certificate to any of the following persons or bodies within 7 days of the request being made—

- 5
- (a) the Business Licensing Authority;
 - (b) the Director;
 - (c) the Victorian Building Authority;
 - (d) an inspector;
 - (e) a client of the engineer.

10 Penalty: 10 penalty units.

18 Conditions on registration or endorsement

The Business Licensing Authority—

- (a) must impose on a registration or endorsement any prescribed conditions; and
- 15 (b) may impose on a registration or endorsement any other conditions that the Business Licensing Authority considers appropriate for the registration or endorsement.

19 Period of registration or endorsement

- 20
- (1) Registration and endorsement under this Part lasts for a period of up to 3 years as determined by the Business Licensing Authority.
 - (2) Subsection (1) does not take away from any provision about the suspension or cancellation
 - 25 of registration.

20 Renewal of registration

- (1) The Business Licensing Authority may grant a renewal of registration or an endorsement on the application of the registered engineer.

- 5
- (2) This Part applies to a renewal of registration or endorsement in the same manner as it applies to a registration or endorsement, subject to any prescribed modifications.
- 10
- (3) A prescribed qualification or the equivalent of a prescribed qualification accepted under section 12(2)(a) for the registration of an engineer is taken to be the appropriate prescribed qualification for the renewal of that registration.
- (4) Without limiting subsection (2), in considering whether to grant a renewal of registration or a renewal of an endorsement, the Business Licensing Authority may have regard to—
- 15
- (a) whether the applicant has complied with prescribed continuing professional development requirements (if any); and
- (b) whether the applicant complies with any other renewal criteria or conditions prescribed by the regulations.
- 20

21 Annual endorsement fee and statement

- (1) An endorsed building engineer must pay to the Victorian Building Authority the prescribed annual endorsement fee (if any)—
- 25
- (a) on the date the endorsement was specified to come into force under section 14 or specified to be renewed under section 20 (as the case may be) and on each subsequent anniversary of whichever of those dates is applicable; or
- 30
- (b) if another date is prescribed, on the prescribed date.
- (2) An annual endorsement fee may be paid at any time in the 6 weeks before it falls due.

- 5
- (3) The payment must be accompanied by a statement in respect of the year up to the date the payment is made that is in a form approved by the Victorian Building Authority and that is signed by the endorsed building engineer.
- (4) The statement must contain any information and be accompanied by any document required by the Victorian Building Authority.
- 10
- (5) The Business Licensing Authority must suspend the endorsement on an endorsed building engineer's registration if the engineer fails to comply with this section.

22 Surrender of registration or endorsement

- 15
- (1) A registered engineer may, with the consent of the Business Licensing Authority, surrender the engineer's registration.
- (2) An endorsed building engineer may, with the consent of the Business Licensing Authority and the Victorian Building Authority, surrender the endorsement on the engineer's registration.
- 20

23 Suspension of endorsement

25

The Business Licensing Authority must suspend an endorsed building engineer's endorsement upon granting an application by the engineer for registration as a non-practising engineer.

24 Change to registered information

30

A registered engineer must notify the Business Licensing Authority of any material change to the information about the engineer provided to the Business Licensing Authority under this Part within 14 days after the change occurs.

Penalty: 10 penalty units.

25 Return of certificates of registration

A person registered, or whose registration is endorsed, under this Part must return the certificate of registration to the Business Licensing Authority within 7 days of—

- 5
- (a) becoming aware of the suspension or cancellation of the registration; or
 - (b) becoming aware of the suspension or cancellation of an endorsement of the registration; or
 - 10 (c) notifying the Business Licensing Authority that the person is surrendering an endorsement or registration; or
 - (d) the occurrence of any other prescribed circumstances.
- 15

Penalty: 10 penalty units.

Division 2—Review of registration decisions

26 Definitions

In this Division—

20 *affected person* means a person directly affected by a reviewable decision;

reviewable decision means any of the following decisions under this Act—

- 25
- (a) a decision to refuse an application for registration in an area of engineering;
 - (b) a decision to refuse an application for endorsement of a registration;
 - 30 (c) a decision to impose conditions (other than prescribed conditions) on a registration or an endorsement of a registration;

- (d) a decision to refuse to renew a registration or an endorsement of a registration.

27 Application for review by VCAT of reviewable decision

5

- (1) An affected person may apply to VCAT for review of a reviewable decision.
- (2) An application for review of a reviewable decision must be made within 28 days after the reviewable decision is made.
- (3) For the purposes of an application under this section, the following decisions are taken to be a decision of the Victorian Building Authority—
 - (a) a decision to refuse an application for endorsement of a registration;
 - (b) a decision to impose conditions (other than prescribed conditions) on an endorsement of a registration;
 - (c) a decision to refuse to renew an endorsement of a registration.

10

15

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Division 3—The Register

28 The Register

25

30

- (1) The Licensing Registrar must establish and maintain a register to be called the Register of Professional Engineers.
- (2) The purposes of the Register are—
 - (a) to record information about registered engineers and endorsed building engineers and publish certain information; and
 - (b) to record information about applications for registration and endorsement of registration and for renewal of registration and

- endorsement of registration, including applications that were refused; and
- 5 (c) to record information about registration or endorsements of registration that were cancelled by VCAT and any conditions imposed on registrations or endorsements; and
- 10 (d) to record decisions and determinations made by the Business Licensing Authority under this Act; and
- (e) subject to section 17A of the **Business Licensing Authority Act 1998**, to make the information collected for the purposes of the Register available to the public; and
- 15 (f) to enable the Director, the Business Licensing Authority and the Victorian Building Authority to provide information to registered engineers and other persons affected by this Act.
- 20 (3) The Licensing Registrar must record in the Register the following information in respect of each registered engineer—
- (a) the engineer's full name and registration number;
- 25 (b) the address of the engineer;
- (c) the areas of engineering in respect of which the engineer is registered;
- (d) whether there is an endorsement on the registration;
- 30 (e) the date on which the application for registration and endorsement of the registration (if any) was granted;
-

- 5
- (f) the date on which an application for renewal of the registration and endorsement of the registration (if any) was granted;
- (g) the expiry date of the registration and endorsement of the registration (if any);
- (h) if applicable, the date on which the registration or endorsement of the registration was cancelled;
- 10 (i) details of any condition to which the registration and endorsement of the registration (if any) is subject;
- (j) details of any court order or VCAT order affecting the registration and endorsement of the registration (if any) of which the Business Licensing Authority has notice;
- 15 (k) any other prescribed matter.
- (4) A person may search and take a copy of an extract from, or a copy of, the Register on payment of the prescribed fee (if any).
- 20 (5) A person may obtain a certified extract from, or a certified copy of, the Register on the payment of the prescribed fee (if any).
- 25 (6) Subject to section 17A of the **Business Licensing Authority Act 1998**, the Licensing Registrar may keep and publish the Register in any form that the Licensing Registrar thinks fit.

29 Publication of information

- 30 (1) The Licensing Registrar must publish on the Internet the following information in respect of each registered engineer—
- (a) the name of the engineer;
- (b) the areas of engineering in respect of which the engineer is registered;

- 5
- (c) whether there is an endorsement on the registration;
- (d) the date on which the registration and endorsement of the registration (if any) was granted;
- (e) the expiry date of the registration and endorsement of the registration (if any);
- (f) any conditions on the registration and endorsement of the registration (if any);
- 10 (g) any convictions or findings of guilt for any offence under this Act or the regulations or the **Building Act 1993** or regulations made under that Act;
- (h) details of any disciplinary orders made under Part 4 or any disciplinary action under Part 11 of the **Building Act 1993**;
- 15 (i) any other prescribed information.
- (2) A registered engineer must notify the Licensing Registrar of any change in the information about the engineer appearing in the Register without delay after the change occurs, and the Licensing Registrar must update the Register accordingly.
- 20 (3) The Register must be in accordance with the regulations.

25 **Division 4—Codes of conduct**

30 Director may approve codes of conduct for registered engineers

- 30 (1) The Director may approve codes of conduct for registered engineers in accordance with this Division.
- (2) A code of conduct may make different provision for different areas of engineering.

- (3) Without limiting their scope, codes of conduct may deal with any obligation of a registered engineer to act fairly, honestly and in the best interests of a client.

5 **31 Codes of conduct prepared by Director or industry**

- (1) A code of conduct approved by the Director under this Division may be—

- 10 (a) a code of conduct prepared by the Director;
 or
 (b) a code of conduct prepared and submitted to the Director by an organisation representing engineers.

- (2) In preparing a code of conduct under subsection (1)(a), the Director—

- 15 (a) must consult with any prescribed organisation representing engineers; and
 (b) may consult with any other organisation.

- (3) The Director may make changes to a code of conduct submitted to the Director under
20 subsection (1)(b).

- (4) Before making changes to a code of conduct under subsection (3), the Director—

- 25 (a) must consult with the organisation that submitted the code of conduct; and
 (b) may consult with any other organisation.

