

Professional Engineers Registration Bill 2019

Introduction Print

EXPLANATORY MEMORANDUM

General

The Professional Engineers Registration Bill 2019 (the *Bill*) establishes a registration scheme for professional engineers. It implements a commitment made by the Government. The scheme will help to promote professional development within the engineering profession, reduce the risk of loss and harm to the public, and give consumers more confidence in procuring engineering services. It will also improve opportunities for the export of engineering services by Victorian engineers.

The key elements of the scheme are that—

- engineers who work in a certain areas of engineering will be required to be registered, unless they work under the direct supervision of a registered professional engineer, or the work is in accordance with a prescriptive standard;
- the Business Licensing Authority (*BLA*) will register applicants if satisfied the applicants meet certain eligibility requirements, including that the applicant meets certain qualification and experience requirements set out in an assessment scheme. The assessment of qualifications and experience will be carried out by assessment entities;
- registered professional engineers who are engaged in the building industry and who wish to perform certain functions under the **Building Act 1993** will be required to hold an endorsement, which will be recommended by the Victorian Building Authority (*VBA*) after a consideration of whether the applicant is a fit and proper person to hold the endorsement;

- the BLA will approve assessment entities to assess the qualifications and experience of applicants for registration;
- where a registered professional engineer has an endorsement, the VBA will rely on disciplinary and entry powers under the **Building Act 1993** in relation to the endorsement; and
- in other cases, the Director of Consumer Affairs Victoria (*CAV*) will be the lead regulator and rely on entry powers in the Bill, along with applied provisions of the **Australian Consumer Law and Fair Trading Act 2012**. Disciplinary proceedings will generally be conducted by the Victorian Civil and Administrative Tribunal (*VCAT*) on application by the Director of CAV (the *Director*).

Clause Notes

Part 1—Preliminary

- Clause 1 sets out the purposes of the Bill. The main purpose is to establish a scheme for the registration of professional engineers in order to—
- promote best practice in the provision of professional engineering services;
 - ensure that professional engineering services are provided only by suitably qualified and experienced engineers;
 - provide for the endorsement of registration authorising a registered professional engineer to be engaged in the building industry; and
 - provide appropriate protection to consumers of professional engineering services provided by registered professional engineers.

Certain other Acts are consequentially amended as a result of the scheme implemented by the Bill.

- Clause 2 is the commencement provision. The provisions of the Bill will come into operation on a day or days to be proclaimed. If a provision of the Bill does not come into operation before 1 July 2021, it comes into operation on that day.

Applications for registration and for renewals of registrations will be made online, and a system to enable this must be developed before the scheme can commence. An extended default commencement date will enable sufficient time for the online system to be built.

An extended default commencement date also ensures registered professional engineers are provided with sufficient time to understand the new scheme and determine whether they need to re-organise their affairs, if necessary, to ensure they are eligible to be granted a registration. This will be in addition to regulations that will enable exemptions of areas of engineering to be prescribed, with those exemptions being phased out over time.

Clause 3 defines various words and expressions used in the Bill. Some of the key terms defined in subclause (1) include—

endorsement which means authorisation for a registered professional engineer to be engaged in the building industry;

prescriptive standard which means a document that states procedures or criteria—

- (a) for carrying out a design, or a construction or production activity, relating to engineering; and
- (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 services means an engineering service that requires, or is based on, the application of engineering principles and data to—

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

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

Subclause (2) enables the Director to provide practice notes on what constitutes a prescriptive standard. It is envisaged that an Australian Standard may be an example of a prescriptive standard.

- Clause 4 sets out the areas of engineering, which must be published by the BLA on the Internet. An ability to prescribe additional areas of engineering is included to facilitate future expansion of the coverage of the scheme.
- Clause 5 provides for the extraterritorial application of the Bill. The Bill will apply within and outside Victoria to the full extent of the extraterritorial legislative power of the Parliament.
- Clause 6 sets out the functions of the BLA which are—
- to determine applications for registration and endorsement and renewals of registration and endorsement; and
 - to refer certain applications for endorsement to the VBA for report; and
 - to approve assessment entities and assessment schemes; and
 - to liaise with the Director and the VBA so as to assist those persons to carry out their functions in relation to this Act; and
 - to refer relevant matters for investigation by the Director or any other relevant body; and
 - any other function conferred on the BLA by or under this Act, any regulations made under this Act or any other Act or regulations.
- Clause 7 sets out the functions of the Director which are—
- to liaise with the BLA and VBA so as to assist them to carry out its functions in relation to this Act; and
 - to monitor compliance with, and investigate and prosecute alleged contraventions of, this Act; and
 - to refer registered professional engineers to VCAT for disciplinary action; and
 - to refer to other bodies for investigation, if appropriate, any allegation, complaint or information in relation to registered professional engineers; and

- any other function conferred on the Director by or under this Act, any regulations made under this Act or any other Act or regulations.

Clause 8 sets out the functions of the VBA which are—

- to provide reports in relation to applications for endorsement; and
- to liaise with the BLA and the Director so as to assist them to carry out their functions in relation to this Act; and
- any other function conferred on the VBA by or under this Act, any regulations made under this Act or any other Act.

Clause 9 is a power of delegation.

Subclause (1) empowers the Director to delegate any of the Director's functions or powers under this Bill to any person engaged or appointed under section 7(2) or 15 of the **Business Licensing Authority Act 1998** or a person or person or class of person employed under Part 3 of the **Public Administration Act 2004**.

Subclause (2) empowers the VBA to delegate its functions or powers to any person. This approach reflects the VBA's power of delegation in the **Building Act 1993**.

The power of delegation cannot be delegated—see section 42A of the **Interpretation of Legislation Act 1984**.

Part 2—Registration of engineers

Division 1—Procedure for obtaining registration

Clause 10 provides that a natural person may make an application to the BLA for a registration. It requires an application to contain certain information and be accompanied by the prescribed application and registration fees.

Clause 11 provides that a natural person may make an application to the BLA for an endorsement to authorise the registered professional engineer to practise as a registered professional engineer engaged in the building industry.

