

Guide to the Building and Development Certifiers Bill 2018

Introduction

As part of the Government's commitment to its response to the Independent Review of the *Building Professionals Act 2005* (the Independent Review), also known as the Lambert Review, the NSW Government is proposing to repeal and replace the *Building Professionals Act 2005* (the BP Act) to simplify and strengthen the certification system in NSW. The Government values the contribution of certifiers to the public safety and amenity of buildings and construction in NSW. Certifiers are responsible for inspecting building work at critical stages, certifying compliance with various laws and issuing compliance certificates. There are 24 categories of accredited certifiers, each who hold specialised qualifications and have extensive experience in the construction sector.

The BP Act plays an important role in setting out the regulatory requirements for the licensing and accreditation of certifiers, and supports the functions of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) which outlines a certifier's role in carrying out functions in the integrated planning and approvals framework.

The Independent Review made 150 recommendations to address a number of issues with the building and certification system. The Government's response to the Independent Review acknowledged that the legislation governing certifiers was not achieving its policy objectives. To support the outcomes of certification work, the Government Response identified key legislative areas which could be improved to clarify a certifier's role and responsibilities, enhance independence, strengthen disciplinary procedures and facilitate better coordination of certifier functions. The Government Response also committed to enabling professional associations to be approved by the Government as accreditation authorities to administer industry accreditation schemes for competent fire safety practitioners.

The *Building and Development Certifiers Bill 2018* (the Bill) has been developed to implement a number of the legislative reforms committed to as part of the Government's response to the Independent Review.

The Bill represents a significant rewrite of the current BP Act. The structure has been improved to simplify, modernise and update requirements and processes to align the regulation of certifiers with the other occupational licensing frameworks administered by NSW Fair Trading. The development of the Bill supports other reforms in this space to ensure that the certification and complying development systems continue to deliver substantial community benefits and have strong public confidence in their use.

Interpretation note:

Any reference to Part 4A of the EP&A Act is simultaneously taken to be a reference to Part 6 of the EP&A Act, which commences from 1 September 2018. The key provisions relating to building regulation and certification, currently contained in Part 4A, will be consolidated into Part 6 of the EP&A Act later this year.

Provisions under the *Building and Development Certifiers Bill 2018*

Bill reference	Provision in Bill	BP Act section	If a new provision – similar legislation*	Rationale on the provision
Part 1 – Preliminary				
1	Name of Act	1	-	The name was changed from <i>Building Professional Act 2005</i> to the <i>Building and Development Certifiers Act 2018</i> to reflect that the specific purpose of the legislation is to regulate the certification industry.
2	Commencement	2	-	-
3	Objects of Act	NEW	s 1.3 EP&A s 3 RV s 3 MD&R	Objects have been included to identify the purpose of the Bill and place a particular emphasis on the role of certifiers as impartial public officials whose certification functions affect public health, safety and amenity.
4	Definitions	3	-	<p>Definitions have been updated, with key changes including:</p> <p><i>“accreditation authority”</i> – the Government intends to approve non-government organisations to administer accreditation schemes for competent fire safety practitioners, which is part of the Competent Fire Safety Practitioner Co-Regulatory Accreditation Framework which permits industry accreditation schemes.</p> <p><i>“certification legislation”</i> – definition was updated to account for all current legislation under which certificates are issued.</p> <p><i>“certification work”</i> – definition was broadened to consider the breadth of responsibilities imposed on certifiers, such as the standards of behaviour which are contained in the statutory Code of Conduct. The expanded definition also promotes the accountability of certifiers, and affects matters such as grounds for disciplinary action.</p> <p><i>“licensed certifier”</i> – ‘accredited certifiers’ under the BP Act are now ‘licensed certifiers’ under the Bill to differentiate between Government-issued licenses for people who carry out ‘certification work’ and</p>

