



New South Wales

Plumbing and Drainage Bill 2011

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.*

Overview of Bill

The objects of this Bill are:

- (a) to regulate the carrying out of plumbing and drainage work, including by prescribing the standards and requirements that must be complied with in carrying out such work, and
- (b) to provide for a single plumbing regulator to oversee the regulation of plumbing and drainage work regardless of where the work is carried out in the State.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

* Amended in committee—see table at end of volume.

Clause 3 defines certain words and expressions used in the proposed Act. In particular, the term *plumbing regulator* is defined. The *plumbing regulator* is the Commissioner for Fair Trading.

Clause 4 defines the term *plumbing and drainage work* for the purposes of the proposed Act. Plumbing and drainage work includes the following:

- (a) the construction of, or work on, certain plumbing installations,
- (b) the construction of, or work on, sanitary plumbing systems,
- (c) the construction of, or work on, sanitary drainage systems,
- (d) any other type of construction or work prescribed by the regulations.

There are several exclusions from the definition, and power to make regulations providing for further exclusions.

Clause 5 defines the *responsible person* for plumbing and drainage work. The responsible person is:

- (a) in the case of work carried out or proposed to be carried out by the holder of an endorsed contractor licence or a supervisor certificate under the *Home Building Act 1989* authorising the holder to do the work, the holder of that licence or certificate, or
- (b) in the case of work carried out or proposed to be carried out under the immediate or general supervision of the holder of an endorsed contractor licence or a supervisor certificate under the *Home Building Act 1989* authorising the holder to supervise the work, the holder of the endorsed contractor licence or supervisor certificate.

Part 2 Plumbing and drainage work

Division 1 General requirements for plumbing and drainage work

Clause 6 makes it an offence for a person to do any kind of plumbing and drainage work unless the person:

- (a) holds an endorsed contractor licence or a supervisor certificate in force under the *Home Building Act 1989* authorising the holder to do that kind of work, or
- (b) does the work under the immediate supervision of the holder of such a licence or certificate, or
- (c) holds a tradesperson certificate in force under the *Home Building Act 1989* authorising the holder to do that work under supervision and does that work under the general supervision of the holder of a licence or certificate referred to in paragraph (a).

This offence is similar to existing offences relating to plumbing and drainage work that connects to public infrastructure.

Clause 7 provides that the responsible person for plumbing and drainage work must ensure the work complies with the *Plumbing Code of Australia* and other prescribed standards and requirements. Work done in accordance with this provision is **code compliant**.

Clause 8 provides that the responsible person for plumbing and drainage work must ensure the fittings used in the work are fittings that have been authorised by the plumbing regulator.

Division 2 Notice of plumbing and drainage work

Clause 9 provides that the responsible person for plumbing and drainage work must ensure that no plumbing and drainage work is carried out by, or under the supervision of, the responsible person unless:

- (a) the responsible person has given the plumbing regulator a notice of work, and
- (b) the work carried out corresponds to the specifications in the notice of work.

Work notified in accordance with this requirement is work that has been **pre-notified**.

Clause 10 exempts certain emergency work from the requirement that plumbing and drainage work be pre-notified.

Clause 11 requires the responsible person for plumbing and drainage work carried out on land to give notice of any defective installation or system on the land discovered in the course of carrying out the work to the owner of the land and the occupier of the land. If the defective installation or system poses an imminent risk to public health or safety the responsible person must also notify the plumbing regulator.

Division 3 Inspection of plumbing and drainage work

Clause 12 gives the plumbing regulator power to inspect any plumbing and drainage work for the purpose of monitoring compliance with the proposed Act.

Clause 13 provides for the inspection of plumbing and drainage work by the plumbing regulator. Before, or as soon as practicable after, completing plumbing and drainage work the responsible person for the work must notify the plumbing regulator when the work will be ready for inspection. The plumbing regulator then advises the responsible person of a period during which the work must be available for inspection and the responsible person must ensure the work is ready for inspection during that period and be present, or ensure that a suitably qualified person is present, for the inspection during that period.

Clause 14 provides that the plumbing regulator may issue directions to the responsible person for plumbing and drainage work requiring the responsible person to fix any defects in the work.