Subclause (2) requires an application to be in a form approved by the BLA, contain the prescribed information and be accompanied by the prescribed fee.

Subclause (3) enables an application for endorsement to be made at the same time as, or after an application for registration.

Subclause (4) requires endorsement application fees to be paid into the Building account established under the **Building Act 1993**.

Clause 12 provides that the BLA must register an applicant in an area of engineering if the BLA is satisfied that the applicant is eligible for registration in the area applied for, and the prescribed application fee and prescribed registration fee have been paid.

Subclause (2) sets out what the BLA must be satisfied of before it can register an applicant.

Subclause (3) enables the BLA to rely on the report of an assessment entity who administers an assessment scheme when satisfying itself that the person has the required qualifications and experience.

Subclause (4) enables the BLA to refuse registration if it is satisfied the applicant is not a fit and proper person to provide professional engineering services in an area of engineering.

Subclause (5) enables the BLA to make any inquiries it considers appropriate to determine an application or whether an applicant is a fit and proper person.

Subclause (6) enables the BLA to register an engineer as a practising or non-practising professional engineer.

Clause 13 sets out a range of matters the BLA must have regard to in determining whether a person is a fit and proper person to hold a registration as an engineer in clause 12.

Clause 14 provides that the BLA must endorse a registration if the BLA is satisfied that the applicant is eligible for registration under clause 12, the prescribed application fee has been paid and the applicant is a fit and proper person within the meaning of the **Building Act 1993** to be engaged in the building industry.

Subclause (2) requires the BLA to rely on a report of the VBA in making this decision.

Clause 15 requires the BLA to refer applications for endorsement to the VBA. It also requires the VBA to provide a report on the application that includes a recommendation as to whether the endorsement should be granted, and enables the VBA to make any other recommendations it thinks fit.

Clause 16 provides that, in considering an application for a registration or renewal of a registration, the BLA may—

- conduct any inquiries in relation to the application that it thinks fit; and
- require a relevant person to provide further information in relation to the application.

The BLA may refuse to register an applicant if the applicant fails to comply with a requirement to provide information within a reasonable time.

The BLA or VBA may also require a relevant person to confirm the veracity of any information provided by the relevant person under the Division relating to registration. This can be by means of a statutory declaration within a specified time.

Clause 17 requires the BLA to cause a certificate of registration to be issued to the applicant as soon as practicable after registration occurs.

Subclause (2) enables the Licensing Registrar to issue a duplicate certificate if satisfied the existing certificate has been lost or destroyed. The prescribed fee (if any) must be paid.

Subclause (3) requires a registered professional engineer to produce a certificate of registration on request by any of the BLA, Director, VBA, an inspector or a client of the engineer. A penalty of 10 penalty units applies for contraventions.

Clause 18 requires the BLA to impose any prescribed conditions on registration or endorsement, and enables the BLA to impose any other conditions it considers appropriate for the registration or endorsement.

Clause 19 provides that a registration and endorsement remain in force for a period of up to 3 years as determined by the BLA. The provision does not take away from any provision about suspension or cancellation of registration or endorsement of registration.

- Clause 20 enables the BLA to renew the registration or endorsement of a registered professional engineer on application. The same processes apply to renewals as they do to a new registration, except that a registered professional engineer who has had prescribed qualifications (or their equivalent) accepted under clause 12(2)(a) is taken to have the appropriate prescribed qualification. The BLA may consider whether the applicant has complied with prescribed continuing professional development requirements, and any other prescribed renewal criteria or conditions.
- Clause 21 requires endorsed building engineers to pay an annual fee and provide an annual statement to the VBA. The principal purpose of this endorsement is to enable insurance coverage under the **Building Act 1993** to be checked.
- Subclause (1) requires an endorsed building engineer to pay a prescribed annual endorsement fee (if any) on the anniversary of being issued the endorsement (or another prescribed date).
- Subclause (2) enables payment to be made in the 6 weeks before it falls due.
- Subclause (3) requires the payment to be accompanied by a statement in a form approved by the VBA.
- Subclause (4) enables the VBA to require that the statement include any information and be accompanied by other document required by the VBA.
- Subclause (5) requires the BLA to suspend an endorsement if the clause is not complied with.
- Clause 22 permits a registered professional engineer to surrender a registration with the consent of the BLA. An endorsed building engineer may surrender the engineer's endorsement with the consent of both the BLA and the VBA.
- Clause 23 requires the BLA to suspend an endorsement as an endorsed building engineer if that person becomes a non-practising professional engineer.

Clause 24 provides that a registered professional engineer must give the BLA notice of a material change to the prescribed information under Part 2 within 14 days of becoming aware of the change.

A maximum penalty of 10 penalty units applies for a contravention of this provision.

Clause 25 requires a person who is registered to return their certificate of registration within 7 days of becoming aware of the suspension or cancellation of the registration or endorsement, or notifying the BLA that the person is surrendering an endorsement or registration.

A maximum penalty of 10 penalty units applies for a contravention of this provision.

Division 2—Review of registration decisions

Clause 26 defines terms used in Division 2, which relates to reviews of decisions relating to applicants for registration or endorsement. The definition *reviewable decision* specifies which decisions are reviewable.

Clause 27 provides that an affected person may apply to VCAT for review of a reviewable decision.

Subclause (2) provides that an application for review must be made within 28 days of the reviewable decision.

Subclause (3) deems a decision to refuse an endorsement, impose conditions on an endorsement (other than prescribed conditions) or refuse to renew an endorsement to be a decision of the VBA.

Division 3—The Register

Clause 28 provides for establishment of the Register of Professional Engineers.

Subclause (1) provides that the Licensing Registrar must establish and keep a register to be called the Register of Professional Engineers. Note that the *Licensing Registrar* is defined in clause 3 of the Bill to mean the Registrar of the Business Licensing Authority appointed under the **Business Licensing Authority Act 1998**.

Subclause (2) provides for the purposes of the Register.

Subclause (3) sets out the information that the Licensing Registrar must record in the Register in respect of each registered professional engineer.