32 Publication of codes of conduct

As soon as is practicable after a code of conduct is approved, the Director must publish the code of conduct on the Internet.

33 Engineers must comply with approved codes of conduct

5

A registered engineer must comply with any code of conduct approved under this Division that is applicable to the area of engineering in respect of which the engineer is registered.

Part 3—Assessment schemes

Division 1—Approval of assessment schemes

34 Suitability of assessment schemes for approval

- 5 An assessment scheme is suitable for approval under this Part if—
- 10 (a) the scheme adequately provides for the assessment of qualifications and competencies of engineers in an identifiable area of engineering; and
 - 15 (b) the scheme is consistent with national and international standards for the recognition of professional engineers; and
 - 20 (c) the scheme includes procedures for the assessment of applicants for registration under Part 2 that are conducted in an independent and professional manner; and
 - 25 (d) the entity conducting the scheme has adequate procedures for monitoring and improving the assessment process carried out under the scheme; and
 - 30 (e) any fees imposed under the scheme for the assessment of qualifications and competencies are reasonable having regard to the scope of the services being offered; and
 - (f) the scheme includes adequate continuing professional development requirements for engineers and an effective audit program to ensure registration renewal requirements are met; and
 - (g) the entity conducting the scheme engages competent persons to perform assessments of applicants for registration under Part 2 and has proven procedures for training and
-

accrediting those persons who will perform the assessments; and

- 5
- (h) the entity conducting the scheme has the financial capacity and facilities to conduct assessments of qualifications and competencies; and
- 10
- (i) the entity conducting the scheme has a proven capacity to undertake independent and authoritative assessments in a timely manner; and
- (j) the scheme and the entity conducting the scheme satisfy any other applicable prescribed criteria.

35 Application for approval of an assessment scheme

- 15
- (1) An entity may apply to the Business Licensing Authority for approval of a proposed assessment scheme for one or more areas of engineering, or proposed areas of engineering, to be conducted by the entity.
- 20
- (2) The application must—
- (a) be in the approved form; and
- (b) be supported by enough information to enable the Business Licensing Authority to determine the application; and
- 25
- (c) be accompanied by—
- (i) the proposed assessment scheme; and
- (ii) the prescribed fee (if any).

36 Application for renewal of approval of an assessment scheme

- 30
- (1) The assessment entity for an assessment scheme may apply to the Business Licensing Authority for renewal of the approval of the assessment scheme.

- 5
- (2) The application must—
- (a) be in the approved form; and
 - (b) be supported by enough information to enable the Business Licensing Authority to determine the application; and
 - (c) be made at least 28 days before the approval ends; and
 - (d) be accompanied by the prescribed fee (if any).

10 **37 Application for variation to an approved assessment scheme**

(1) The assessment entity for an assessment scheme may apply to the Business Licensing Authority for variation of the assessment scheme.

- 15
- (2) The application must—
- (a) be in the approved form; and
 - (b) be supported by enough information to enable the Business Licensing Authority to decide the application; and
 - 20 (c) be accompanied by—
 - (i) the proposed variation of the assessment scheme; and
 - (ii) the prescribed fee (if any).

38 Notification of change of details of assessment entity

25 An assessment entity must notify the Business Licensing Authority of any changes in the information provided to the Business Licensing Authority under this Part within 30 days of the change.

30

39 Further information or document to support application

- 5 (1) The Business Licensing Authority may, by written notice, require an applicant under this Part to give the Business Licensing Authority, within at least 14 days or such other reasonable time stated in the notice, further information or a document the Business Licensing Authority reasonably requires to determine the application.
- 10 (2) The Business Licensing Authority and the applicant may agree on an extension of the time stated in the notice.
- 15 (3) The applicant is taken to have withdrawn its application if the applicant does not comply with the requirement within the following time—
- (a) the time stated in the notice;
 - (b) if the Business Licensing Authority and the applicant have agreed on an extension of time—the agreed time.

20 **40 Decision on application**

- (1) The Business Licensing Authority must determine an application under this Part by granting or refusing the application.
- 25 (2) The Business Licensing Authority must grant the application if the Business Licensing Authority is satisfied that—
- (a) in the case of an application for approval of a proposed assessment scheme, the proposed assessment scheme is suitable for approval;
 - 30 or
 - (b) in the case of an application for renewal of an approved assessment scheme, the assessment scheme continues to be suitable for approval; or

- (c) in the case of an application for variation of an approved assessment scheme, the assessment scheme as proposed to be varied is suitable for approval.
- 5 (3) The Business Licensing Authority may, when granting an application, impose any conditions that it considers appropriate.

41 Notice of decision

10 If the Business Licensing Authority grants an application without conditions, the Business Licensing Authority must as soon as practicable give the applicant notice of the decision.

42 Grant of application with conditions

- 15 (1) If the Business Licensing Authority proposes to grant an application with conditions, the Business Licensing Authority must give the applicant a notice stating the following—
- 20 (a) that the Business Licensing Authority proposes to grant the application with conditions (the *proposed decision*);
- (b) the proposed conditions;
- (c) the reasons for the proposed decision;
- 25 (d) that the applicant may make, within 28 days of receiving the notice, written representations to the Business Licensing Authority about the proposed decision.
- 30 (2) The Business Licensing Authority must consider all written representations about the proposed decision (the *accepted representations*) made by the applicant within 28 days of receiving a notice under subsection (1).

- 5
- (3) After considering the accepted representations, or if there are no accepted representations, the Business Licensing Authority must decide to grant the application with, or without, conditions.
- (4) The Business Licensing Authority may impose any conditions under subsection (3) that it considers appropriate.
- 10
- (5) The Business Licensing Authority must, as soon as practicable after making a decision under subsection (3), give the applicant—
- (a) in the case of a decision to grant the application without conditions, notice of the decision; or
- 15
- (b) in the case of a decision to grant the application with conditions, notice of the decision and reasons for the decision.

43 Refusal of application

- 20
- (1) If the Business Licensing Authority proposes to refuse to grant the application, the Business Licensing Authority must give the applicant a notice stating the following—
- (a) that the Business Licensing Authority proposes to refuse to grant the application (the *proposed decision*);
- 25
- (b) the reasons for the proposed decision;
- (c) that the applicant may make, within 28 days of receiving the notice, written representations to the Business Licensing Authority about the proposed decision.
- 30
- (2) The Business Licensing Authority must consider all written representations about the proposed decision (the *accepted representations*) made by the applicant within 28 days of receiving a notice under subsection (1).

- 5
- (3) After considering the accepted representations, or if there are no accepted representations, the Business Licensing Authority must decide—
- (a) to grant the application, with or without conditions; or
- (b) to refuse to grant the application.
- 10
- (4) As soon as practicable after making a decision under subsection (3), the Business Licensing Authority must give the applicant—
- (a) in the case of a decision to grant the application without conditions, notice of the decision; or
- 15
- (b) in the case of a decision to grant the application with conditions or to refuse to grant the application, notice of the decision and reasons for the decision.
- (5) Section 42 does not apply in relation to conditions imposed under this section.

44 Period of approval

- 20
- (1) An approval of an assessment scheme under this Part remains in force for the term decided by the Business Licensing Authority when granting the application for approval or renewal of the assessment scheme, unless it is sooner cancelled,
- 25
- suspended or otherwise ended.
- (2) A term under subsection (1) must not be more than 5 years.
- (3) A variation of an approval under this Part does not extend the term of the approval.

30 **45 Approval continues pending decision about renewal**

- (1) If an assessment entity applies for renewal of approval of an assessment scheme under section 36, the approval of the assessment scheme is taken to continue in force from the
-

day it would, but for this subsection, have ended until the day on which any of the following first happens—

- 5
- (a) the Business Licensing Authority renews the approval;
 - (b) if the Business Licensing Authority decides to refuse to grant the renewal, the Business Licensing Authority gives the assessment entity notice of the decision;
 - 10 (c) the assessment entity is taken to have withdrawn the application under section 39(3).
- 15
- (2) If the Business Licensing Authority renews the approval, the approval is taken to have been renewed from the day it would, but for subsection (1), have ended.
 - (3) Subsection (1) does not apply if the approval of the assessment scheme is cancelled or suspended.

46 Surrender of approval

- 20
- (1) The assessment entity for an assessment scheme may surrender the approval for the scheme by notice given to the Business Licensing Authority.
 - (2) The surrender of the approval takes effect—
- 25
- (a) 90 days after the day the notice is given to the Business Licensing Authority; or
 - (b) if a later day is stated in the notice, on the later day.

