

Authorised Version
Building Amendment (Consumer Protection)
Regulations 2016
S.R. No. 103/2016

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Authorised Version

STATUTORY RULES 2016

S.R. No. 103/2016

Building Act 1993

Building Amendment (Consumer Protection) Regulations 2016

The Governor in Council makes the following Regulations:

Dated: 23 August 2016

Responsible Minister:

RICHARD WYNNE
Minister for Planning

ANDREW ROBINSON
Clerk of the Executive Council

1 Objective

The objective of these Regulations is to amend the Building Regulations 2006—

- (a) to replace references to the Building Practitioners Board with references to the Victorian Building Authority; and
- (b) in relation to owner-builder requirements, certificates of consent and the register of certificates of consent; and
- (c) to make miscellaneous amendments.

2 Authorising provisions

These Regulations are made under sections 7, 261 and 262 of, and Schedule 1 to, the **Building Act 1993**.

3 Commencement

These Regulations come into operation on 1 September 2016.

4 Principal Regulations

In these Regulations, the Building Regulations 2006¹ are called the Principal Regulations.

5 Transfer of Building Practitioners Board functions to Victorian Building Authority—consequential amendments

- (1) In regulations 101(k), 113(a)(ii) and 305(f) of the Principal Regulations, for "Building Practitioners Board" **substitute** "Authority".
- (2) Regulation 1501 of the Principal Regulations is **revoked**.

6 Regulation 201 substituted

For regulation 201 of the Principal Regulations **substitute**—

"201 Applications for certificate of consent

- (1) An application for a certificate of consent to carry out domestic building work on land must be in the form approved by the Authority and contain the information set out in subregulation (2).
- (2) For the purposes of section 25C(2)(a) of the Act, the following information is the information to be contained in the application—
 - (a) the address of the land on which the domestic building work is to be carried out;

- (b) the name, address, telephone number and ABN and ACN (if applicable) of each owner of the land;
- (c) if the applicant is not an owner of the land, the name, address, telephone number, ABN and ACN (if applicable) of the applicant;
- (d) a description of the proposed domestic building work;
- (e) details of the cost of the proposed domestic building work;
- (f) whether or not a building permit referred to in section 25E(1)(e), (f) or (g) of the Act has been issued in the previous 5 years;
- (g) the type of work in which the applicant is engaged or intends to engage, and whether it is for profit or gain;
- (h) if the applicant intends to seek an exemption under section 25E(4) of the Act, details of the grounds on which the exemption is sought."

7 New regulations 201A, 201B and 201C inserted

After regulation 201 of the Principal Regulations
insert—

"201A Information to accompany application for certificate of consent

For the purposes of section 25C(2)(c)(i) of the Act, an application for a certificate of consent must be accompanied by the following information—

- (a) any evidence or proof of identity of the applicant that is required by the Authority;

- (b) if the land is under the **Transfer of Land Act 1958**, a copy of the certificate of title for the land dated within 7 days before the date of the application;
- (c) if the land is not under the operation of the **Transfer of Land Act 1958**, any evidence of ownership of the land required by the Authority;
- (d) if the applicant co-owns the land, a written statement from each other owner, stating that the owner authorises the making of the application dated within 28 days before the date of the application.

201B Additional information to accompany application for certificate of consent if land is owned by body corporate

For the purposes of section 25C(2)(c)(i) of the Act, an application for a certificate of consent must be accompanied by the following information in addition to the information required under regulation 201A, if the land to which the application relates is owned by a body corporate—

- (a) if the owner is a company incorporated under the Corporations Act, a copy of a record of a current company extract from the records maintained by the Australian Securities and Investments Commission established under the Australian Securities and Investments Commission Act 2001 of the Commonwealth that shows the company name, ABN, ACN, the names of the directors and the address of the company's registered office,

dated within 7 days before the date of the application;

- (b) if the body corporate is not a company incorporated under the Corporations Act, any evidence of incorporation required by the Authority;
- (c) a written authorisation of the body corporate to the making of the application and the carrying out of the domestic building work on the land by the applicant, dated within 28 days before the date of the application;
- (d) a description of the nature of the business of the body corporate.

