



Plumbing
Industry
Commission

FACT SHEET

Amendments to the Building Act

New amendments to the *Building Act 1993* came into effect on 1 January 2009.

This Fact Sheet provides information on how licensed and registered plumbing practitioners will be affected by the proposed amendments to the Act.

Overall changes flowing from the Amendments

The amendments to the Building Act (the Act):

- take into consideration policy discussions and a long history of stakeholder feedback on all aspects of Victoria's building industry;
- enhance consumer protection and provide greater clarification of aspects of the plumbing provisions of the Act to make them more easily understood by removing out-of-date references;
- aim to improve the operation of the regulatory scheme, established in the Act, and clarify terminology to enhance the roles of plumbing practitioners; and
- improve the current legislative scheme and lead to a more efficient process of delivery.

A new definition of 'complete' for the issuing of a Compliance Certificate for plumbing work

The amendments benefit both the consumer and practitioners by clarifying when plumbing work is completed for the purpose of issuing a Compliance Certificate by a Licensed Plumbing Practitioner under s. 221ZH(2) of the *Building Act 1993*.

The amendments are designed to ensure Licensed Plumbing Practitioners issue a Compliance Certificate when they have completed the work under their engagement

rather than requiring the Compliance Certificate to be issued when the work or part of the work is used or capable of being used. For example:

- when a Licensed Plumbing Practitioner is engaged to carry out work, such as underground drainage work, leaving the rest of the plumbing work to be carried out by another Licensed Plumbing Practitioner at a later date; or
- when the plumbing work is not completed under the engagement with the consumer due to unforeseen circumstances such as an unresolved dispute between the consumer and Plumbing Practitioner or insolvency of the Building Practitioner employing the Plumbing Practitioner.

In the above circumstances, the second Licensed Plumbing Practitioner who completes the plumbing work, is not obliged to, and may not wish to, issue a Compliance Certificate for the first Licensed Plumbing Practitioner's work.

The new provisions are especially important as:

- an occupancy permit cannot be issued unless a Compliance Certificate is issued for all the plumbing work under s. 44 of the *Building Act* 1993; and
- the Compliance Certificate identifies the Licensed Plumbing Practitioner and the work carried out by that person. Additional protection is provided to the consumer in identifying the Licensed Plumbing Practitioner and the work carried out by that person if any investigation, or insurance claim, is made for defective work.

The amendments do not affect the issuing of Compliance Certificates when the work has been totally completed under the terms of engagement.

Examples of situations where the new definition is applicable

- Where the total required plumbing works are undertaken by more than one Licensed Plumbing Practitioner.
- When the total works are to be completed in stages over a long period of time.
- Where the circumstances of the engagement change - delay in materials or appliances; change in design or original proposal not viable. In these cases, a Compliance Certificate can be issued for the completed works.
- Some break down in the consumer-practitioner relationship results in the practitioner not being required to return to the site.
- The nature of the work required means the Plumbing Practitioner is unable or unwilling to undertake further work. The requirements of the work may involve classes of plumbing work beyond the scope of the Plumbing Practitioner registration, this may not have been apparent when the work commenced.
- The Plumbing Practitioner has a change in circumstances which results in them being unable to fully undertake all requirements of the engagement – ill health, injury, bankruptcy.

Maximum monetary penalty raised

The amendments in the Act see the penalty limit raised to 100 penalty units.

The increase is from \$1,000 to a possible \$11,342. This amount is considered appropriate given the potential impact of plumbing breaches on individual consumers and also the health and safety of the public.

The changes are intended to provide sufficient deterrent for Plumbing Practitioners to avoid not complying with the Act and regulations, and also to assist with compensation to affected consumers.

The increased penalty is a maximum only and will be ordered only where the Plumbing Industry Commission determines there has been a more serious breach of the Act.

In addition, this maximum amount aligns with the proposed maximum monetary penalty available to the Building Practitioners Board.

What kind of breaches would warrant the issue of a penalty up to or around the 100 penalty units?

This may include:

- if risks associated with the non-compliance are significant and clearly evident;
- where a serious breach does not warrant suspension or cancellation of licence;
- where a number of serious breaches have been considered within the one inquiry; breaches across a number of sites; or breaches repeated over time; and
- when a breach represents an intention to avoid compliance with the Regulations or is a result of a pattern of behaviour and other measures have failed to produce compliance,

For example:

- a Plumbing Practitioner who has been found to have undertaken a number of instances of non-compliance across several locations;
- a Plumbing Practitioner who has been issued verbal warnings, rectification notices or reprimands but continues to breach;

Many licensed Plumbing Practitioners employ registered practitioners or apprentices and suspension or cancellation of a licence may have a disproportionate effect on others not party to the breach. If competence is found not to be at issue, then suspension, subject to satisfying competence, would not be effective.

Clarifying the meaning of ‘supervision’

The amendment clarifies the meaning of supervision a licensed plumber is required to exercise over plumbing apprentices and registered Plumbing Practitioners.

Previously, in s221D(5)(e) and s221P(2) of the Act apprentice plumbers and provisionally registered Plumbing Practitioners could work *‘on behalf of, or at the direction of’* a licensed Plumbing Practitioner. The term was not defined and therefore the requirement of close instruction, inspection and monitoring of the plumbing work was not required. Apprentices, who are just beginning their careers, should be provided with a high level of guidance and supervision during their training. Provisionally registered plumbers may require close supervision depending on where their competency gaps are.

The Act now provides that plumbing work requiring a Compliance Certificate that is not performed by a licensed Plumbing Practitioner may be performed by a registered Plumbing Practitioner working *‘under the supervision of’* a licensed Plumbing Practitioner. *‘Supervision’* is defined in s221B(3) and provides for close instruction, inspection and monitoring of the plumbing work being performed.

The amendments to the Act replaces the term ‘on behalf of, or at the direction of’ in Part 12A relating to plumbing apprentices and registered Plumbing Practitioners with *‘under the supervision of’*. This change clarifies the meaning of the words to ensure a consistent and appropriate level of guidance and supervision for training and performance of work.

Use of the title of plumber or plumbing practitioner

The Amendment also states that a person must not use the title ‘plumber’ or ‘plumbing practitioner’ unless licensed or registered to carry out at least one class or type of plumbing works as defined in the Plumbing Regulations 2008.

There is a penalty of 50 units or equivalent in dollars.

Further Information

Contact the Plumbing Industry Commission on 1800 015 129, or visit www.legislation.vic.gov.au