Subclause (4) provides that a person may search and take a copy of the Register or copies of extracts from the Register on payment of a prescribed fee, if a fee is prescribed.

Subclause (5) provides that a person may obtain certified extracts or certified copies of the Register on payment of a prescribed fee, if a fee is prescribed.

Subclause (6) provides that 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 Registrar thinks fit. Section 17A of the **Business Licensing Authority Act 1998** provides for the restriction of public access to personal information on registers kept by the Registrar in certain circumstances.

Clause 29 provides for the publication of information on the Internet.

Subclause (1) provides for the information that the Licensing Registrar must publish on the Internet in respect of each registered professional engineer.

Subclause (2) requires a registered professional engineer to notify the BLA of any changes to information on the Register without delay. If the registered professional engineer fails to do so, they may be subject to discipline.

Subclause (3) requires the Register to be kept in accordance with the regulations.

Division 4—Codes of conduct

Clause 30 enables the Director to approve a code of conduct for registered professional engineers. A code may make different provision for different areas of engineering. It also clarifies that codes of conduct may deal with any obligation of a registered professional engineer to act fairly, honestly and in the best interests of a client.

- Clause 31 provides that a code of conduct may be prepared by the Director, or alternatively approved by the Director after being prepared and submitted by an organisation representing engineers. The Director must consult with any prescribed organisations representing engineers, and may also consult any other organisations, on the development of a code. In relation to any changes the Director proposes to make to a code the Director has developed, the Director must also consult with organisations who submitted a code of practice, and may also consult any other organisations it considers relevant, before making any changes to that code.
- Clause 32 requires approved codes of conduct to be published on the Internet by the Director.
- Clause 33 requires a registered professional engineer to comply with any applicable code of conduct approved under the Division. Failure to comply will constitute grounds for disciplinary action.

Part 3—Assessment schemes

Division 1—Approval of assessment schemes

- Clause 34 sets out criteria that assessment schemes would need to meet on initial application and to remain suitable for approval as an assessment scheme.
- Clause 35 provides that an entity may apply to the BLA for approval of a proposed assessment scheme for one or more areas of engineering to be conducted by the entity. The application for approval must be in the form approved by the BLA and be supported by enough information to enable the BLA to decide the application. The application must also be accompanied by the proposed assessment scheme and the prescribed fee (if any).
- Clause 36 provides that an assessment entity for an assessment scheme may apply to the BLA for renewal of the approval of the assessment scheme. The application for renewal must be in the form approved by the BLA and be supported by enough information to enable the BLA to decide the application. The application must also be made at least 28 days before

the approval of the assessment scheme ends and be accompanied by the prescribed fee (if any).

- Clause 37 provides that the assessment entity for an assessment scheme may apply to the BLA to vary the assessment scheme. The application for variation must be in the form approved by the BLA and be supported by enough information to enable the BLA to decide the application. The application must also be accompanied by the proposed variation of the assessment scheme and the prescribed fee (if any).
- Clause 38 requires an assessment entity to notify the BLA of any changes to information it has provided to the BLA within 30 days of the change.
- Clause 39 provides that the BLA may require the applicant to give the BLA further information or a document the BLA reasonably requires to make its recommendation on the application. The applicant must respond within a reasonable time of not less than 14 days. The BLA and the applicant may agree on an extension of the time stated in the notice. The applicant is taken to have withdrawn its application if it does not comply with the requirement within the specified time.
- Clause 40 requires the BLA to consider the application and decide to either grant, or refuse to grant, the application.
- Subclause (2) sets out what the BLA must be satisfied of before deciding to grant an application to approve, renew or vary an assessment scheme.
- Subclause (3) enables the BLA to impose conditions on the approval that it considers appropriate.
- Clause 41 provides that if the BLA decides to grant the application without conditions then the BLA must give the applicant notice of the decision as soon as practicable.
- Clause 42 provides that if the BLA proposes to grant the application with conditions, the BLA must give the applicant a notice stating the proposed conditions (the *proposed decision*), the reasons for the proposed decision and that the applicant may make written representations to the BLA about the proposed decision within 28 days. The BLA must consider all written representations

and decide whether to grant the application with, or without, conditions.

- Clause 43 provides that if the BLA proposes to refuse to grant the application, the BLA must give the applicant a notice stating the reasons for the proposed refusal and that the applicant may make written representations to the BLA about the proposed refusal within 28 days. The BLA must consider all written representations and decide whether to grant the application with, or without, conditions or refuse to grant the application.
- Clause 44 specifies that, unless sooner cancelled, suspended or otherwise ended, approval of an assessment scheme remains in force for the term decided by the BLA but must not be more than 5 years. A variation of an approval does not act as an extension to the period of approval.
- Clause 45 provides that if an assessment entity applies for renewal of approval of an assessment scheme the approval of the assessment scheme is taken to continue in force until the assessment entity withdraws that application or the BLA decides to renew the approval or refuses to grant the renewal.
- Clause 46 provides that the assessment entity for an assessment scheme may surrender the approval for the scheme by notice given to the BLA. The surrender takes effect at least 90 days after notice is given.
- Clause 47 specifies the grounds for cancelling or suspending the approval of an assessment scheme.

Division 2—Show cause process

- Clause 48 requires that the BLA must give the assessment entity a show cause notice if the BLA believes that a grounds for cancellation or suspension of the approval of an assessment scheme exists and the BLA proposes to cancel or suspend the approval. The assessment entity may make written representations explaining why the approval should not be cancelled or suspended.
- Clause 49 requires that the BLA must consider all written representations made in response to a show cause notice by the assessment entity.

- Clause 50 provides that if, after considering the accepted representations for the show cause notice, the BLA no longer believes the ground exists to take the proposed action, the BLA must not take further action about the show cause notice and 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.
- Clause 51 provides that if, after considering the accepted representations for the show cause notice (or if no accepted representations are made), the BLA believes the ground exists to cancel or suspend the approval, the BLA may cancel or suspend the approval as the case may be. If the BLA decides to cancel or suspend the approval, the BLA must give the assessment entity notice of the decision and the reasons for the decision.