201C Additional information to accompany application for certificate of consent if land is subject to trust

For the purposes of section 25C(2)(c)(i) of the Act, an application for a certificate of consent must be accompanied by the following information in addition to the information required under regulation 201A, if the land to which the application relates is the subject of a trust—

- (a) a certified copy of the trust deed, together with any subsequent amendments, showing the name of the trust, the name of each trustee and the name of each beneficiary, certified within 28 days before the date of the application;

- (b) a written authorisation by each trustee of the trust to the making of the application and to the carrying out of the domestic building work by the applicant on the land, dated within 28 days before the date of the application;
- (c) a description of the nature of the business of the trust (if any).

Note

It is an offence under section 246 of the Act to make false or misleading statements."

8 Regulation 202 substituted and new regulation 202A inserted

For regulation 202 of the Principal Regulations substitute—

"202 Fee for an application for certificate of consent

For the purposes of section 25C(2)(c)(ii) of the Act, the fee for an application for the issue of a certificate of consent is 6.90 fee units.

202A Required knowledge for owner-builders

For the purposes of section 25E(1)(ab) of the Act, the knowledge of the duties and responsibilities of an owner-builder set out in Schedule 10 is prescribed."

9 Regulation 203 substituted

For regulation 203 of the Principal Regulations substitute—

"203 Information in certificate of consent

For the purposes of section 25G(1)(a) of the Act, a certificate of consent must contain the following information—

- (a) the date of issue of the certificate;
- (b) a description of the proposed domestic building work to which the certificate relates;
- (c) the address of the land on which the domestic building work is to be carried out;
- (d) details of the cost of the proposed domestic building work;
- (e) an identification number of the certificate;
- (f) the name, address, telephone number and ABN and ACN (if applicable) of each owner of the land;
- (g) if the applicant is not an owner of the land, the name, address, telephone number and ABN and ACN (if applicable) of the applicant;
- (h) if an owner of the land is a body corporate, the names of all the directors of the body corporate;
- (i) if the land is subject to a trust, the name of that trust and the names of all the trustees of that trust."

10 Regulation 204 substituted and new regulation 205 inserted

For regulation 204 of the Principal Regulations
substitute—

"204 Register of certificates of consent

For the purposes of section 25H(2) of the Act, the register of certificates of consent kept by the Registrar of the Authority must contain the following information in relation to each certificate of consent issued—

- (a) the date of issue of the certificate;
- (b) the identification number of the certificate;
- (c) the address of the land to which the certificate relates;
- (d) the name, address, telephone number and ABN and ACN (if applicable) of each owner of the land;
- (e) the description of the proposed domestic building work to be carried out on the land;
- (f) if the applicant for the certificate is not an owner of the land, the name, address, telephone number, ABN and ACN (if applicable) of the applicant;
- (g) if an owner of the land is a body corporate, the names of all the directors of the body corporate;
- (h) if the land is subject to a trust, the name of the trust and the names of all the trustees of the trust.

205 Publication of information kept on the register of certificates of consent

- (1) For the purposes of section 25H(3) of the Act, the Authority may publish on the Authority's website the following information that is kept on the register of certificates of consent in relation to each certificate of consent issued—
 - (a) the date of issue of the certificate;

- (b) the identification number of the certificate;
 - (c) a description of the domestic building work to which the certificate relates;
 - (d) the address of the land on which the domestic building work to which the certificate relates is to be carried out.
- (2) The Authority may publish the information under subregulation (1) relating to a certificate of consent issued in the previous 10 years."

11 Note at the foot of regulation 1502 substituted

For the note at the foot of regulation 1502 of the Principal Regulations **substitute**—

"Note

A building practitioner who contravenes the requirements of regulation 1502 may be given a show cause notice under section 182 of the Act."