47 Grounds for cancellation or suspension of approval

30 Each of the following is a ground for cancelling or suspending the approval of an assessment scheme—

- (a) the assessment scheme stops being suitable for approval;

- 5
- (b) the assessment entity for the scheme has intentionally or recklessly assessed an applicant for registration under section 12(2)(a) as having the qualifications and competencies provided for under the scheme and the applicant does not have those qualifications or competencies;
- 10
- (c) the approval was granted because of a materially false or misleading representation or declaration;
- (d) the assessment entity for the scheme has contravened a condition of the approval;
- (e) the assessment entity for the scheme has contravened a provision of this Act.

15

Division 2—Show cause process

48 Show cause notice for assessment entities

- (1) This section applies if—
- 20
- (a) the Business Licensing Authority believes a ground exists to cancel or suspend the approval of an assessment scheme; and
- (b) the Business Licensing Authority proposes to cancel or suspend the approval (the *proposed action*).
- 25
- (2) The Business Licensing Authority must give the assessment entity for the assessment scheme a notice (a *show cause notice*) stating the following—
- 30
- (a) the proposed action;
- (b) if proposing to suspend an approval—the period of the proposed suspension;
- (c) the grounds for the cancellation or suspension;

- 5
- (d) an outline of the facts and circumstances forming the basis for the grounds;
 - (e) that the assessment entity may make, within a stated period (the *show cause period*), written representations explaining why the approval should not be cancelled or suspended.
- 10
- (3) The show cause period must be a period ending at least 21 days after the show cause notice is given to the assessment entity.

49 Representations about show cause notice

15

The Business Licensing Authority must consider all written representations (the *accepted representations*) made in the show cause period by the assessment entity.

50 Ending show cause process without further action

20

If, after considering the accepted representations for the show cause notice, the Business Licensing Authority no longer believes the ground exists to take the proposed action, the Business Licensing Authority—

- 25
- (a) must not take further action about the show cause notice; and
 - (b) must, as soon as practicable, give notice to the assessment entity that no further action is to be taken in relation to the show cause notice.

51 Cancelling or suspending after show cause process

- 30
- (1) This section applies if, after considering the accepted representations for the show cause notice, the Business Licensing Authority—

- 5 (a) still believes the ground exists to cancel or suspend the approval; and
- (b) believes cancellation or suspension is warranted.
- 5 (2) This section also applies if there are no accepted representations for the show cause notice.
- (3) The Business Licensing Authority may—
- 10 (a) if the proposed action was to cancel the approval—cancel the approval or suspend the approval for a period; or
- (b) if the proposed action was to suspend the approval for a period—suspend the approval for not longer than that period.
- 15 (4) If the Business Licensing Authority decides to cancel or suspend the approval of the assessment scheme, the Business Licensing Authority must give the assessment entity notice of the decision and the reasons for the decision.
- (5) The decision takes effect—
- 20 (a) on the day the notice is given to the assessment entity; or
- (b) if a later day is stated in the notice—on the later day.

Division 3—Review by VCAT

25 **52 Application for review by VCAT of refusal to grant application**

- (1) An assessment entity may apply to VCAT for a review of a decision under this Part—
- 30 (a) to refuse an application; or
- (b) to suspend or cancel the approval of an assessment scheme administered by the assessment entity; or
-

(c) to grant an application with conditions.

(2) An application under subsection (1) must be made within 28 days after the decision that is the subject of the application.

5

Division 4—Record of assessment entities

53 Record of assessment entities

(1) The Business Licensing Authority must keep a record stating each of the following—

- (a) the name of each assessment entity;
- 10 (b) the contact details for the entity;
- (c) the areas of engineering for which the entity conducts an assessment scheme.

(2) The Business Licensing Authority must—

- (a) publish the record on the Internet; and
- 15 (b) if asked by a person and on payment of the prescribed fee (if any), give the person a copy of all or part of the record.

Part 4—Disciplinary proceedings in relation to registered engineers

Division 1—Preliminary

54 Application of Part

5 This Part applies to the following—

- (a) a registered engineer;
 - (b) a person who is not a registered engineer, but who was registered at the time of the conduct that forms the ground for disciplinary action, as if the person were a registered engineer.
- 10

Note

Section 64 provides that if a person's registration or endorsement is suspended, the person is taken not to be registered or endorsed (as the case may be) under this Act.

55 Grounds for disciplinary action

15

- (1) Each of the following is a ground on which disciplinary action may be taken in respect of a registered engineer—
 - (a) the registered engineer has contravened—
 - (i) this Act or the regulations under this Act; or
 - (ii) a prescribed Act or law or a prescribed provision of a prescribed Act or law;
 - (b) the registered engineer has engaged in unsatisfactory professional conduct;
 - (c) the registered engineer no longer meets the eligibility criteria for an area of engineering in respect of which the registered engineer is registered;
 - (d) the registered engineer is not a fit and proper person to provide professional engineering services in an area of engineering in respect
- 20
- 25
- 30
-

- of which the registered engineer is registered;
- 5 (e) the registered engineer obtained registration, or any required insurance, on the basis of information or a document that was false or misleading;
- (f) the registered engineer has failed to comply with a condition of the registered engineer's registration;
- 10 (g) the registered engineer has failed to comply with an undertaking given to the Director under this Act, or to the Victorian Building Authority under the **Building Act 1993**;
- 15 (h) the registered engineer has not paid a fee or other amount required to be paid under—
- (i) this Act or the regulations; or
 - (ii) a prescribed Act or law.
- (2) The Director may make inquiries to determine whether a ground exists for taking disciplinary action under this Part.
- 20

Division 2—Show cause process

56 Show cause process for registered engineers

- 25 (1) The Director may, by notice in writing, require a registered engineer to show cause why the engineer should continue to be registered.
- (2) The Director may issue a notice under subsection (1) if the Director is of the opinion that—
- 30 (a) there are reasonable grounds to believe that a ground for disciplinary action against the registered engineer exists; and

- (b) if the ground for disciplinary action against the registered engineer exists, cancellation of the registered engineer's registration would be appropriate in the circumstances.
- 5 (3) A notice under subsection (1) (a *show cause notice*) must—
- (a) be served personally on the registered engineer; and
- 10 (b) state that the Director proposes to make an application to VCAT for an order cancelling the registered engineer's registration; and
- (c) specify the ground for the proposed application; and
- 15 (d) contain an outline of the facts and circumstances forming the basis for the ground for the proposed application; and
- (e) state the time period within which the registered engineer may respond to the notice, that time period being not less than
- 20 21 days from the date of service of the notice (the *show cause period*); and
- (f) state what steps need to be taken by the registered engineer to respond to the notice; and
- 25 (g) state the consequences for the registered engineer of not responding to the notice.
- (4) Despite subsection (3)(a), if, on the application of the Director, it appears to VCAT that service cannot be promptly effected on a registered
- 30 engineer, VCAT may order that the notice be served—
- (a) by sending it by post, facsimile or other electronic transmission to the registered engineer at the engineer's usual or last
- 35 known residential or business address; or
-

- 5 (b) by leaving it at the registered engineer's usual or last known residential or business address with a person on the premises who is apparently at least 16 years old and apparently residing or employed there.

57 Representations about show cause notice

- 10 (1) The registered engineer may—
- (a) make written representations about the show cause notice to the Director within the show cause period; or
 - 15 (b) make oral representations about the show cause notice to the Director at the time within the show cause period, and at the place, agreed by the Director and the registered engineer.
- (2) The Director must keep a record of oral representations made under subsection (1)(b).

58 Decision about whether to take disciplinary action

20 Within 28 days after the show cause period ends, the Director must decide whether cancellation of the registered engineer's registration would be appropriate in the circumstances.

59 Ending show cause process without further action

25 If the Director no longer believes cancellation of the registered engineer's registration would be appropriate in the circumstances, the Director—

- (a) must take no further action about the show cause notice; and
 - 30 (b) must revoke any suspension under Division 3 of Part 6.2 of the **Australian Consumer Law and Fair Trading Act 2012** that relates to the matter that is the subject of the show cause notice; and
-

- (c) must, as soon as practicable after making its decision, give notice to the registered engineer that no further action will be taken about the show cause notice.

5 **Division 3—VCAT may conduct disciplinary proceedings**

60 VCAT may conduct disciplinary proceeding

10 VCAT may, on application by the Director, conduct a proceeding (a *disciplinary proceeding*) to decide whether a disciplinary ground is established.

61 Continuation of particular proceeding

15 If, after a disciplinary proceeding is started against a person, the person ceases to be a registered engineer, the proceeding may continue under this Part.