Division 3—Review by VCAT

- Clause 52 enables an assessment entity to apply to VCAT for a review of a decision to refuse an application, to suspend or cancel an approval or grant an approval with conditions. An application must be made within 28 days of the decision that is the subject of the application.

Division 4—Record of assessment entities

- Clause 53 requires the BLA to keep a record of the name and contact details of each assessment entity and the areas of engineering for which the entity conducts an assessment scheme. The record must be published on the Internet and made available to the public in hard copy form on payment of the prescribed fee (if any).

Part 4—VCAT may conduct disciplinary proceedings

Division 1—Preliminary

- Clause 54 ensures that disciplinary proceedings can be taken against an engineer whose registration is already suspended or cancelled in addition to registered professional engineers.
- Clause 55 outlines the various grounds on which disciplinary action may be taken against a registered professional engineer. Subclause (2) enables the Director to make inquiries to determine whether a ground exists to take disciplinary action.

Division 2—Show cause process

Clause 56 sets out a procedure where the Director may require a registered professional engineer should show cause why their registration should not be cancelled.

Subclause (1) enables the Director to serve a notice on a registered professional engineer requiring that engineer to show cause why their registration should not be cancelled.

Subclause (2) requires the Director to have formed an opinion that a ground for disciplinary action exists and cancellation of the engineer's registration would be appropriate in the circumstances before being able to issue the notice.

Subclause (3) requires a show cause notice to be served personally and include a range of statements regarding the matter.

Subclause (4) authorises VCAT, on the application of the Director, to permit substituted service if personal service cannot be promptly effected.

Clause 57 ensures that a registered professional engineer may make oral and written representations to the Director, and requires the Director to keep a record of oral representations.

Clause 58 requires the Director to decide whether or not to seek cancellation of the registered professional engineer's registration within 28 days of the end of the show cause period.

Clause 59 specifies what the Director must do if the Director believes that cancellation of an engineer's registration would no longer be appropriate in the circumstances. This includes taking no further action in respect of the show cause notice, lifting any suspension in force and giving notice to the registered professional engineer concerned.

Division 3—VCAT may conduct disciplinary proceedings

Clause 60 provides that on application by the Director, VCAT may conduct a hearing to determine whether a disciplinary ground is established against a registered professional engineer.

- Clause 61 ensures that disciplinary proceedings can continue against a person even if they have ceased to be a registered professional engineer.
- Clause 62 provides VCAT with powers to make orders if it is satisfied that one or more grounds under clause 55 for taking disciplinary action against a registered professional engineer have been established.
- Subclause (1) provides VCAT with the power to make any order under subclause (2), (3) or (4), or take no action.
- Subclause (2) enables VCAT to impose a penalty of up to the equivalent of 200 penalty units.
- Subclause (3), specifies a range of other orders VCAT can make against the registered professional engineer including orders reprimanding the engineer; requiring the engineer to do or not do something; requiring the engineer to undertake specified training; requiring the engineer to pay the Director's investigation and preparation costs; and requiring the engineer to enter into an undertaking. VCAT may also impose conditions on the engineer's registration, cancel the registration, suspend the registration and disqualify the person from obtaining registration.
- Subclause (4) provides that VCAT may order that a registration be suspended until a penalty or costs order is paid if the amount in the VCAT order is not paid within the specified time.
- Subclause (5) provides that a registration suspended under subclause (4) is suspended until the earlier of the amount being paid or the expiry of the registration.
- Subclause (6) clarifies that a suspension imposed for non-payment of an amount under subclause (4) takes effect immediately after the time specified in subclause (4).
- Clause 63 sets out the orders that VCAT can make in relation to a former registered professional engineer. VCAT may decide to take no action against the person. Alternatively, it may impose a penalty of up to 200 penalty units, reprimand the person or disqualify the person from applying for registration.
- Clause 64 sets out the consequences of the suspension of an engineer's registration. It provides that where a person's registration as a professional engineer is suspended, the person is taken not to be

registered either wholly or, if it is a partial suspension, in relation to the matter specified in the suspension.

Subclause (2) enables suspended engineers to apply for renewal of their registration, but any suspension applies to the renewed registration until either the engineer's registration is cancelled or the suspension ends or is revoked.

- Clause 65 provides that if VCAT makes an order disqualifying a person from registration, the BLA must not re-register the person indefinitely or, if the disqualification is for a stated period, that stated period.
- Clause 66 enables details of VCAT orders in relation to discipline to be included in the Register for the period stated in the order, as well as any details of the order that are not to be included.

Part 5—Offences

- Clause 67 prohibits a person from providing professional engineering services in an area of engineering unless they are registered in that area, or working under the direct supervision of someone who is registered.

Direct supervision requires a registered practising professional engineer to direct the person in the provision of the services, and oversee and evaluate the provision of the services.

A maximum penalty of 500 penalty units applies for a contravention of this provision.

- Clause 68 creates 4 offences relating to false representations and using titles.

Subclause (1) makes it an offence for a person who is not a practising professional engineer in an area of engineering to represent that they can provide professional engineering services in that area of engineering.

Subclause (2) makes it an offence for a person without an endorsement to represent that they are endorsed.

Subclause (3) makes it an offence for a person who is not registered as a non-practising professional engineer to represent that they are registered as a non-practising professional engineer.

Subclause (4) makes it an offence for a person who is not a registered professional engineer to use the title "professional engineer".

A maximum penalty of 500 penalty units applies for a contravention of each subclause.

Subclause (5) provides that a person does not commit an offence against subclause (4) if the person holds an equivalent registration under a law of the Commonwealth, another State or Territory or New Zealand.

Clause 69 creates 2 offences relating to the provision of false or misleading information under this Bill.

Subclause (1) creates an offence for a person to give information to the BLA, VBA, Director, an assessment entity or an inspector that the person believes to be false or misleading in a material particular.

A maximum penalty of 60 penalty units applies for a contravention of this provision by individuals, while bodies corporate would be liable for a maximum penalty of 300 penalty units.

Subclause (2) creates an offence for a person to produce a document to an inspector 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.