12 Note at the foot of regulation 1503 substituted

For the note at the foot of regulation 1503 of the Principal Regulations **substitute**—

"Note

Under section 170(1)(b)(ii) of the Act, the Authority, unless these Regulations otherwise provide in relation to a particular category or class of building practitioner, may accept equivalent qualifications and experience to those listed in the Table in Schedule 7."

13 Regulation 1510 is revoked

Regulation 1510 of the Principal Regulations is **revoked**.

14 Regulation 1511 substituted and new regulation 1512 inserted

For regulation 1511 of the Principal Regulations
substitute—

"1511 Notice of suspension or cancellation of registration

For the purposes of section 183A of the Act—

- (a) a notice of suspension of registration must be in the form of Form 8 in Schedule 2;
- (b) a notice of cancellation of registration must be in the form of Form 9 in Schedule 2.

1512 Condition of registration

For the purposes of section 170A of the Act, it is a condition of registration that a building practitioner must not allow another person to use the certificate issued to the building practitioner under section 172 of the Act."

15 Review period

In regulation 1605 of the Principal Regulations, for "182A" **substitute** "186".

16 New regulation 2004 inserted

After regulation 2003 of the Principal Regulations
insert—

"2004 Transitional provision—Building Legislation Amendment (Consumer Protection) Act 2016

Section 78(1A), (1B) and (1C) of the Act do not apply in relation to a major domestic building contract entered into by a builder,

or in relation to a builder who acts or proposes to act as a domestic builder in relation to domestic building work, before the commencement of section 38 of the **Building Legislation Amendment (Consumer Protection) Act 2016**."

17 Forms 7A and 8 in Schedule 2 substituted

For Forms 7A and 8 in Schedule 2 to the Principal Regulations **substitute**—

"FORM 8

Regulation 1511(a)

Building Act 1993

Building Regulations 2006

**NOTICE OF SUSPENSION OF REGISTRATION
UNDER SECTION 183A**

I [*insert name*] do hereby give notice that on [*insert date*] my registration as a building practitioner in the category of [*insert registration category*] class of [*insert registration class*] was suspended by the Victorian Building Authority (**VBA**) with respect to the work I am carrying out for you. My registration will be suspended from [*insert date*].

Under section 183A of the **Building Act 1993**, I am required to give you notice of the suspension of my registration.

Under section 185 of the **Building Act 1993**, I have the right to apply for an internal review of the VBA's decision to suspend my registration. In reviewing the decision, the VBA may choose to affirm, amend or substitute the decision.

Under section 186 of the **Building Act 1993**, I also have the right to apply for a review of the decision to suspend my registration directly to the Victorian Civil and Administrative Tribunal (**VCAT**). VCAT may then choose to affirm, amend or substitute the decision.

If I apply for an internal review or a review by VCAT, the suspension of my registration is stayed until a decision is made unless my registration was immediately suspended under section 180A of the Act.

Signature of building practitioner

Date

Note

Under section 175 of the **Building Act 1993**, while suspended a building practitioner is deemed to not be registered under Part 11 of the Act.

FORM 9

Regulation 1511(b)

Building Act 1993

Building Regulations 2006

**NOTICE OF CANCELLATION OF REGISTRATION
UNDER SECTION 183A**

I [*insert name*] do hereby give notice that on [*insert date*] my registration as a building practitioner in the category of [*insert registration category*] class of [*insert registration class*] was cancelled by the Victorian Building Authority (**VBA**). My registration will be cancelled from [*insert date*].

Under section 183A of the **Building Act 1993**, I am required to give you notice of the cancellation of my registration.

Under section 185 of the **Building Act 1993**, I have the right to apply for an internal review of the VBA's decision to cancel my registration. In reviewing the decision, the VBA may choose to affirm, amend or substitute the decision.