62 Orders relating to registered engineer

- 20 (1) If VCAT decides that a disciplinary ground is established in respect of a registered engineer, VCAT may—
- (a) make one or more of the orders mentioned in subsection (2), (3) or (4); or
- (b) take no action against the registered engineer.
- 25 (2) VCAT may order the registered engineer to pay a penalty of not more than the equivalent of 200 penalty units.
- (3) VCAT may also make one or more of the following orders—
- 30 (a) an order reprimanding the registered engineer;
-

Part 4—Disciplinary proceedings in relation to registered engineers

- 5
- (b) an order imposing a condition on the registered engineer's registration including, but not limited to, to submit to an audit of the engineer's practice of engineering;
- (c) an order varying a condition (other than a prescribed condition) on the registered engineer's registration;
- 10
- (d) an order suspending or partially suspending the registered engineer's registration for a stated period;
- (e) an order cancelling the registered engineer's registration;
- 15
- (f) an order disqualifying, indefinitely or for a stated period, the registered engineer from obtaining registration as a registered engineer;
- (g) an order directing the registered engineer—
- 20
- (i) to do a specified thing, including to rectify or complete specified building work; or
- (ii) not to do a specified thing;
- (h) an order requiring the registered engineer to successfully complete a specified course of training within a specified period;
- 25
- (i) an order requiring the registered engineer to pay an amount to the Director as compensation for all, or a part of, the Director's reasonable costs of any investigation about the matter the subject
- 30
- of the proceeding, including the costs of preparing for the proceeding.
- (4) An order for payment of an amount under subsection (2) or (3)(i) may direct that, if the registered engineer does not pay the amount
- 35
- within the period stated in the order, the
-

registered engineer's registration be suspended until the amount is paid.

- 5
- (5) If the registered engineer does not pay the amount within the stated period, the registration is suspended until the earlier of the following—
- (a) the day the amount is paid;
 - (b) the day the registration expires.
- (6) A suspension under subsection (5) takes effect immediately after the end of the stated period.

10 **63 Orders relating to former registered engineer**

- (1) This section applies if VCAT decides that a disciplinary ground is established against a person who is not a registered engineer at the time of the decision.
- 15 (2) VCAT may decide—
- (a) to take no action against the person; or
 - (b) to do one or more of the following—
 - 20 (i) order the person to pay a stated penalty of not more than the equivalent of 200 penalty units;
 - (ii) make an order reprimanding the person;
 - (iii) make an order disqualifying, indefinitely or for a stated period, the person from obtaining registration as a registered engineer.
- 25

64 Consequences of suspension of registration

- 30 (1) While a person's registration as an engineer, or an endorsement on that registration, is suspended, the person is taken not to be registered or endorsed (as the case may be) under this Act either wholly or, if it is a partial suspension, in relation to the matter specified in the suspension.

- 5 (2) A person whose registration as an engineer
or whose endorsement on that registration
is suspended may apply for a renewal of that
registration or endorsement (as the case may be)
during the period of suspension but the renewed
registration or endorsement remains suspended,
either wholly or as a partial suspension (as the
case requires), in accordance with the terms
of the suspension, until the registration or
10 endorsement is cancelled or the suspension ends
or is revoked.

65 Effect of particular orders

- If VCAT makes an order to disqualify a person,
the Business Licensing Authority must not—
- 15 (a) if the disqualification is indefinite—
re-register the person; or
- (b) if the disqualification is for a stated period—
re-register the person during the period
stated in the order.

20 **66 Recording details of orders**

- If VCAT makes an order about a person the order
may state—
- 25 (a) the period for which specified details of the
order are to be included in the Register for
the person; and
- (b) the particular details of the order, if any, that
VCAT decides are not to be included in the
Register.

Part 5—Offences

67 Offence to provide professional engineering services without registration

- 5 (1) A person must not provide professional engineering services in a particular area of engineering unless the person is—
- (a) registered as a practising engineer in that area; or
- 10 (b) providing the professional engineering services under the direct supervision of a person who is registered as a practising engineer in that area.

Penalty: 500 penalty units.

- 15 (2) For the purposes of subsection (1), *direct supervision* means that a person—
- (a) directs another person in the carrying out of professional engineering services; and
- (b) oversees and evaluates the carrying out of the services by the other person.

20 68 Offence to hold out to be registered or endorsed without registration

- 25 (1) A person who is not registered as a practising engineer in a particular area of engineering must not represent that the person is able to provide professional engineering services in that area of engineering.

Penalty: 500 penalty units.

- 30 (2) A person who is not an endorsed building engineer must not represent that the person is an endorsed building engineer.

Penalty: 500 penalty units.

- (3) A person who is not registered as a non-practising engineer must not represent that the person is registered as a non-practising engineer.

Penalty: 500 penalty units.

5

69 Offence to provide false or misleading information

- (1) A person must not give information to the Business Licensing Authority, the Director, the Victorian Building Authority, an inspector or an assessment entity that the person knows or believes to be false or misleading in a material particular.

10

Penalty: In the case of a natural person,
60 penalty units;

15

In the case of a body corporate,
300 penalty units.

- (2) A person must not produce a document to an inspector under this Act that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

20

Penalty: In the case of a natural person,
60 penalty units;

25

In the case of a body corporate,
300 penalty units.

Part 6—Enforcement

Division 1—Preliminary

70 Inspector must produce identity card

5 An inspector must produce the inspector's identity card for inspection—

- (a) before exercising a power under this Part, other than a power exercised by way of post; and
- 10 (b) at any time during the exercise of a power under this Part, if asked to do so.

Penalty: 12 penalty units.

Division 2—Inspection of documents and records

71 Documents to be available for inspection

- 15 (1) A registered engineer must, at all reasonable times at each place at which the registered engineer practises as a registered engineer, keep all documents relating to the business available for inspection by an inspector in a form in which they can readily be inspected.
- 20 (2) An inspector may by written notice require a person to produce documents relating to the person's practice as a registered engineer or endorsed building engineer.
- 25 (3) A notice under subsection (2) must state a time for complying with the notice, being not less than 14 days from the date of the notice.

72 Powers on production of documents

30 If any documents are produced to an inspector under this Division, the inspector may do any one or more of the following—

- 5
- (a) inspect the documents or authorise a person to inspect the documents;
- (b) make copies of, or take extracts from, the documents;
- 10
- (c) seize the documents if the inspector—
- (i) considers the documents necessary for the purpose of obtaining evidence for use in any proceedings or proposed proceedings under this Act; or
- (ii) believes on reasonable grounds that it is necessary to seize the documents in order to prevent their concealment, loss or destruction or their use in the contravention of this Act;
- 15
- (d) secure any seized documents against interference;
- (e) retain possession of the documents.

73 Where must documents be produced?

20 An inspector may require a person to produce a document—

- (a) at the person's place of business; or
- (b) at the office of the Director; or
- (c) with the consent of the person, at any other place.

25 **74 Third parties to produce documents and answer questions relating to professional engineering services**

- 30 (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector may require any person who has possession, custody or control of documents relating to the provision of professional engineering services—

- 5
- (a) to answer, orally or in writing, any questions put by the inspector relating to the provision of professional engineering services; and
- (b) to supply, orally or in writing, information required by the inspector relating to the provision of professional engineering services; and
- 10 (c) to produce to the inspector specified documents or documents of a specified class relating to the provision of professional engineering services.
- (2) Subsection (1) does not permit a requirement to be made of the Registrar of Titles.

15 **75 Specified public bodies to answer questions and supply information**

- (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector may request that, within a time specified by the inspector, a specified public body do either or
- 20 both of the following—
- (a) answer, orally or in writing, any questions put by the inspector relating to the provision of professional engineering services;
- (b) supply, orally or in writing, information
- 25 required by the inspector relating to the provision of professional engineering services.
- (2) An inspector may only make a request under subsection (1) with the written consent of the
- 30 Director.
- (3) A specified public body other than the Chief Commissioner must comply with a request under subsection (1).

(4) The Chief Commissioner must respond to a request under subsection (1) and may, but is not obliged to, comply with it.

(5) In this section—

5 *public statutory authority* means a body established by or under an Act for a public purpose;

specified public body means—

10 (a) a Department Head within the meaning of the **Public Administration Act 2004**; or

 (b) a public statutory authority; or

 (c) a municipal council; or

 (d) the Chief Commissioner.

15 **76 Certain other specified persons or bodies to answer questions and supply information**

 (1) For the purpose of monitoring compliance with this Act or the regulations, the Director or an inspector may require a specified person or body within a time specified by the Director or inspector—

20 (a) to answer, orally or in writing, any questions put by the inspector relating to the provision of professional engineering services; and

25 (b) to supply, orally or in writing, information required by the inspector relating to the provision of professional engineering services.

30 (2) An inspector can only make a requirement under subsection (1) with the written consent of the Director.

 (3) A specified person or body must comply with a requirement under subsection (1).

(4) In this section, *specified person or body* means—

(a) a person who is a publisher of a publication;
or

5 (b) a person who is the owner or operator of a
broadcasting service; or

(c) a person who is the owner or operator of a
telecommunications service; or

(d) a person who is the owner or operator of a
postal service.