				<p>certificates of accreditation issued by approved non-government bodies who carry out 'regulated work'.</p> <p><i>"relevant offence"</i> – the revised definition covers a range of offences in the Bill and has implications for licensing processes throughout the Bill, including the assessment of licensing applications and notifying the regulator in certain circumstances.</p> <p><i>"regulated work"</i> – the definition is amended to also refer to work carried out by those accredited by approved non-government accreditation authorities, including the work of competent fire safety practitioners and any other work declared by this or any other Act to be regulated work.</p>
Part 2 – Licensing of certifiers				
Division 1 – Preliminary				
5	Certification work requires licence	72	-	The Bill carries over and updates existing provisions from the BP Act.
6	Licensing of persons to carry out certification works	72 and 5A	-	The Bill carries over and updates existing provisions from the BP Act.
7	Grounds for finding that a person is not a suitable person to carry out certification work	7	-	<p>General licensing criteria for individuals and body corporates have been consolidated to ensure that certifiers and directors of body corporates can better carry out their supervisory responsibilities, and include the following key changes:</p> <ul style="list-style-type: none"> • Introducing the requirement that a body corporate must have at least one director with an individual licence in the same category as that held by the licensed body corporate; • Introducing a general probity provision which allows an application to be refused if an individual, body corporate or director of a body corporate has been convicted of a relevant offence within the previous ten years; • Excluding an individual, body corporate or director of a body corporate if the Independent Commission Against Corruption has made a finding or is of the opinion that the person has engaged in corrupt conduct within the previous ten years;

* Refers to other laws where similar provision exists. Key:

HB – Home Building Act 1989

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				<ul style="list-style-type: none"> Excluding a person who is disqualified from holding an equivalent authorisation under the law of another jurisdiction; Refusing a licence if a “close associate” of an applicant is not a fit and proper person to hold a licence and the close associate exercises a significant influence over the applicant, or the operation and management of the applicant’s business. The provision is consistent with other legislation administered by Fair Trading.
Division 2 – Application for licence				
8	Application for a licence	5	-	The Bill carries over and updates existing provisions from the BP Act.
9	Secretary may obtain information from third parties	NEW	s 35 HB	The Bill allows the Secretary to obtain relevant information from a third party to assess an application and is consistent with other legislation administered by Fair Trading.
10	Grant or refusal of licence	6	-	The Bill carries over and updates existing provisions from the BP Act.
11	Duration of licence	10	-	The Bill extends the duration of a licence from one year to up to five years which aligns with the Government Response and reflects the Government’s commitment to reduce administrative burden and red tape.
12	Variation of licence	9 and 13	-	The Bill carries over and updates existing provisions from the BP Act.
Division 3 – Conditions of licence				
13	Conditions of a licence	9	-	The Bill carries over and updates existing provisions from the BP Act.
14	Compliance with standards or methodologies	NEW	-	In the Government Response, the Government committed to introducing a best practice industry standards guide to set out the required approach to certification and creating a framework for better cooperation with other parties, such as councils to improve certification outcomes. The Bill has been drafted to provide the Secretary with the power to issue any standard or methodology, such as a practice guide, as a condition of the certifier’s licence in the future.
15	Conditions may provide that authorisation takes effect later	9	-	The Bill carries over and updates existing provisions from the BP Act.

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Division 4 – Suspension or cancellation of a licence				
16	Grounds for suspension or cancellation of a licence	8	-	The Bill carries over and updates existing provisions from the BP Act.
17	Suspension of a licence	8	-	The Bill introduces a streamlined process to replace the submissions process with the standardised internal review provisions found in section 53 of the <i>Administrative Decisions Review Act 1997</i> , which apply to most licensing decisions in NSW.
18	Cancellation of a licence	8	-	The Bill introduces a streamlined process to replace the submissions process with the standardised internal review provisions found in section 53 of the <i>Administrative Decisions Review Act 1997</i> , which apply to most licensing decisions in NSW.
19	Suspension or cancellation may be subject to conditions	NEW	s 210 BS	This provision supports administration of licence suspension and cancellation to enable the Secretary to issue a licence variation on a case-by-case basis. For example, it may be appropriate for a certifiers licence to be suspended, but only subject to certain conditions.
Division 5 – Miscellaneous				
20	Offence of contravening condition	73	-	The Bill carries over and updates existing provisions from the BP Act.
21	A licence not transferable	NEW	s 46 HB	The provision is introduced to align with requirements found in other licensing frameworks administered by Fair Trading.
22	Offence of lending a licence	NEW	s 46A HB	The provision is introduced to align with requirements found in other licensing frameworks administered by Fair Trading.
23	Voluntary surrender or suspension of a licence	NEW	s 105L HB	The provision is introduced to align with requirements found in other licensing frameworks administered by Fair Trading.
24	Review by NCAT	18	-	The Bill carries over and updates existing provisions from the BP Act.
25	Recovery of unpaid fees	NEW	-	This provision is introduced from the <i>Licensing and Registration (Uniform Procedures) Act 2002</i> to align with standard requirements found in other licensing frameworks administered by Fair Trading.
Part 3 – Requirements on certifiers				
Division 1 – Insurance				