Under section 186 of the **Building Act 1993**, I also have the right to apply for a review of the decision to cancel my registration directly to the Victorian Civil and Administrative Tribunal (**VCAT**). VCAT may then choose to affirm, amend or substitute the decision.

If I apply for an internal review or a review by VCAT, the cancellation of my registration is stayed until a decision is made.

Signature of building practitioner

Date".

18 Schedule 7 amended

- (1) Subclause (1) of Schedule 7 to the Principal Regulations is **revoked**.
- (2) In Schedule 7 to the Principal Regulations, for "(2) In the Table" **substitute** "In the Table".
- (3) In the Table in Schedule 7 to the Principal Regulations—
 - (a) for "Board" (wherever occurring) **substitute** "Authority";
 - (b) for "National Professional Engineers Register (NPER)" (wherever occurring) **substitute** "National Engineering Register (NER)".

19 New Schedule 10 inserted

After Schedule 9 of the Principal Regulations
insert—

**"Schedule 10—Duties and responsibilities
of an owner-builder**

Regulation 202A

- 1 Understanding the restrictions imposed by the Act and these Regulations on the carrying out of domestic building work, including those referred to in section 16 of the Act which requires a building permit for the carrying out of building work.
- 2 Applying to a municipal building surveyor or a private building surveyor appointed under Part 6 of the Act to obtain a building permit and understanding when the relevant building surveyor must not issue a building permit.
- 3 Ensuring building work is inspected as required by the Act and these Regulations.

- 4 Understanding the requirement for, and knowing when to apply for and obtain, an occupancy permit or certificate of final inspection.
- 5 Understanding the requirement for entering a major domestic building contract when engaging a domestic builder to undertake certain building work.
- 6 Understanding the requirement to engage a building practitioner registered under Part 11 of the Act to carry out certain building work if required by the Act and these Regulations.
- 7 Understanding the requirement to engage licenced or registered practitioners, other than building practitioners registered under Part 11 of the Act, to undertake forms of regulated work such as plumbing or electrical work.
- 8 Understanding the processes available to resolve domestic building work disputes under the **Domestic Building Contracts Act 1994**.
- 9 Undertaking relevant planning and preparation for carrying out building work.
- 10 Complying with site safety requirements, including development, communication, monitoring and maintenance of site safety plans, and any relevant requirement under the **Occupational Health and Safety Act 2004** and the regulations under that Act, for carrying out building work.
- 11 Supervising the carrying out of all building work and ensuring that it complies with the Act and these Regulations.
- 12 Ensuring building work is undertaken in accordance with the requirements of any relevant environmental laws.

- 13 Understanding when directions to fix building work can be made and when and how enforcement of safety and building standards can be undertaken in respect of domestic building work subject to a certificate of consent.
- 14 Arranging any required protection works.
- 15 Interpreting plans, drawings and specifications relating to the building work.
- 16 Setting out and preparing the building site according to plans and specifications.
- 17 Understanding requirements for the sale of an owner-built home under section 137B of the Act, including the requirement to obtain insurance for the building work carried out by the owner-builder.
- 18 Ensuring knowledge of and obtaining insurance to cover any loss, damage or injury to the owner-builder or others incurred in connection with carrying out building work.
- 19 Ensuring knowledge of warranties implied into a contract for the sale of an owner-built home under section 137C of the Act.
- 20 Any other duty or responsibility of an owner-builder imposed by the Act, these regulations, the **Domestic Building Contracts Act 1995** or the regulations made under that Act."

Endnotes

- ¹ Reg. 4: S.R. No. 68/2006. Reprint No. 3 as at 11 December 2014.
Reprinted to S.R. No. 197/2014. Subsequently amended by
S.R. Nos 8/2015, 21/2015, 70/2015, 134/2015, 152/2015, 157/2015,
21/2016, 33/2016, 49/2016 and 63/2016 and extended in operation
by S.R. No. 4/2016.

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2016 is \$13.94. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.