A maximum penalty of 60 penalty units applies for a contravention of this provision by individuals, while bodies corporate would be liable for a maximum penalty of 300 penalty units.

Part 6—Enforcement

Division 1—Preliminary

Clause 70 creates an offence for an inspector not to produce their identity card for inspection before exercising a power under Part 6, other than a power exercised by post, and at any time during the exercise of a power under this Part if asked to do so. A maximum penalty of 12 penalty units applies for a contravention of this provision.

Division 2—Inspection of documents and records

Clause 71 requires documents to be made available for inspection.

Subclause (1) requires a registered professional engineer at each place at which the registered professional engineer carries on the business of providing professional engineering services to keep all documents relating to their practice as a registered professional engineer available for inspection by an inspector, in a form in which they can be readily inspected, at all reasonable times.

Subclause (2) enables an inspector to give a person a written notice to produce documents relating to the person's practice as a registered professional engineer.

Subclause (3) requires that the notice to produce documents specify a time for compliance with the notice. The time specified cannot be less than 14 days.

Clause 72 specifies the powers an inspector has in respect of any documents produced to an inspector under this Division.

Clause 73 provides that an inspector may require a person to produce a document at the person's place of business, at the office of the Director, or with the consent of the person, at any other place.

Clause 74 provides inspectors with powers to require third parties to produce information and answer questions.

Subclause (1) provides that an inspector may require any person with possession, custody or control of relevant documents relating to the provision of professional engineering services to—

- answer questions put by the inspector whether orally or in writing; and
- supply information required by the inspector whether orally or in writing; and
- produce to the inspector specified documents relating to the provision of professional engineering services.

Subclause (2) provides that the Registrar of Titles cannot be subject to a requirement under subclause (1).

Clause 75 provides inspectors with powers to require specified public bodies to produce information and answer questions.

Subclause (1) provides that an inspector may, within a time specified by the inspector, request that a specified public body answer questions and supply information (orally or in writing) relating to the provision of professional engineering services.

Subclause (2) provides that an inspector may only make such a request with the written consent of the Director.

Subclause (3) provides that a specified public body must comply with a request made under subclause (1), with the exception of the Chief Commissioner of Police.

Subclause (4) provides that the Chief Commissioner of Police may comply with a request made under subclause (1) but is not obliged to do so, while subclause (5) provides that the Chief Commissioner must provide a response in relation to a decision to comply or not comply with such a request.

Subclause (5) provides 2 definitions for the purposes of this clause. **Public statutory authority** is defined to mean a body established by or under an Act for a public purpose and **specified public body** is defined to mean a Department Head within the meaning of the **Public Administration Act 2004**, a public statutory authority, a Council, or the Chief Commissioner of Police.

Clause 76 provides the Director and inspectors with powers to require specified persons or bodies to produce information and answer questions.

Subclause (1) provides that the Director or an inspector may, at a time and place specified by the Director or inspector, require a specified person or body to answer questions or supply information (orally or in writing) relating to the provision of professional engineering services.

Subclause (2) provides that an inspector may only make such a request with the written consent of the Director.

Subclause (3) provides that a specified person or body must comply with a request made under subclause (1).

Subclause (4) defines the term **specified person or body** to mean publishers, owners and operators of broadcasting services, telecommunications services or postal services.

Clause 77 provides inspectors with powers to apply for orders from the Magistrates' Court requiring a person to answer questions and supply information for the purpose of monitoring compliance with the Bill or the regulations.

Subclause (1) provides that an inspector, with the written approval of the Director, may apply to the Magistrates' Court for an order requiring a person to answer questions or supply information in relation to the provision of professional engineering services.

Subclause (2) provides that the Magistrates' Court may grant the order sought if satisfied on the basis of the evidence presented by the inspector that the order is necessary for the purpose of monitoring compliance with the Bill or the regulations.

Subclause (3) provides that an order made under this clause must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.

Subclause (4) provides that an inspector must notify the Magistrates' Court of the time and place of execution of an order under this clause in writing as soon as practicable after that execution.

Clause 78 provides for methods for the service of documents by inspectors under this Division.

Division 3—Entry, search and seizure

Clause 79 provides inspectors with powers to enter and search premises with consent for the purpose of monitoring compliance with the Bill or the regulations.

Subclause (1) provides that an inspector may, with the consent of the occupier of the premises, enter and search the premises, examine and seize any item found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of the Bill or the regulations, inspect and make copies of documents, and make still or moving images, audio recordings or audio-visual recordings.

Subclause (2) provides for the actions an inspector must undertake before obtaining an occupier's consent to enter and search their premises including producing the inspector's identity card for inspection and informing the occupier of the purpose of the search and that the occupier may refuse to give consent.

Subclause (3) provides that an inspector must ask the occupier to sign an acknowledgement that the inspector has complied with the requirements of subclause (2) before entering the premises with consent.

Subclause (4) provides that an inspector must before seizing or taking any item ask the occupier to sign an acknowledgement that the occupier has consented to the seizure or taking of the thing and the date and time of that consent.

Subclause (5) provides for a copy of any signed acknowledgement to be given to the occupier.

Clause 80 provides inspectors with powers to enter and search premises without consent or warrant for the purpose of monitoring compliance with the Bill or the regulations.

Subclause (1) provides that subject to subclause (2), an inspector may enter and search any premises at which a business providing professional engineering services is being conducted during the normal business hours of the business, seize or secure any thing found on the premises which the inspector believes on reasonable grounds to be connected with a contravention of the Bill or the regulations and inspect and make copies of documents. An inspector can also require a person to answer questions, make audio and video images and bring things onto the premises that are necessary to determine whether things may be seized.

Subclause (2) enables an inspector to enter with other persons who can provide technical assistance (for example an engineer).

Subclause (3) makes it an offence for a person to fail to comply with a requirement in subclause (1) without a reasonable excuse. A 150 penalty unit penalty applies for individuals, while the maximum penalty for bodies corporate is 750 penalty units.

Subclause (4) defines *premises* for the purposes of this clause to exclude any part of a place of business which is the permanent place of residence of a person.