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26	Licensed certifiers to have required insurance policy	63	-	The Bill carries over and updates existing provisions from the BP Act. It is noted that insurance provisions largely remain the same as administration of insurance is dealt with in the regulations and will be subject to review when the supporting regulation is developed.
27	Regulations under this Division	65	-	
Division 2 – Conflicts of interest				
28	Conflicts of interest	66	-	Conflict of interest provisions have been updated to better capture the breadth of work undertaken by certifiers. This provision further broadens the exemptions for certifiers from the conflict of interest process to more accurately reflect the types of work which may be subject to a potential conflict.
29	Meaning of “conflict of interest”	67, 68 & 69	-	The Bill replicates some of the examples of a ‘private interest’ to match those in the BP Act and redefines the other conflict of interest provisions to more effectively target and capture instances of conflicting interest.
30	Meaning of having a pecuniary interest	70	-	The Bill revises the provision to broaden its application to include relationships with the certifier, whether family, personal, employment, business or other.
Division 3 – General requirements				
31	Requirements relating to contracts for certification work	73A	-	The Bill strengthens the requirement for a written contract by providing that it is a condition of a licence that a licensed certifier must carry out certification work under a written contract between the certifier (or certifier’s employer), and the beneficiary of the development consent or other person prescribed by the <i>Environmental Planning and Assessment Regulation 2017</i> . This requirement reinforces the fact that certifiers are a party to the contract and have enforceable duties to ensure that the certification work is accurate and independent.
32	Code of conduct	4(2)(b)	-	The Bill gives greater prominence to the Code of conduct by inserting a regulation making power to prescribe the Code. The supporting regulations may create offences for failing to comply with the Code of Conduct where appropriate, to promote certifier independence and accountability.
33	Principal certifier to notify client of certain changes	74	-	The Bill carries over and updates existing provisions from the BP Act to ensure that certifiers only carry out work which they are authorised to do.

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34	Licensed certifier to notify employer of certain changes	61	-	The Bill carries over and updates existing provisions from the BP Act to ensure that certifiers only carry out work which they are authorised to do.
35	Licensed certifier to notify Secretary of certain events	61	-	The Bill carries over and updates existing provisions from the BP Act, and includes additional matters which require the certifier to notify the regulator, such as if a certifier is found guilty of a relevant offence or if a certifier becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the creditors.
36	Return of licence	NEW	ss 44 & 66 HB	The provision is introduced to align with requirements found in other licensing frameworks administered by Fair Trading.
37	Responsibilities of individuals acting on behalf of licensed body corporate or council	72B	-	The Bill carries over and updates existing provisions from the BP Act.
Division 4 – Additional requirements for licensed body corporates				
38	Licensed directors must ensure certification work carried out lawfully	72A(1)	-	The Bill carries over and updates existing provisions from the BP Act.
39	Licensed directors must report certain conduct	72A(2), (3) and (4)	-	The Bill carries over and updates existing provisions from the BP Act.
40	Licensed body corporate must ensure certification work carried out by individual	72C(1) and (2)	-	The Bill removes the prescriptive requirement from the BP Act which stated that three licensed certifiers must be within a licensed body corporate, but retains the requirement for certification work to be carried out on and behalf the licensed corporation to be done by a licensed individual.
41	Licensed body corporate with insufficient licensed directors	72C(3) and (4)	-	The Bill removes the prescriptive requirement from the BP Act which stated that three licensed certifiers must be within a licensed body corporate, but retains the requirement for certification work to be carried out on and behalf the licensed corporation to be done by a licensed individual.
Division 5 – Miscellaneous offences relating to certification				
42	Improper influence with respect to carrying out certification work	84	-	The Bill carries over and updates existing provisions from the BP Act.