10 **77 Specified persons to answer questions and supply
information**

(1) For the purpose of monitoring compliance with
this Act or the regulations, an inspector, with
the written approval of the Director, may apply
15 to the Magistrates' Court for an order requiring
any person at a time and place specified by the
inspector—

(a) to answer, orally or in writing, any questions
put by the inspector relating to an engineer's
20 practice as a registered engineer; or

(b) to supply, orally or in writing, information
required by the inspector in relation to an
engineer's practice as a registered engineer.

(2) If the Magistrates' Court is satisfied on the basis
25 of evidence presented by the inspector that the
order is necessary for the purpose of monitoring
compliance with this Act or the regulations, the
Court may grant the order sought.

(3) An order under this section must state a date,
30 not later than 28 days after the making of the
order, on which the order ceases to have effect.

- (4) An inspector who executes an order under this section must, as soon as practicable after that execution, notify the Magistrates' Court in writing of the time and place of execution of the order.

5 **78 Service of documents**

- (1) A written requirement by an inspector under this Division may be given personally or by registered post to a person—

- 10 (a) at the last known place of business, employment or residence of the person; or
- (b) in the case of a body corporate, at the registered office of the body corporate.

- 15 (2) A person who provides a document or information in response to a requirement of an inspector under this Division may send that document or information to the Director by registered post.

Division 3—Entry, search and seizure

79 Entry or search with consent

- 20 (1) For the purpose of monitoring compliance with this Act or the regulations, an inspector, with the consent of the occupier of the premises, may—
- (a) enter and search the premises; and
- 25 (b) examine and seize any thing found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations; and
- 30 (c) inspect and make copies of, or take extracts from, any document found on the premises; and
- (d) make any still or moving image, audio recording or audio-visual recording.
-

- 5 (2) An inspector must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the inspector—
- 5 (a) has produced the inspector's identity card for inspection; and
- (b) has informed the occupier of the purpose of the search and that—
- 10 (i) the occupier may refuse to give consent to the entry and search or to the seizure of any thing found during the search; and
- 15 (ii) the occupier may refuse to consent to the taking of any copy of, or extract from, a document found on the premises during the search; and
- 20 (iii) any thing seized or taken during the search with the consent of the occupier may be used in evidence in proceedings.
- 25 (3) If an occupier consents to an entry and search, the inspector who requested consent must, before entering the premises, ask the occupier to sign an acknowledgement stating the inspector has complied with the requirements set out in subsection (2).
- 30 (4) If an occupier consents to the seizure or taking of any thing during a search under this section, the inspector must, before seizing or taking the thing, ask the occupier to sign an acknowledgement stating—
- 35 (a) that the occupier has consented to the seizure or taking of the thing; and
- (b) the date and time that the occupier consented.
-

- (5) An occupier who signs an acknowledgement must be given a copy of the signed acknowledgement before the inspector leaves the premises.

80 Entry without consent or warrant

- 5 (1) Subject to subsection (2), for the purpose of monitoring compliance with this Act or the regulations, an inspector may do all or any of the following—
- 10 (a) enter and search, at any time during the normal business hours of the business being conducted at the premises—
- 15 (i) any premises at which a business is being conducted that provides professional engineering services; and
- 20 (ii) any premises, at which the inspector reasonably believes there are records or documents, or a person working at the premises who knows information, relevant to the conduct of a business referred to in subparagraph (i);
- 25 (b) seize or secure against interference any thing that the inspector believes on reasonable grounds to be connected with a contravention of this Act or the regulations that is found in or on premises referred to in paragraph (a);
- 30 (c) inspect and make copies of, or take extracts from, any document kept in or on, or accessible from, premises referred to in paragraph (a);
- (d) require a person to produce a document or part of a document located at the premises referred to in paragraph (a);

- 5 (e) require a person at the premises referred to in paragraph (a) to answer any questions put by the inspector;
- (f) make any still or moving image, audio recording or audio-visual recording at or of premises referred to in paragraph (a);
- 10 (g) bring any equipment onto the premises that the inspector believes on reasonable grounds is necessary for the examination or processing of things (including documents) found at the premises in order to determine whether they are things that may be seized under this section.
- 15 (2) An inspector may enter and search premises under subsection (1) with the assistance of any person necessary to provide technical assistance to the inspector.
- 20 (3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).
- Penalty: In the case of a natural person,
150 penalty units;
In the case of a body corporate,
750 penalty units.
- 25 (4) For the purposes of subsection (1), *premises* excludes any part of a place of business which is the permanent place of residence of a person referred to in subsection (1)(a)(i).

81 Use or seizure of electronic equipment at premises

- 30 (1) If an inspector, during a search under section 80—
- (a) finds a thing at the premises that is or includes a disc, tape or other device for the storage of information; and

- 5
- (b) there is at the premises equipment that may be used with the disc, tape or other storage device; and
- (c) the inspector believes on reasonable grounds that information stored in the disc, tape or other storage device may be relevant to determine whether this Act or the regulations have been complied with—
- 10 the inspector may operate, or may require the occupier of the premises or an employee of the occupier to operate, the equipment to access the information.
- 15 (2) If the inspector believes on reasonable grounds that a disc, tape or other storage device at the premises contains, stores or is otherwise used in the transmission of information that is relevant to determine whether this Act or the regulations have been complied with, the inspector may—
- 20 (a) put the information in a documentary form and seize the documents so produced; or
- (b) copy the information to another disc, tape or other storage device and remove that disc, tape or storage device from the premises; or
- 25 (c) if it is not practicable to put the information in a documentary form or to copy the information, seize the disc, tape or other storage device and the equipment that enables the information to be accessed.
- 30 (3) An inspector must not operate or seize equipment for a purpose set out in this section unless the inspector believes on reasonable grounds that the operation can be carried out without damage to the equipment.
- 35

82 Search warrants

- 5
- (1) An inspector may apply to a magistrate for the issue of a search warrant in relation to particular premises if the inspector believes on reasonable grounds that—
- (a) there is, or may be within the next 72 hours, on the premises evidence that a person may have contravened this Act or the regulations; or
- 10 (b) there is evidence in a digital or electronic form that a person may have contravened this Act or the regulations which is accessible on the premises.
- (2) An application under subsection (1) must not be made without the written approval of the Director.
- 15 (3) If a magistrate is satisfied by evidence, on oath or by affidavit, that there are reasonable grounds to believe that—
- (a) there is, or may be within the next 20 72 hours, on the premises a thing, or a thing of a particular kind, connected with a contravention of this Act or the regulations; or
- (b) there is information in digital or electronic 25 format connected with a contravention of this Act or the regulations that is accessible from the premises—
- the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989**.
- 30

83 Form and content of search warrants

- (1) A search warrant issued under section 82(3) may authorise the inspector named in the warrant together with a police officer or any other person or persons named or otherwise identified in the
- 35
-

warrant and with any necessary equipment to do any of the following—

- (a) to enter the premises specified in the warrant, by force if necessary;
- 5 (b) if the inspector believes on reasonable grounds that a thing, or thing of a particular kind, named or described in the warrant is connected with a contravention of this Act or the regulations—
 - 10 (i) to search for the thing; and
 - (ii) to seize the thing; and
 - (iii) to secure the thing against interference; and
 - (iv) to examine and inspect the thing; and
 - 15 (v) to make copies of, or take extracts from, the thing;
- (c) to make an image of the hard drive of a computer, or a computer of a particular kind, named or described in the warrant, if the
20 inspector believes on reasonable grounds that information contained on the hard drive is connected with the alleged contravention;
- (d) in the case of information in electronic or digital format described in the warrant that is
25 accessible from the premises, if the inspector believes on reasonable grounds that the information is connected with the alleged contravention—
 - 30 (i) to access the information via any computer or other electronic device located on the premises; and
 - (ii) to download or make an electronic copy of that information; and

- (iii) to make or produce a physical copy of that information;
- (e) to make any still or moving image, audio recording or audio-visual recording of any thing of a particular kind named or described in the warrant, if the inspector believes on reasonable grounds that it is connected with the alleged contravention.
- 5
- (2) A search warrant issued under section 82(3) must state—
- 10
- (a) the purpose for which the search is required; and
- (b) any condition to which the warrant is subject; and
- 15
- (c) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.
- 20
- (3) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to warrants issued under section 82(3).
- 25
- 84 Warrant may authorise the giving of a direction requiring assistance from person with knowledge of a computer or other electronic device**
- (1) This section applies if a magistrate is satisfied by evidence, on oath or by affidavit, that there are reasonable grounds to believe that there is information in digital or electronic format connected with a contravention of this Act or the regulations that is accessible from particular premises.
- 30
-

- 5 (2) Subject to subsection (3), a warrant issued by the
magistrate under section 82(3) may authorise the
inspector named in the warrant to require a person
to provide any information or assistance that is
reasonable and necessary to allow the inspector or
another person to do one or more of the following
things—
- 10 (a) to access information held in, or accessible
from, any computer or other electronic
device located on the premises;
 - (b) to download or make an electronic copy of
that information;
 - (c) to make or produce a physical copy of that
information.
- 15 (3) The inspector may require a person to provide
the information or assistance referred to in
subsection (2) if the person—
- 20 (a) is one of the following—
 - (i) the person alleged to have contravened
this Act or the regulations;
 - (ii) the owner or lessee of the computer or
other electronic device;
 - (iii) an employee of the owner or lessee of
the computer or electronic device;
 - 25 (iv) a person engaged under a contract for
services by the owner or lessee of the
computer or electronic device; and
 - (b) has relevant knowledge of—
 - 30 (i) the computer or electronic device or
a computer network of which the
computer or device forms or formed
part; or
-

- (ii) measures applied to protect information held in, or accessible from, the computer or electronic device.