Clause 81 enables an inspector to use electronic equipment found at premises when acting under clause 80.

Subclause (1) provides that if an inspector finds an information storage device and equipment to access the device and the inspector believes on reasonable grounds that information stored on that device may be relevant to whether the Bill or the regulations have been complied with, the inspector may operate that device, or require the occupier of the premises or the occupier's employee to operate the device, so as to access the information.

Subclause (2) provides that if an inspector believes that an information storage device at the premises is used in the transmission of information relevant to determine compliance with the Bill or the regulations, the inspector may put the information into documentary form and seize those documents, copy the information to another storage device or, if it is not practicable to put the information in a documentary form or copy the information, seize the information storage device and the equipment that enables the information to be accessed.

Subclause (3) provides that an inspector must not operate or seize equipment under this clause unless the inspector believes on reasonable grounds that the operation can be carried out without damage to the equipment.

Clause 82 subclause (1) provides that an inspector may apply to a magistrate for a search warrant if the inspector believes on reasonable grounds that there is (or may be in the next 72 hours) on the premises evidence (including evidence in electronic form accessible from the premises) that a person may have contravened the Bill or the regulations.

Subclause (2) provides that an application for a search warrant must not be made without the written approval of the Director.

Subclause (3) provides that the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989** if satisfied by evidence, on oath or by affidavit, that reasonable grounds exist that a thing connected with a contravention of the Bill or the regulations is (or may be in the next 72 hours) on the premises or is in an electronic format accessible from the premises.

Clause 83 subclause (1) provides that a search warrant issued under clause 82(3) may authorise the inspector named in the warrant, together with a police officer or any other person named or identified in the warrant and with any necessary equipment to enter the premises, by force if necessary and exercise particular powers in relation to any item named or described in the warrant including powers of search and seizure; powers to examine and inspect and make copies or take extracts; powers to image hard drives; powers to access electronic information; and powers to make audio or video recordings.

Subclause (2) provides that a search warrant issued under clause 82(3) must state the purpose of the search, any conditions, authorised entry times and the date on which the warrant ceases to have effect.

Subclause (3) provides that except as provided by the Bill, the search warrant rules under the **Magistrates' Court Act 1989** extend and apply to warrants issued under clause 82(3).

Clause 84 provides that a search warrant issued under clause 82(3) may authorise the giving of a direction requiring assistance from a person with knowledge of a computer or other electronic device.

Subclause (1) provides that new clause 84 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 the Act or its regulations that is accessible from particular premises.

Subclause (2) provides that a warrant issued under clause 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—

- access information held in, or accessible from, any computer or other electronic device located on the premises;
- download or make an electronic copy of that information;
- make or produce a physical copy of that information.

Subclause (3) limits the application of the direction to certain persons. The inspector may require a person, who has the relevant knowledge regarding the computer or electronic device or the computer network of which the computer or device forms a part, to provide the information or assistance referred to in subclause (2) if the person is one of the following—

- the person alleged to have contravened the Act or its regulations;
- the owner or lessee of the computer or other electronic device;
- an employee of the owner or lessee of the computer or electronic device;
- a person engaged under a contract for services by the owner or lessee of the computer or electronic device.

Clause 85 subclause (1) provides that on executing a search warrant, an inspector must announce that the inspector is authorised by warrant to search the premises and give any person present an opportunity to allow entry.

Subclause (2) provides an exception to the requirement to make an announcement before entry if the inspector believes on reasonable grounds that immediate entry is required for safety reasons or to ensure the warrant is not frustrated.

Subclauses (3) and (4) requires the inspector to produce the inspector's identity card and give a copy of the warrant to people present when the search warrant is being executed. Subclause (3) provides that if the occupier is present, the identity card and copy of the warrant must be produced and given to the occupier. Subclause (4) clarifies that if the occupier is not present, these documents may be provided to any person present at the premises.

Clause 86 provides the circumstances in which a search warrant issued under clause 82(3) authorises an inspector to seize any other thing which is not described in the warrant.

Clause 87 subclause (1) provides that an inspector executing a search warrant may issue an embargo notice if the thing that the search warrant authorises the inspector to seize cannot or cannot readily be physically seized and removed. The embargo notice must be

served on the occupier or attached in a prominent position to the thing if the occupier cannot be located.

Subclause (2) creates an offence for a person, who knows that an embargo notice relates to a thing, to sell, lease, transfer, move, dispose of or otherwise deal with the thing or any part of the thing without the written consent of the inspector.

A maximum penalty of 60 penalty units applies for a contravention of this provision.

Subclause (3) provides that the offence established in subclause (2) does not apply to a person who moved the thing or part of the thing for the purpose of protecting and preserving it.

Subclause (4) provides that any sale, lease, transfer or other dealing with a thing in contravention of this clause is void.

Clause 88 subclause (1) provides that, 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 orders requiring the owner of a thing to which an embargo notice relates, or the occupier of premises where the thing is kept or required to be kept, to answer questions or produce documents, and for orders for monitoring compliance with the embargo notice or with clause 87(2).

Subclause (2) provides that the Magistrates' Court may make the orders sought under this clause.

Clause 89 subclause (1) provides that an inspector may, with the written approval of the Director, apply to a magistrate for a search warrant to enter premises where a thing to which an embargo notice relates is kept or required to be kept.

Subclause (2) provides that the magistrate may issue the search warrant in accordance with the **Magistrates' Court Act 1989** if satisfied by evidence on oath or affidavit that the warrant is necessary for the effective monitoring of compliance with the embargo notice.

Subclause (3) provides that a search warrant may authorise the inspector named in the warrant, together with any other person named or identified in the warrant and with any necessary equipment to enter the premises, by force if necessary, and search for, seize and secure against interference the thing named in the warrant.

Subclause (4) provides that except as provided by the Bill, the search warrant rules under the **Magistrates' Court Act 1989** extend and apply to warrants issued under this clause.

Clause 90 subclause (1) provides that if an inspector retains possession of a document seized from a person under this Division, the inspector must give a certified copy of that document to the person within 21 days after the seizure.