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43	Representing work is work requiring a licensed certifier	NEW	ss 17 & 18 HB	The addition of this offence is intended to address false representations which may be made by a licensed certifier to obtain work.
44	Knowingly issuing a false certificate	85	-	The scope of the offence is broadened to reflect the range of certificates that can be issued by a certifier to ensure that certifiers are responsible for completing accurate documentation.
Part 4 – Disciplinary action against certifiers				
Division 1 – Preliminary				
45	Grounds for taking disciplinary action	19	-	The Bill deletes the terms “unsatisfactory professional conduct” and “professional misconduct”, and instead provides grounds for taking disciplinary action. While the proposed grounds are similar to matters previously covered under the definition of “unsatisfactory professional conduct” in section 19 of the BP Act, the list has been supplemented to be more comprehensive by introducing additional grounds. The additional grounds are intended to more accurately account for the scope of work undertaken by certifiers, for which they should be accountable.
46	Functions exercised on behalf of council or body corporate	19(2)	-	The Bill carries over and updates existing provisions from the BP Act.
47	Notice to show cause	NEW	s 61 HB s 72 FT	The complaints and disciplinary process for certifiers has been streamlined under the Bill to align with the process used in other licensing regimes administered by Fair Trading.
48	Disciplinary action that may be taken by Secretary	31	-	The Bill carries over and updates existing provisions from the BP Act.
49	Review by NCAT	18 and 33	-	The Bill carries over and updates existing provisions from the BP Act.
50	Enforcement of monetary penalties and payment of costs	90	-	The Bill strengthens the regulator’s powers and aligns with other licensing legislation administered by Fair Trading.
51	Liability for offences not affected	NEW	s 68 HB	The provision is introduced to align with requirements found in other licensing frameworks administered by Fair Trading.
Part 5 – Accreditation of persons carrying out regulated work				
52	Meaning of “regulated work”	NEW	-	

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53	Regulated work requires accreditation	NEW	-	Part 5 is a new Part and delivers on the Government's commitment to exploring co-regulation for certain building professionals. Part 5 establishes the concept of "regulated work". While "regulated work" is not work that requires a licensed certifier, it is work that requires the person carrying out the work to have certain skills, competencies and experience. The work of competent fire safety practitioners is considered by the Bill to be regulated work. The Bill and any other Act may also declare other work to be "regulated work" in the future.
54	Accreditation of persons to carry out regulated work	NEW	-	
55	Regulations may authorise licensed certifiers to carry out regulated work	NEW	-	
Part 6 – Approval of accreditation authorities				
Division 1 – Accreditation authorities				
56	Accreditation authority – meaning	NEW	-	Similar to Part 5, Part 6 is also new and delivers on the Government's commitment to exploring industry co-regulation for certain building professionals.
57	Functions of an accreditation authority	NEW	-	
58	Person must be approved to exercise functions of accreditation authority	NEW	-	Part 6 establishes the regulatory mechanism under which competent fire safety practitioners can be accredited by non-government organisations who operate industry accreditation schemes. Although Part 6 is a new Part, majority of the requirements in this Part are broadly similar with the requirements under Part 2, Division 2 of the BP Act, and reflect existing practice across similar legislation where accreditation is authorised – see <i>Biosecurity Act 2015</i> , <i>Passenger Transport Act 1990</i> and <i>Teacher Accreditation Act 2004</i> .
59	Approval of accreditation authority to exercise functions	NEW	-	
60	Effect of approval	NEW	-	
61	Accreditation authority approval guidelines	NEW	-	
Division 2 – Approval procedure				
62	Application for approval	NEW	-	The 2017 amendments to the <i>Environmental Planning and Assessment Regulation 2017</i> empowered the Secretary of DFSI to recognise individuals who have that have undergone training or assessment by a specified professional or industry organisation as "competent fire safety practitioners".
63	Grant or refusal or approval	NEW	-	
64	Duration of approval	NEW	-	
65	Variation of approval	NEW	-	
Division 3 – Condition of approval				
66	Conditions of approval	NEW	-	The Bill subsequently repeals clause 167A of the Regulation to give effect to this new Part and enables organisations wishing to operate

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67	Condition that functions exercised in accordance with approved accreditation	NEW	-	industry accreditation schemes to do so, subject to the Secretary's approval. The Bill reintroduces the definition of 'competent fire safety practitioner' into the <i>Environmental Planning and Assessment Act 1979</i> as a holder of an accreditation under the Bill that authorises the holder to exercise the functions of the competent fire safety practitioner as per their accreditation. A person who is not satisfied with the decision of the Secretary to cancel, suspend or deny an authority approval can apply to NCAT for an administrative review of the decision in accordance with the <i>Administrative Decisions Review Act 1997</i> . Processes and timeframes for administrative review are detailed in the that Act, rather than being replicated in the Bill.
68	Condition that work be carried out only by individuals notified to Secretary	NEW	-	
69	Condition that functions be exercised in the public interest	NEW	-	
70	Condition requiring provision of information to the Secretary	NEW	-	
71	Condition relating to independent audits	NEW	-	
72	Condition relating to investigations and audits conducted by Secretary	NEW	-	
73	Condition requiring publication of information	NEW	-	
74	Condition requiring the keeping of records	NEW	-	
Division 4 – Suspension or cancellation of approval				
75	Grounds for suspension or cancellation of approval	NEW	-	
76	Suspension of approval	NEW	-	
77	Cancellation of approval	NEW	-	
78	Suspension or cancellation may be subject to conditions	NEW	-	
Division 5 – Miscellaneous				
79	Requirements for an accreditation scheme	NEW	-	
80	Offence of contravening condition	NEW	-	