Division 4 Obligation to supply certificates and plans

Clause 15 provides that the responsible person for plumbing and drainage work must, after completing the work, give a certificate of compliance for the work to the plumbing regulator and the person for whom the work was carried out. The certificate certifies that the plumbing and drainage work is code compliant. A person who contracts with another person for the other person to carry out plumbing and drainage work and who is not the owner of the premises on which the work is carried out must provide a copy of the certificate of compliance to the owner of the premises.

Clause 16 provides that after completing work on a sanitary drainage system, the responsible person for the work must supply a plan of the work to the owner of the land and the plumbing regulator.

Division 5 Miscellaneous

Clause 17 requires an owner or occupier of land who has control of a plumbing installation or sanitary drainage system to take all reasonable steps to ensure the installation or system does not threaten public health or safety.

Clause 18 enables the regulations to provide for exemptions from Part 2 of the proposed Act.

Part 3 Plumbing regulator

Clause 19 provides for the general functions of the plumbing regulator under the proposed Act.

Clause 20 gives the plumbing regulator power to give directions as to the fittings that may be used in plumbing and drainage work.

Clause 21 provides that the plumbing regulator may delegate any of the regulator's functions to a local council or to any other person whom the regulator considers has the necessary skills, knowledge or experience to exercise the function. A council may subdelegate a function delegated to the council to the general manager of the council or to a person engaged as a contractor by the council.

Part 4 Inspection and enforcement powers

Division 1 Appointment of inspectors and enforcement officers

Clause 22 provides for the appointment by the plumbing regulator of inspectors under the proposed Act. Inspectors are authorised persons for the purposes of the proposed Act.

Clause 23 provides for the appointment by the plumbing regulator of enforcement officers for the purposes of the proposed Act. A person is eligible for appointment as an enforcement officer only if the person is a member of the Government Service, an officer or employee of a local council or an investigator under the *Fair Trading Act*

1987. Enforcement officers are also authorised persons for the purposes of the proposed Act.

Clause 24 requires authorised persons to be issued with identification cards.

Clause 25 makes it clear that a power conferred on an authorised person under the proposed Act can only be exercised for purposes connected with the proposed Act.

Division 2 Powers of inspectors

Clause 26 gives inspectors power to enter premises with the consent of the occupier of the premises.

Clause 27 provides for the powers an inspector may exercise on premises. The powers are in the nature of general inspection powers.

Clause 28 makes it an offence to hinder or obstruct an inspector in the exercise of a function under the proposed Act.

Division 3 Powers of enforcement officers

Clause 29 gives enforcement officers the power to enter premises at a reasonable hour without the consent of the occupier.

Clause 30 provides that the power to enter premises does not apply to any part of the premises being used for residential purposes unless the occupier of that part of the premises has given consent to enter or the entry is authorised by a search warrant.

Clause 31 provides that the power to enter premises may not be exercised by an enforcement officer unless the owner or occupier of the premises has been given written notice of an intention to enter the premises. This restriction does not apply if the premises are entered under a search warrant, with consent of the occupier or in certain other limited circumstances.

Clause 32 provides that an enforcement officer may use reasonable force to enter premises, if authorised to do so by the plumbing regulator.

Clause 33 provides that if an enforcement officer uses force to enter premises or enters the premises in an emergency, the enforcement officer must advise the plumbing regulator of that fact.

Clause 34 provides for the powers that an enforcement officer may exercise after entering premises, including, for example, inspecting any article, matter or thing on the premises related to plumbing and drainage work, taking samples and measurements and requiring any person at the premises to give the enforcement officer reasonable help or to answer questions or otherwise furnish information.

Clause 35 provides for the application for, and issuing of, search warrants to enter premises and search for evidence of a contravention of the proposed Act or regulations made under that Act.

Clause 36 makes it an offence for a person to hinder or obstruct an enforcement officer in exercising the enforcement officer's functions.

Division 4 General

Clause 37 provides that an authorised person must do as little damage as possible in exercising a function under the proposed Part.

Clause 38 provides for the plumbing regulator to recover the costs of entering and inspecting premises from the owner or occupier of the premises, or the responsible person for the plumbing and drainage work that is the subject of the inspection, in certain circumstances.

Part 5 Criminal and other proceedings

Clause 39 provides for appeals to the Land and Environment Court against a decision of the plumbing regulator to issue a defect notice for plumbing and drainage work.