5 **85 Announcement before entry**

- (1) On executing a search warrant issued under section 82(3), the inspector named in the warrant—
 - 10 (a) must announce that the inspector is authorised by the warrant to enter the premises; and
 - (b) if the inspector has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.
- 15 (2) An inspector is not required to comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required to ensure—
 - 20 (a) the safety of any person; or
 - (b) that the effective execution of the search warrant is not frustrated.
- (3) If the occupier is present at premises where a search warrant is being executed, the inspector must—
 - 25 (a) produce the inspector's identity card to the occupier; and
 - (b) give to the occupier a copy of the warrant.
- (4) If the occupier is not present at premises where a search warrant is being executed, the inspector must—
 - 30 (a) produce the inspector's identity card to the occupier; and
 - (b) give to the occupier a copy of the warrant.

- (a) produce the inspector's identity card to a person (if any) at the premises; and
- (b) give to the person a copy of the warrant.

86 Seizure of things not mentioned in the warrant

5 A search warrant issued under section 82(3)
authorises an inspector executing the search
warrant, in addition to the seizure of any thing
of the kind described in the warrant, to seize any
10 thing which is not of the kind described in the
warrant if—

- (a) the inspector believes, on reasonable grounds, that the thing—
 - 15 (i) is of a kind which could have been included in a search warrant issued under this Division; or
 - (ii) is evidence of a contravention of this Act or the regulations; and
- (b) in the case of seizure, the inspector believes,
20 on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction or its use in the contravention of this Act or the regulations.

87 Embargo notice

- 25 (1) An inspector executing a search warrant who is authorised by that warrant to seize any thing may, if the thing cannot, or cannot readily, be physically seized and removed, issue a notice in the prescribed form—
- 30 (a) by causing a copy of the notice to be served on the occupier; or

- (b) if the occupier cannot be located after all reasonable steps have been taken to do so, by attaching a copy of the notice to the thing in a prominent position.
- 5 (2) Subject to subsection (3), a person who knows that a notice relates to a thing must not, without the written consent of the inspector who issued the notice, sell, lease, transfer, move, dispose of or otherwise deal with the thing or any part of
- 10 the thing.
- Penalty: 60 penalty units.
- (3) Subsection (2) does not apply to a person who moved the thing or the part of the thing for the purpose of protecting and preserving it.
- 15 (4) Despite anything in any other Act, a sale, lease, transfer or other dealing with a thing in contravention of this section is void.
- 88 Inspector may monitor compliance with embargo notice**
- 20 (1) For the purpose of monitoring compliance with an embargo notice, an inspector, with the written approval of the Director, may apply to the Magistrates' Court for—
- 25 (a) an order requiring the owner of the thing to which an embargo notice relates, or the occupier of the premises where the thing is kept or required under the notice to be kept, to answer questions or produce documents at a time and place specified by the inspector;
- 30 and
- (b) any other order incidental to, or necessary for, monitoring compliance with the embargo notice or with section 87(2).
- (2) The Magistrates' Court may make the order sought
- 35 under subsection (1)(a) or (b).
-

89 Search warrants in relation to embargo notice

- 5 (1) If a thing is subject to an embargo notice, an inspector, with the written approval of the Director, may apply to a magistrate for the issue of a search warrant permitting entry to the premises where the thing is kept or required to be kept for the purposes of monitoring compliance with an embargo notice.
- 10 (2) The magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989** if the magistrate is satisfied by evidence, on oath or by affidavit, of the inspector that the warrant is necessary for the effective monitoring of compliance with an embargo notice.
- 15 (3) A search warrant issued under subsection (2) may authorise the inspector, together with any other person or persons named or otherwise identified in the warrant and with any necessary equipment—
- 20 (a) to enter the premises specified in the warrant, by force if necessary; and
- (b) to search for, seize and secure against interference the thing named in the warrant.
- 25 (4) Except as provided by this Act, the rules to be observed with respect to search warrants under the **Magistrates' Court Act 1989** extend and apply to search warrants issued under subsection (2).

90 Retention and return of seized documents or things

- 30 (1) If an inspector retains possession of a document seized from a person under this Division, the inspector must, within 21 days after the seizure, give the person a copy of the document certified as correct by the inspector.

- 5 (2) A copy of a document certified under subsection (1) must be received in all courts, tribunals and VCAT to be evidence of equal validity to the original.
- 10 (3) If an inspector seizes a document or other thing under this Division, the inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
- 15 (4) If a document or thing seized by an inspector under this Division has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—
- 20 (a) proceedings for the purpose for which the document or thing was retained have commenced within that 3-month period and those proceedings (including any appeal) have not been completed; or
- (b) the Magistrates' Court makes an order under section 91 extending the period during which the document or thing may be retained.

91 Magistrates' Court may extend 3-month period

- 25 (1) An inspector may apply to the Magistrates' Court for an extension (not exceeding 3 months) of the period during which a seized document or thing may be retained—
- 30 (a) within 3 months after the document or thing is seized under this Division; or
- (b) if an extension has been granted under this section, before the end of the period of the extension.
- (2) The Magistrates' Court may make an order extending the period if it is satisfied that the total period of retention does not exceed 12 months

and retention of the document or other thing is necessary—

- 5
- (a) for the purposes of an investigation into whether a contravention of this Act or the regulations has occurred; or
 - (b) to enable evidence of a contravention of this Act or the regulations to be obtained for the purposes of a proceeding under this Act.
- 10
- (3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

92 Requirement to assist inspector during entry

- 15
- (1) An inspector exercising a power of entry under this Division may require the occupier of the premises or an agent or employee of the occupier to do any one or more of the following—
 - (a) give information to the inspector, orally or in writing;
 - (b) produce documents to the inspector;
 - (c) give reasonable assistance to the inspector.
 - (2) A person must not, without reasonable excuse, fail to comply with a requirement of an inspector under this section.

Penalty: 60 penalty units.

25 **93 Protection against self-incrimination**

- 30
- (1) It is a reasonable excuse for a natural person to refuse or fail to give information, or do any other thing that the person is required to do, under this Part if the giving of the information or the doing of the thing would tend to incriminate the person.
 - (2) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required

to produce under this Part if the production of the document would tend to incriminate the person.

- 5 (3) Despite subsection (1), it is not a reasonable excuse for a natural person to refuse or fail to provide information or assistance that a person is required under section 84 to provide, if the provision of the information or assistance would tend to incriminate the person.

10 **94 Refusal or failure to comply with requirement**

A person must not, without reasonable excuse, refuse or fail to comply with a requirement of an inspector or the Director under this Part.

Penalty: 60 penalty units.

15 **95 Confidentiality**

- 20 (1) An inspector must not, except to the extent necessary to carry out the inspector's functions under this Part, give to any other person, whether directly or indirectly, any information acquired by the inspector in carrying out those functions.

Penalty: 60 penalty units.

- 25 (2) Subsection (1) does not apply to the giving of information—
- 25 (a) to a court or tribunal in the course of legal proceedings; or
 - (b) under an order of a court or tribunal; or
 - (c) to the extent reasonably required to enable the investigation or the enforcement of a law of this State or of any other State or of a Territory or of the Commonwealth; or
 - 30 (d) to the Business Licensing Authority; or
 - (e) to the Director; or
 - (f) to the Victorian Building Authority; or
-

- (g) with the written authority of the Director; or
- (h) with the written authority of the person to whom the information relates.

96 Infringements

- 5 (1) An inspector may serve an infringement notice on a person in respect of a prescribed offence if the inspector has reason to believe that the person committed the offence.
- 10 (2) A prescribed offence is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The infringement penalty for an offence referred to in subsection (1) is the prescribed penalty in respect of the offence.

97 Complaints

- 15 (1) A person may complain to the Director about the exercise of a power by an inspector under this Part.
- 20 (2) The Director must investigate any complaint received under this section and provide a written report on the results of the investigation to the complainant.