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81	Offence of carrying out accreditation authority functions during suspension	NEW	-	
82	Surrender of approval	NEW	-	
83	Review by NCAT	NEW	-	
84	Disclosure of information	NEW	-	
Part 7 – Powers of authorised officers				
Division 1 – Preliminary				
85	Definitions	NEW	-	The provision is introduced to clarify Part 7 which governs the powers of authorised officers and aligns with similar provisions in other licensing frameworks administered by Fair Trading.
86	Purposes for which functions under Part may be exercised	48 and 49	-	The powers of authorised officers to investigate, gather information, and monitor and enforce compliance under the Bill are revised to be used in relation to both certifiers and accreditation authorities.
Division 2 – Authorised officers				
87	Appointment of authorised officers	NEW	s 18 FT s 149 MD&R	The Bill contains a range of enforcement provisions which reflect the integration of the Building Professionals Board’s functions into DFSI. These powers significantly enhance the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and aligns with other licensing legislation administered by Fair Trading.
88	Scope of authority	NEW	s 18 FT	The provision significantly enhances the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and aligns with other licensing legislation administered by Fair Trading.
89	Identification	55	-	The Bill carries over and updates existing provisions from the BP Act.
Division 3 – Information gathering powers				
90	Exercise in conjunction with other powers	NEW	-	The provision significantly enhances the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and aligns with other licensing legislation administered by Fair Trading.

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91	Powers of authorised officers to require information and records	48 and 50	-	The Bill carries over and updates existing provisions from the BP Act.
92	Power of authorised officers to require answers	NEW	s 127 HB	The provision significantly enhances the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and align with other licensing legislation administered by Fair Trading. The provision also introduces new penalties to correspond with additional matters that can be issued by an authorised officer as a direction.
93	Recording of evidence	NEW	s 152 MD&R	The provision significantly enhances the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and aligns with other licensing legislation administered by Fair Trading.
Division 4 – Entry to premises				
94	Powers of authorised officers to enter premises	49	s 126 HB s 19 FT	The Bill carries over and updates existing provisions from the BP Act.
95	Entry into residential premises only with permission or warrant	56	s 19A FT s 154 MD&R	The Bill carries over and updates existing provisions from the BP Act.
96	Search warrants	57	s 154 MD&R	The Bill carries over and updates existing provisions from the BP Act.
97	Requiring assistance	50(d)	s 151 MD&R	The Bill carries over and updates existing provisions from the BP Act.
98	Powers that may be exercised on premises	50	s 151 MD&R	The Bill carries over and updates existing provisions from the BP Act.
Division 5 – Miscellaneous				
99	Taking possession of records to be used as evidence	NEW	s 152 MD&R s21 FT	The provision significantly enhances the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and aligns with other licensing legislation administered by Fair Trading.
100	Obstruction of authorised officers	58	s 128 HB s 23 FT s 155 MD&R	The provision significantly enhances the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and aligns with other licensing legislation administered by Fair Trading. This is supported by an increase in penalty amounts.

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101	Failure to comply with direction	59	s 127 HB s 28 FT	The provision significantly enhances the ability of authorised officers to undertake compliance and enforcement operations under the legislation, and aligns with other licensing legislation administered by Fair Trading. This is supported by an increase in penalty amounts.
Part 8 – Other functions of the Secretary				
102	Registers of licences and approvals	11	-	The Bill carries over and updates existing provisions from the BP Act.
103	Warning notices	NEW	s 23 HB	This provision is common to other Fair Trading legislation and assists in alerting consumers of potential risks when dealing with particular certifiers. The power additionally promotes certifier accountability and protects the consumer.
104	Undertakings	NEW	s 70 FT s 106 MD&R	Undertakings provide certifiers with a new avenue for compliance with the requirements under the legislation and aligns with other legislation administered by Fair Trading.
105	Applying for injunctions	NEW	s 138 HB s 79 FT	This provision provides an additional compliance option, which is available under other similar legislation administered by Fair Trading.
106	Complaints, investigations and audits of certifiers and accreditation authorities	27	-	This provision is amended to clarify that the Secretary may investigate, whether a complaint has been received or not, in relation to a range of matters. The power affirms the regulator's ability to proactively conduct investigations, in addition to investigations that are linked to complaints.
107	Investigation of councils acting as certifier	45	-	The Bill carries over and updates existing provisions from the BP Act.
108	Exchange of information	82A	-	The Bill carries over and updates existing provisions from the BP Act, and is amended to provide that a 'relevant agency' now includes an insurer that provides insurance for residential building work under a <i>Home Building Act 1989</i> contract. The change will assist in the exchange of residential building work and other related information between DFSI and other agencies.
109	Secretary may exercise functions of an accreditation authority	NEW	N/A – New	This provision enables the Secretary to adopt an accreditation scheme which is compliant with the requirements for such a scheme under clause 78.
Part 9 – Miscellaneous				