Clause 40 provides power for the Land and Environment Court to grant an injunction restraining a person from engaging in plumbing or drainage work that constitutes or may constitute a serious risk to public health or safety or a serious risk to the public.

Clause 41 provides for the issuing of penalty notices for offences under the proposed Act or the regulations.

Clause 42 provides that proceedings for an offence under the proposed Act are to be dealt with summarily before the Local Court or the Land and Environment Court.

Clause 43 provides that the prosecution or conviction of a person for an offence does not prevent the plumbing regulator from taking civil proceedings in relation to the same matter.

Part 6 Miscellaneous

Clause 44 provides that a person who aids or abets a person to commit an offence is guilty of the same offence and liable to be punished accordingly.

Clause 45 makes it an offence for a person to provide false or misleading documents under the proposed Act.

Clause 46 provides that a person must not disclose information obtained in connection with the administration or execution of the proposed Act except in certain circumstances.

Clause 47 allows the plumbing regulator to share information with local councils, network utility operators and the Ministry of Health.

Clause 48 provides that persons exercising functions under the proposed Act do not incur personal liability for acts done or omitted to be done in good faith under that Act.

Clause 49 provides for the continuing effect of directions given under the proposed Act or regulations made under that Act.

Clause 50 makes a certificate signed by the plumbing regulator prima facie evidence of the matters stated in it.

Clause 51 provides for the service of notices and directions under the proposed Act.

Clause 52 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 53 provides for the review of the proposed Act in 2 years.

Schedule 1 Savings, transitional and other provisions

Schedule 1 contains savings, transitional and other provisions consequent on the enactment of the proposed Act. These include provisions that:

- (a) provide for the staged commencement of the proposed Act in certain parts of the State, and
- (b) apply the provisions of the proposed Act to work started, but not completed, before the commencement of the provision concerned, and
- (c) recognise permits for plumbing and drainage work issued by network utility operators before the commencement of the new provisions.

Schedule 2 Amendments to legislation

Home Building Act 1989

The amendments to the *Home Building Act 1989* extend the definition of **plumbing work** for the purposes of that Act. The effect of the amendment is that all plumbing and drainage work within the meaning of the proposed Act will be specialist work under that Act and accordingly will be regulated by that Act.

The amendments to the *Home Building Act 1989* also ensure that contravention of the proposed Act is misconduct by an authority holder under the *Home Building Act 1989* and that officers under that Act can take proceedings for offences under the proposed Act.

Land and Environment Court Act 1979

The amendments to the *Land and Environment Court Act 1979* are consequential on the provisions of the proposed Act that provide for the making of appeals to, and the grant of injunctions by, the Land and Environment Court.

Law Enforcement (Powers and Responsibilities) Act 2002

The amendment to the *Law Enforcement (Powers and Responsibilities) Act 2002* is consequential on the provisions of the proposed Act that provide for the issue of search warrants to enforcement officers.

Other Acts and regulations

The amendments to the other Acts and regulations specified in Schedule 2 are generally consequential on the fact that most plumbing and drainage work will now be regulated under the proposed Act, rather than under the laws relating to various network utility operators (such as Sydney Water Corporation and Hunter Water Corporation) or under local government laws. The amendments remove and update provisions that will be superseded by the proposed Act, including by replacing references to the Plumbing and Drainage Code of Practice.

The amendments, together with the amendments in Schedule 3, preserve the right of local councils and network utility operators to regulate plumbing and drainage work that does not fall within the ambit of the proposed Act. A key example of such work is stormwater drainage work. The amendments also make it clear that the standards for plumbing and drainage work set by the proposed Act prevail over any other standards set by other Acts for the same work.

Schedule 3 Additional amendments to legislation

Schedule 3 amends the Acts and regulations specified in the Schedule. The amendments are set out in a separate Schedule to accommodate the staged commencement of the principal provisions of the proposed Act. It is anticipated that the proposed Act will commence in 2 stages. In the first stage, the requirement that plumbing and drainage work be code compliant and use only fittings authorised by the plumbing regulator will commence. In the second stage, the plumbing regulator will take over all regulatory functions with respect to plumbing and drainage work currently exercised by local councils and other network utility operators.