Part 7—General

98 Application of Australian Consumer Law and Fair Trading Act 2012

- 5 (1) Sections 125, 126, 152, 172, 173, 176 and 178
of the **Australian Consumer Law and Fair
Trading Act 2012** apply (with any necessary
modifications) in relation to the exercise or
attempted exercise of a power of an inspector
under Part 6 of this Act as if any reference in
10 those sections to Part 6.4 of that Act were a
reference to Part 6 of this Act.
- 15 (2) Sections 195 and 196 and Part 8.2 (except
section 213) of the **Australian Consumer Law
and Fair Trading Act 2012** extend and apply
(with any necessary modifications) to this Act
and any regulations made under this Act as if any
reference in those provisions to the **Australian
Consumer Law and Fair Trading Act 2012**
20 were a reference to this Act and any regulations
made under this Act.
- (3) For the purposes of subsection (2)—
- 25 (a) section 210 of the **Australian Consumer
Law and Fair Trading Act 2012** applies
as if a reference in that section to Part 3.1,
4.1 or 6.3 of the **Australian Consumer
Law and Fair Trading Act 2012** were a
reference to this Act and any regulations
made under this Act; and
- 30 (b) section 212 of the **Australian Consumer
Law and Fair Trading Act 2012** applies as
if a reference to prescribed proceedings were
a reference to—
- 35 (i) a proceeding for an offence against a
provision of this Act or any regulations
made under this Act; or

- 5 (ii) proceedings on an application for an injunction under section 201, 202, or 203 of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)) against a person alleged to have contravened a provision of this Act or any regulations made under this Act; or
- 10 (iii) proceedings on an application for an order under section 216, or for damages under section 217, of the **Australian Consumer Law and Fair Trading Act 2012** (as applied by subsection (2)).

15 **99 Who may commence proceedings?**

- (1) Proceedings for an offence against this Act or the regulations may only be commenced by—
- (a) the Director; or
- 20 (b) a person authorised by the Director for the purposes of this section.
- (2) In any proceeding commenced for an offence against this Act it must be presumed, in the absence of evidence to the contrary, that the person commencing the proceeding was
- 25 authorised to do so.

100 Service of documents

- A document required to be served on a registered engineer under this Act or the regulations (other than a written requirement served by an inspector under section 78) may
- 30 be served—
- (a) by giving it personally to the engineer; or

- 5 (b) by sending it by registered post to the engineer's last known—
- (i) address, as stated on the Register of Professional Engineers; or
 - 5 (ii) principal place of business; or
- (c) by leaving it at the registered engineer's usual or last known residence or business address with a person on the premises who is apparently at least 16 years old and
- 10 apparently residing or employed there; or
- (d) in any other prescribed manner.

101 Extension of time for prosecutions

15 Despite anything to the contrary in any Act, a proceeding for an offence against this Act may be commenced within the later of—

- (a) 3 years after the date on which the offence is alleged to have been committed; or
- 20 (b) 2 years after the date on which the Director is first made aware that the offence is alleged to have been committed, but not more than 10 years after the date on which the offence is alleged to have been committed.

102 Review of operation of Act

- 25 (1) The Minister must cause a review of the operation of this Act to be conducted.
- (2) The review must be conducted in the fourth year of the operation of the Act and be a review of the first 3 years of operation of the Act.
- 30 (3) On completing the review, the Minister must cause a report of the review to be tabled before each House of the Parliament.

103 Regulations

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- 30
- (1) The Governor in Council may make regulations for or with respect to the following—
 - (a) matters relating to assessment schemes, qualifications and competencies;
 - (b) requirements in relation to the continuing professional development of registered engineers;
 - (c) prescribing conditions on registration or endorsement of registration;
 - (d) prescribing infringement offences and infringement penalties for the purposes of section 96;
 - (e) prescribing penalties for contraventions of the regulations, not exceeding—
 - (i) 20 penalty units in the case of a natural person; and
 - (ii) 100 penalty units in the case of a corporation;
 - (f) any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
 - (2) The regulations—
 - (a) may be of general or limited application; and
 - (b) may differ according to differences in time, place or circumstances; and
 - (c) may apply, adopt or incorporate any matter contained in any document, whether wholly or partially or as amended by the regulations or as in force at a particular time or as in force from time to time; and
-

- 5
- (d) may confer a discretionary authority or impose a duty on specified persons or bodies or specified classes of persons or bodies; and
- (e) may provide in specified cases or classes of cases for the exemption of persons or things or classes of persons or things from any of the provisions of the Act or the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified.
- 10
- (3) Regulations with respect to fees or refunds of fees—
- (a) may provide for different fees for different classes of—
- 15
- (i) application for registration or endorsement; and
- (ii) application for a renewal of registration or endorsement; and
- (iii) registration or endorsement; and
- 20
- (b) may provide for fees that vary according to the period of time for which a registration or endorsement is granted or renewed; and
- (c) may provide for the means of payment of fees or refunds.

25 **104 Transitional regulations**

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- 30
- (2) A provision mentioned in subsection (1) may be retrospective in operation to the commencement of this Act.
- (3) Regulations made under this section have effect despite anything to the contrary in any Act (other than this Act or the Charter of Human
-

Rights and Responsibilities) or in any subordinate instrument.

(4) This section expires on 1 July 2022.

105 Certain provisions of the Subordinate Legislation Act 1994 not to apply

5

Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to regulations made under section 104.

Part 8—Savings, consequential and transitional provisions

Division 1—Transitional provisions

106 Definitions

5

In this Part—

building practitioner has the same meaning as it had in the **Building Act 1993** immediately before the commencement of Division 3;

10

commencement day means the day on which Part 2 comes into operation.

107 Certain building practitioners deemed to be registered engineers until registration expires

15

(1) A natural person who was registered as a building practitioner under the **Building Act 1993** in a class of registration in the category of engineer on that day—

20

(a) is taken to be an endorsed building engineer until the person's registration under the **Building Act 1993** expires; and

25

(b) is subject to any code of conduct, disciplinary action, proceedings or other matters that applied to the registration under the **Building Act 1993** immediately before the commencement day; and

30

(c) is taken to have the required qualifications and experience for an endorsed building engineer for a period of 5 years, commencing on the commencement day.

(2) The following provisions of this Act apply to a deemed registration and endorsement under subsection (1) in the same way as they apply to a registration or endorsement under this Act—

(a) section 18;

(b) section 22.

Division 2—Amendments to the Business Licensing Authority Act 1998

5 **108 Definitions**

In section 3 of the **Business Licensing Authority Act 1998**, in the definition of *business licensing Act*, after paragraph (ab) insert—

"(ac) the **Engineers Registration Act 2018**; or".

10 **109 Constitution of Authority**

After section 5(1)(a) of the **Business Licensing Authority Act 1998** insert—

15 "(b) at least one person appointed by the Governor in Council who has qualifications and experience in the field of engineering; and".

110 Functions of Authority

20 In section 6(a) of the **Business Licensing Authority Act 1998**, before subparagraph (ii) insert—

"(i) the **Engineers Registration Act 2018**";.

111 Consultants

25 After section 8(2) of the **Business Licensing Authority Act 1998** insert—

30 "(3) The Business Licensing Authority may engage the Chief Engineer of the Office of Projects Victoria under this section to provide advice in relation to the Business Licensing Authority's functions and duties under the **Engineers Registration Act 2018**".

Division 3—Amendments to the Building Act 1993

112 Definitions

In section 3(1) of the **Building Act 1993**—

(a) in the definition of *building practitioner*—

5

(i) **omit** paragraph (d);

(ii) after paragraph (j) **insert**—

"(k) an endorsed building engineer;"

(b) **insert** the following definitions—

10

endorsed building engineer has the same meaning as it has in the **Engineers Registration Act 2018**;

professional engineering service has the same meaning as it has in the **Engineers Registration Act 2018**."

15

113 Offences relating to carrying out building work

(1) In section 16(4) of the **Building Act 1993**, after "building practitioner" **insert** ", an endorsed building engineer".

20

(2) In section 16(5) of the **Building Act 1993**, after "building practitioner" **insert** ", endorsed building engineer".

114 Specification of builders in relation to specific building work

(1) In section 24B(2) of the **Building Act 1993**—

25

(a) in paragraph (c), for "1991." **substitute** "1991;"

(b) after paragraph (c) **insert**—

"(d) an endorsed building engineer."

(2) In section 24B(3) of the **Building Act 1993**—

30

(a) in paragraph (c), for "architect." **substitute** "architect; or";

(b) after paragraph (c) **insert**—

"(d) an endorsed building engineer."

115 Notice of ending of engagement of builder

5 In section 25A(1) of the **Building Act 1993**,
after "building practitioner" **insert** ", an endorsed
building engineer".

**116 Notice to relevant building surveyor of subsequent
engagement of builder**

10 (1) In section 25AB(1)(b) of the **Building Act 1993**,
after "building practitioner" **insert** ", an endorsed
building engineer".

(2) In section 25AB(3)(a) of the **Building Act 1993**,
after "building practitioner's registration number"
15 **insert** ", the name of the endorsed building
engineer and the endorsed building engineer's
number".