Subclause (2) provides that a copy of a document certified under subclause (1) must be received in all courts, tribunals and VCAT to be evidence of equal validity to the original.

Subclause (3) provides that an inspector must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for seizure no longer exists.

Subclause (4) provides that if a document or thing has not been returned within 3 months after seizure, the inspector must take reasonable steps to return it unless proceedings have commenced and have not been completed (including any appeal) or there is a Magistrates' Court order under clause 91 extending the period.

Clause 91 subclause (1) provides that 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 within 3 months of the seizure or if an extension has been granted, before the end of the period of the extension.

Subclause (2) provides that the Magistrates' Court may make an order if satisfied that the total period of retention does not exceed 12 months and retention of the thing or document is necessary for the purposes of an investigation into whether a contravention of the Bill or the regulations has occurred or to enable evidence of a contravention to be obtained.

Subclause (3) provides that the Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

Clause 92 provides that an inspector may require an occupier of premises, or an agent or employee of the occupier, to give information, produce documents, and give reasonable assistance to the inspector.

Subclause (2) creates an offence if a person fails to comply with a requirement of an inspector under this clause without reasonable excuse.

A maximum penalty of 60 penalty units applies for a contravention of this provision.

Clause 93 provides for protection against self-incrimination.

Subclause (1) provides that it is a reasonable excuse for a natural person to refuse to give information or do any other required thing required to be done under this Part on the grounds of self-incrimination.

Subclause (2) provides that the reasonable excuse of self-incrimination does not extend to the production of documents required under this Part.

Subclause (3) provides that despite the protection against self-incrimination provided under subclause (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 by clause 84 to give under a search warrant, if the provision of the information or assistance would tend to incriminate the person.

Clause 94 makes it an offence for a person to fail to comply with a requirement of an inspector or the Director under this Part without a reasonable excuse. A maximum penalty of 60 penalty units applies to such an offence.

Clause 95 subclause (1) creates an offence for an inspector to give to any other person any information acquired by the inspector in carrying out the inspector's functions under this Part, unless the giving of information is authorised under this clause.

A maximum penalty of 60 penalty units applies for a contravention of this provision.

Subclause (2) provides for the circumstances in which an inspector may give out information acquired by the inspector in carrying out a function under this Part.

Clause 96 provides for the prescribing of offences in regulations made under this Bill as infringement offences under the **Infringements Act 2006** and for the prescribing of penalties for those infringements.

Clause 97 provides for a process whereby a person may complain to the Director about the exercise of a power by an inspector under this Part.

Part 7—General

Clause 98 provides for the application of specific sections of the **Australian Consumer Law and Fair Trading Act 2012** to this Bill.

Subclause (1) applies specific sections of the **Australian Consumer Law and Fair Trading Act 2012**, which provide the Director with certain powers to compel the production of information or documents or give evidence, enable inspectors to enter and inspect public places, create offences relating to inspectors and place record keeping requirements on inspectors and the Director in relation to the exercise of powers of entry under Part 6 of this Bill.

Subclause (2) extends and applies sections 195 and 196, which specify certain matters relating to contraventions by a body corporate and conduct by officers, employees and agents, and provisions relating to remedies and legal proceedings under Part 8.2 (with the exception of the defences under section 213) of the **Australian Consumer Law and Fair Trading Act 2012** to the Bill.

Subclause (3) clarifies the operation of particular references in certain sections of the **Australian Consumer Law and Fair Trading Act 2012** applied under subclause (2).

Clause 99 provides that only the Director, or a person authorised by the Director for that purpose, may commence proceedings for an offence against this Bill or the regulations, and that the person commencing the proceeding is assumed to be authorised to do so.

Clause 100 provides for the methods of service of documents for the purposes of this Bill and the regulations. This clause does not apply to clause 78, which sets out separate requirements for the service of documents by inspectors under Division 2 of Part 6 of the Bill.

- Clause 101 provides that a proceeding for an offence against the Bill may be commenced within either 3 years after the date on which the offence was committed despite anything to the contrary in any Act, or 2 years after the Director is made aware of the offence (but not more than 10 years after the offence was committed). This extended prosecution period reflects the extended period in the **Building Act 1993**, which reflects that defective building work caused by poor engineering may not come to light for several years after the provision of the relevant services.
- Clause 102 requires the Minister responsible for the administration of the Bill to cause a review of the Bill to be conducted in the fourth year of operation of the Act. The report of the review must be tabled in Parliament.
- Clause 103 provides for regulation-making powers under the Bill.
- Clause 104 provides for transitional regulation-making powers under the Bill. The power ensures savings or transitional matters can be addressed. Any regulations made under this provision sunset on 1 July 2023.
- Clause 105 exempts transitional regulations made under clause 104 from the requirement for consultation and a regulatory impact statement to be prepared under sections 6 and 7 of the **Subordinate Legislation Act 1994**, reflecting the time-limited nature of the regulations being made.

Part 8—Savings, consequential and transitional provisions

Division 1—Transitional provisions

- Clause 106 defines 2 key terms for the purposes of this clause. The first is *building practitioner*, which has the same meaning as in the **Building Act 1993** immediately before the commencement of Division 3. The second is *commencement date*, which is defined to mean the day on which Part 2 comes into operation.
- Clause 107 provides for engineers who are currently registered as building practitioners under the **Building Act 1993** to have their registrations recognised as an endorsed building engineer. It also ensures that they will be subject to any discipline or other matters applying to the registration immediately before the commencement date.

Division 2—Amendments to the Business Licensing Authority Act 1998

- Clause 108 inserts a reference to the "**Professional Engineers Registration Act 2019**" in section 3 of the **Business Licensing Authority Act 1998** so that this Bill comes within the definition of *business licensing Act* for the purposes of that Act.
- Clause 109 amends section 5 of the **Business Licensing Authority Act 1998** to expand the membership of the BLA to include a person appointed by the Governor in Council who has qualifications and experience in the field of engineering.
- Clause 110 inserts a reference to the "**Professional Engineers Registration Act 2019**" in section 6(a) of the **Business Licensing Authority Act 1998** to clarify that the administration of the registration provisions in this Bill are a function of the BLA.
- Clause 111 amends section 8 of the **Business Licensing Authority Act 1998** to enable the BLA to engage the Chief Engineer to provide advice in relation to the BLA's functions, such as in relation to the approval of assessment schemes.