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110	Disclosure and misuse of information	83	-	This provision is broadened to make it an offence for a person who is involved in administering and executing the legislation to improperly influence matters relating to certification work, and is a measure to strengthen certifier independence.
111	Responsibilities of councils carrying out certain prescribed certification work	74A and 74C	-	The Bill carries over and updates existing provisions from the BP Act.
112	Delegation	80	-	The Bill carries over and updates existing provisions from the BP Act.
113	Personal liability	89	-	The Bill carries over and updates existing provisions from the BP Act.
114	Offences by bodies corporate	93A	-	The Bill carries over and updates existing provisions from the BP Act.
115	Service of documents	88	-	The Bill carries over and updates existing provisions from the BP Act.
116	Certificate evidence of certain matters	91	-	The Bill carries over and updates existing provisions from the BP Act.
117	Penalty notices	92	-	The Bill carries over and updates existing provisions from the BP Act.
118	Proceedings for offences	93	-	This provision extends the period in which action can be taken in the Local Court or Land and Environment Court for offences relating to the Bill and regulations from two years (section 93 of the BP Act) to three years. The provision aligns with other Fair Trading legislation, such as the <i>Home Building Act 1989</i> .
119	Regulations	94	-	The regulation-making powers are expanded to enable regulations to prescribe qualifications, skills and experience for licensees, including approval of courses of training, and the approval of persons to train or to assess. These additional matters will allow the Secretary to specify matters that are currently covered in the Accreditation Scheme, and aligns with other legislation administered by Fair Trading.
120	Repeal	N/A	-	-
Key amendments to other legislation to be introduced by the <i>Building and Development Certifiers Bill 2018</i>				
Sections 6.6 and 6.12 – <i>Environmental Planning and Assessment Act 1979</i>				
Schedule 3, paragraph 9 and 10	Requirements before building work commences/requirements before subdivision work commences	NEW	-	The provisions enable the Minister responsible for the <i>Environmental Planning and Assessment Act 1979</i> to authorise the Secretary of DFSI as a person who can appoint a principal certifier for a development, when it is in the public interest to do so.

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				A principal certifier might suddenly die, become incapacitated, or be suspended and not be willing or able to make transfer arrangements. Other situations where it may be appropriate for the principal certifier to be appointed by the Secretary include a conflict of interest or where it is likely for potential harm to be caused. The provision is scheduled to commence in September 2018.
Schedule 3, paragraph 9 and 10		NEW	-	<p>The provisions enable the Minister responsible for the <i>Environmental Planning and Assessment Act 1979</i> to prescribe classes of development in which the principal certifier is to be appointed in a manner prescribed by the regulations, including but not limited to, being approved in accordance with a scheme.</p> <p>These provisions will enable an alternative process to be implemented for the appointment of a principal certifier for certain, higher-risk developments.</p> <p>It is intended that the final form of an alternative appointment process and the developments to be captured by the alternative appointment process will be subject to public consultation in the future.</p>
Sections 11B and C – Home Building Act 1989				
Schedule 2, paragraph 1	Consumer information – certifiers	NEW	-	This provision provides greater clarity to the community about the role and responsibility of certifiers, to reduce or eliminate misconceptions. The prescribed information aims clarify the right of home owners to choose their own certifier.
	Undue influence relating to appointment of certifiers	NEW	-	The proposed change is intended to address the power imbalance between an owner and a home builder when negotiating the appointment of a certifier. To emphasise the seriousness of the offence, the proposed penalty is 1000 penalty units in the case of a corporation, and 300 penalty units in any other case.

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