117 Suspension of building permit

After section 25AE(1)(b) of the **Building
Act 1993 insert**—

20 "(ba) if the builder named in the building permit is
an endorsed building engineer—

(i) the endorsed building engineer's
25 registration as an engineer is suspended
or cancelled under the **Engineers
Registration Act 2018**; or

(ii) the endorsed building engineer's
endorsement to act as a registered
engineer who is authorised to engage
30 in the building industry is suspended
or cancelled under the **Engineers
Registration Act 2018**; or".

118 Immunity for Commissioners and staff

5 In section 127(1)(a) and (b) of the **Building Act 1993**, after "the regulations" **insert** "or the **Engineers Registration Act 2018** or regulations made under that Act".

119 Immunity for building surveyor relying on certificate

10 In section 128 of the **Building Act 1993**, after "building practitioner" **insert** "or endorsed building engineer".

120 Order requiring insurance

15 (1) In section 135(1)(a) of the **Building Act 1993**, after "category of building practitioners" **insert** "or any persons in a specified category or class of engineers engaged in the building industry".

(2) In section 135(7)(g) of the **Building Act 1993**, after "practitioner" **insert** "or an engineer engaged in the building industry".

121 Offence to work as building practitioner without required insurance

20 (1) **Insert** the following heading to section 136 of the **Building Act 1993**—

"Offence to work as building practitioner or engineer without required insurance".

25 (2) After section 136(3) of the **Building Act 1993** **insert**—

"(4) A person must not practise as an engineer engaged in the building industry unless the person is covered by the required insurance.

30 Penalty: 500 penalty units, in the case of a natural person;
2500 penalty units, in the case of a body corporate."

122 Offence to claim to be insured when uninsured

In section 137 of the **Building Act 1993**, after "practitioner" **insert** "or engineer engaged in the building industry,".

5 **123 Offence for owner-builder to sell building without report or insurance**

(1) After section 137B(1)(a)(ii) of the **Building Act 1993 insert—**

"(iii) an endorsed building engineer; or".

10 (2) In section 137B(7) of the **Building Act 1993**, in the definition of *prescribed building practitioner—*

15 (a) in paragraph (b), for ", building inspector or an engineer" **substitute** "or a building inspector";

(b) after paragraph (b) **insert—**

"(ba) an endorsed building engineer; or".

124 New section 169K inserted

20 After section 169J of the **Building Act 1993 insert—**

"169K Offences for unregistered engineers

25 (1) An engineer engaged in the building industry must not act as a prescribed building practitioner under section 137B unless the engineer is an endorsed building engineer.

Penalty: 500 penalty units.

30 (2) An engineer engaged in the building industry must not give a certificate under section 238 unless the engineer is an endorsed building engineer.

Penalty: 500 penalty units."

125 Registered building practitioner to produce certificate of registration for inspection

- 5
- (1) In the heading to section 176A of the **Building Act 1993**, after "practitioner" insert "or endorsed building engineer".
- (2) In section 176A of the **Building Act 1993**, after "A registered building practitioner" insert "or endorsed building engineer".

126 New section 177E inserted

10 In Subdivision 1 of Division 3 of Part 11 of the **Building Act 1993**, before section 178 insert—

"177E Application of Division to endorsed building engineers

15 This Division applies (with any necessary modifications) to an endorsed building engineer—

- (a) as if a reference to a registered building practitioner were a reference to an endorsed building engineer; and
- 20 (b) as if a reference to the registration of a registered building practitioner were a reference to the endorsement of the registration (within the meaning of the **Engineers Registration Act 2018**) of an endorsed building engineer; and
- 25 (c) as if a reference to practising as a building practitioner were a reference to practising as an engineer engaged in the building industry."

30 **127 Grounds for disciplinary action**

In section 179(1)(a) of the **Building Act 1993**—

- (a) in subparagraph (iii), for "provision of a prescribed Act or law;" **substitute** "provision of a prescribed Act or law; or";
-

(b) after subparagraph (iii) **insert—**

"(iv) the **Engineers Registration Act 2018**
or the regulations under that Act;"

128 New section 184A inserted

5 After section 184 of the **Building Act 1993**
insert—

**"184A Application of Division to endorsed
building engineers**

10 This Division applies (with any necessary
modifications) to an endorsed building
engineer as if a reference to a reviewable
decision were a reference to any of the
following decisions under this Act—

- 15 (a) a decision to impose conditions
(other than prescribed conditions) on
the endorsement of the registration
(within the meaning of the **Engineers
Registration Act 2018**) of an endorsed
building engineer;
- 20 (b) a decision to immediately suspend
the endorsement of the registration
(within the meaning of the **Engineers
Registration Act 2018**) of an endorsed
building engineer;
- 25 (c) a decision by the Authority to take
disciplinary action;
- 30 (d) another decision prescribed by the
regulations as being a decision for
which a person may apply for internal
review or review by VCAT under this
Division."

129 Grounds on which disciplinary action may be taken

After section 221ZZZG(1)(b) of the **Building Act 1993** insert—

5 "(ba) the person has contravened the **Engineers Registration Act 2018** or the regulations under that Act;"

130 Building surveyor may rely on certificate by other registered building practitioner

10 (1) **Insert** the following heading to section 238 of the **Building Act 1993**—

"Building surveyor may rely on certificate by other registered building practitioner or endorsed building engineer".

15 (2) In section 238(1) of the **Building Act 1993**, after "practitioners" **insert** "or an endorsed building engineer".

(3) In section 238(2) of the **Building Act 1993**—

20 (a) for "practitioner must" **substitute** "practitioner or an endorsed building engineer must"; and

(b) for "practitioner has" **substitute** "practitioner or endorsed building engineer (as the case may be) has".

Division 4—Amendments to the Domestic Building Contracts Act 1995

25

131 Building work to which this Act does not apply

30 In section 6(1)(e) of the **Domestic Building Contracts Act 1995**, for "an engineer or draftsman" **substitute** "a draftsman or an endorsed building engineer within the meaning of the **Engineers Registration Act 2018**".

132 What is a domestic building work dispute?

After section 44(1)(b) of the **Domestic Building Contracts Act 1995** insert—

5 "(ba) an engineer engaged in the building industry;
 or".

133 Who may be appointed as an assessor?

After section 48(1)(b) of the **Domestic Building Contracts Act 1995** insert—

10 "(ba) an endorsed building engineer within the
 meaning of the **Engineers Registration Act 2018**";.

134 What is a domestic building dispute?

(1) In section 54(1)(a) of the **Domestic Building Contracts Act 1995**—

15 (a) in subparagraph (iv), for "architect—" **substitute** "architect; or";

(b) after subparagraph (iv) **insert**—

 "(v) an engineer engaged in the building industry—".

20 (2) In section 54(1)(b) of the **Domestic Building Contracts Act 1995**—

(a) in subparagraph (iv), for "insurer—" **substitute** "insurer; or";

(b) after subparagraph (iv) **insert**—

25 "(v) an engineer engaged in the building industry—".

(3) In section 54(1)(c) of the **Domestic Building Contracts Act 1995**—

30 (a) in subparagraph (ii), for "as an engineer or draftsperson—" **substitute** "as a draftsperson; or";

- (b) after subparagraph (ii) **insert—**
 "(iii) an endorsed building engineer
 within the meaning of the **Engineers
 Registration Act 2018—**";
- 5 (c) after "the architect" **insert** ", endorsed
 building engineer".

Division 5—Amendments to the Australian Consumer Law and Fair Trading Act 2012

135 Definitions

- 10 In section 3(1) of the **Australian Consumer Law
and Fair Trading Act 2012—**
- (a) in paragraph (e) of the definition of *licence*,
 for "1989;" **substitute** "1989; or";
- 15 (b) after paragraph (e) of the definition of
 licence, **insert—**
- "(f) a registration as an engineer under the
 Engineers Registration Act 2018;".

136 Effect of suspension

- 20 After section 121(7) of the **Australian Consumer
Law and Fair Trading Act 2012 insert—**
- "(8) If a notice is issued under this Division
 suspending an engineer's registration under
 the **Engineers Registration Act 2018—**
- 25 (a) the registration is taken, for the
 purposes of that Act, to be suspended
 during the licence suspension period;
 and
- 30 (b) in the case of a suspended registration,
 the engineer is prohibited from
 providing professional engineering
 services in an area of engineering
 (other than under the direct supervision

of a registered engineer) during the
licence suspension period."

**137 Schedule 1 to the Australian Consumer Law and
Fair Trading Act 2012**

5 In Schedule 1 to the **Australian Consumer
Law and Fair Trading Act 2012**, after
"Domestic Building Contracts Act 1995",
insert—
"Engineers Registration Act 2018".

10 **Division 6—Repeal of amending Divisions**

138 Repeal of amending Divisions

This Division and Divisions 2, 3, 4 and 5 are
repealed on the first anniversary of the day on
which all of these Divisions have come into
15 operation.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.