Division 3—Amendments to the Building Act 1993

- Clause 112 amends definitions in the **Building Act 1993**. Among other things, it clarifies that endorsed building engineers are not building practitioners. Instead, various provisions of the **Building Act 1993** are expressly applied to endorsed building engineers.
- Clause 113 amends section 16 of the **Building Act 1993** to ensure endorsed building engineers who are engaged to carry out building work must ensure that the work is carried out under a building permit and in a compliant manner.
- Clause 114 amends section 24B of the **Building Act 1993** to enable an endorsed building engineer to be named as builder on a building permit in respect of certain building work.
- Clause 115 amends section 25A of the **Building Act 1993** to require notice of the ending of the engagement of an endorsed building engineer to be given to a relevant building surveyor if that engineer is named as the builder on the building permit.

- Clause 116 amends section 25AB of the **Building Act 1993** to enable notice of the engagement of an endorsed building engineer to be given to the relevant building surveyor.
- Clause 117 amends section 25AE of the **Building Act 1993** to provide that a building permit is suspended if an endorsed building engineer's registration or endorsement is suspended.
- Clause 118 amends section 127 of the **Building Act 1993** to extend the immunity given to Commissioners and staff of the VBA to work under the Bill.
- Clause 119 amends section 128 of the **Building Act 1993** to extend the immunity given to building surveyors who rely on certificates given under section 238 of that Act to certificates given by endorsed building engineers.
- Clause 120 amends section 135 of the **Building Act 1993** to ensure orders mandating insurance can apply to engineers engaged in the building industry.
- Clause 121 amends section 136 of the **Building Act 1993** to require engineers engaged in the building industry to be covered by the required insurance. A penalty of 500 penalty units applies for natural persons while a penalty of 2500 penalty units applies for bodies corporate, reflecting similar penalties in the provision.
- Clause 122 amends section 137 of the **Building Act 1993** to extend the offence of claiming to be covered by the required insurance when uninsured to engineers engaged in the building industry.
- Clause 123 amends section 137B of the **Building Act 1993** to enable endorsed building engineers to continue to provide reports on owner-builder built homes, and to ensure endorsed building engineers can still be subject to the exemption in subsection (1), which applies to all registered building practitioners.
- Clause 124 inserts new section 169K into the **Building Act 1993** to require that only endorsed building engineers can act as prescribed building practitioners under section 137B or provide certificates under section 238, rather than all engineers engaged in the building industry. Similar to other provisions in the Part, a 500 penalty unit penalty can apply.

- Clause 125 amends section 176A of the **Building Act 1993** to require endorsed building engineers to produce their certificate of registration to VBA inspectors.
- Clause 126 inserts new section 177A into the **Building Act 1993** to apply Division 3 of Part 11 of that Act to endorsed building engineers. Division 3 of Part 11 deals with disciplinary action. This will enable the VBA to take disciplinary action against endorsed building engineers in relation to their endorsement. Disciplinary action involving suspension or cancellation of a registration will be taken by CAV under Part 4.
- Clause 127 amends section 179 of the **Building Act 1993** to make it a grounds for discipline of building practitioners if they contravene the Act or the Regulations.
- Clause 128 inserts new section 184A into the **Building Act 1993** to apply Division 4 of Part 11 of that Act to endorsed building engineers. Division 4 of Part 11 deals with internal reviews and reviews by VCAT of certain reviewable decisions of the VBA. In this case, it relates to decisions relating to endorsements, and decisions by the VBA to take disciplinary action.
- Clause 129 amends section 221ZZZG of the **Building Act 1993** to make it a grounds for discipline of plumbers if they contravene the Act or the Regulations.
- Clause 130 amends section 238 of the **Building Act 1993** to enable endorsed building engineers to issue certificates in relation to the design of proposed building work and inspection of building work.

Division 4—Amendments to the Domestic Building Contracts Act 1995

- Clause 131 amends section 6(1)(e) of the **Domestic Building Contracts Act 1995** to ensure design work by endorsed building engineers continues to be excluded from the operation of that Act, and consequently from the definition of *domestic building work* in the **Building Act 1993**.
- Clause 132 amends section 44(1)(b) of the **Domestic Building Contracts Act 1995** to ensure that domestic building work disputes involving engineers engaged in the building industry are still subject to the dispute resolution provisions in that Act.

Clause 133 amends section 48(1)(b) of the **Domestic Building Contracts Act 1995** to ensure endorsed building engineers can be appointed as assessors in relation to domestic building work disputes.

Clause 134 amends section 54(1) of the **Domestic Building Contracts Act 1995** to ensure domestic building disputes involving engineers engaged in the building industry can continue to be heard by VCAT.

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

Clause 135 amends the definition of *licence* in section 3(1) of the **Australian Consumer Law and Fair Trading Act 2012** to include a registration as a professional engineer under the Act. This enables the Director to immediately suspend the registration under section 120 of that Act, among other things.

Clause 136 inserts new subsection (8) into section 121 of the **Australian Consumer Law and Fair Trading Act 2012** to detail the effect of a suspension under section 120. It provides that the registration is taken to be suspended, and prohibits the engineer from providing professional engineering services in an area of engineering except under direct supervision.

Clause 137 inserts a reference to the "**Professional Engineers Registration Act 2019**" in Schedule 1 to the **Australian Consumer Law and Fair Trading Act 2012** so that this Act comes within the definition of a *Consumer Act* for the purposes of that Act.

Division 6—Repeal of amending Divisions

Clause 138 provides for the automatic repeal of Divisions 2 to 6 of Part 8 on 1 July 2022. The repeal of those Divisions does not affect in any way the continuing operation of those Divisions (see section 15(1) of the **Interpretation of Legislation Act 1984**).