

NORTHERN TERRITORY OF AUSTRALIA

BUILDING (RESOLUTION OF RESIDENTIAL BUILDING WORK DISPUTES) REGULATIONS

Subordinate Legislation No. 43 of 2012

Table of provisions

Chapter 1 Introduction

Part 1.1 Preliminary matters

1	Citation	2
2	Commencement	2
3	Application to public authority residential building work	2

Part 1.2 Interpretation

Division 1 Defined terms

4	Definitions	2
---	-------------------	---

Division 2 Important concepts

5	Residential building work for mediation or conciliation application	5
6	Residential building work for other applications	6
7	Effective period for consumer guarantees	6
8	Contravention of consumer guarantees	8
9	Non-structural defects and structural defects	8

Chapter 2 Applications to Commissioner

Part 2.1 Making applications and decisions about acceptance

Division 1 Procedures for mediation or conciliation application

10	Mediation or conciliation application	9
11	Making mediation or conciliation application	9
12	Consideration of mediation or conciliation application and acceptance	10
13	Decision to reject mediation or conciliation application	10

Division 2 Procedures for technical inspection application

14	Technical inspection application	11
15	Making technical inspection application.....	11
16	Consideration of technical inspection application and acceptance	12
17	Decision to reject technical inspection application.....	12

Division 3 Procedures for consumer guarantee dispute application

18	Specified circumstance for consumer guarantee dispute application	13
19	Making consumer guarantee dispute application.....	13
20	Decision whether to accept consumer guarantee dispute application	14
21	Decision to reject consumer guarantee dispute application.....	15

Part 2.2 Procedures for consumer guarantee dispute applications accepted by Commissioner

Division 1 Procedures before making dispute decision

22	Assistance to locate respondent.....	16
23	Procedure after acceptance of application	16
24	Response to application	17
25	Procedure if response given	18
26	Failure to give response	18
27	Conducting proceeding.....	19
28	Directions hearing.....	19
29	Conducting hearing	20
30	Evidence at hearing.....	20
31	Referrals to Tribunal	21

Division 2 Making dispute decision

32	Dispute decisions generally	21
33	Orders relating to non-completion of work.....	22
34	Orders relating to defective work	22
35	Compliance period and order to notify compliance.....	23
36	Appeal to Tribunal	24
37	Publication of dispute decision	24
38	No liability for publication of report in good faith	24

Part 2.3 Negotiated agreement process

Division 1 Preliminary conference

39	Application of Division	25
40	Procedure for mediation or conciliation application	25
41	Facilitating preliminary conference for any application	25
42	Purpose of preliminary conference and role of convenor	26

Division 2 Mediation conference and conciliation conference

43	Facilitating mediation conference or conciliation conference.....	27
44	Purpose of mediation conference and role of convenor	27
45	Purpose of conciliation conference and role of convenor	28

Division 3 General provisions

46	Convenor for conference	28
47	Attendance at conference.....	28
48	Place for holding conference	29
49	Conference not open to public.....	29
50	Record of conference and outcomes.....	29
51	Effect of agreement and related decision	30
52	Effect if no agreement reached.....	30
53	Restriction on evidence	31
54	Confidentiality	31

Part 2.4 Technical inspection and technical report

Division 1 Appointment of qualified person and technical inspection

55	Appointment of qualified person	31
56	Entry to conduct technical inspection and presence of parties	32
57	Conducting technical inspection	32
58	Additional defective work found during technical inspection.....	33
59	Obtaining additional expert investigation and report.....	34
60	Notice to building certifier	34
61	Offences relating to technical inspection	35

Division 2 Technical report by qualified person

62	Giving technical report to Commissioner	35
63	Giving technical report and notice to parties.....	36
64	Technical inspection application other than for consumer guarantee dispute application.....	36
65	Technical inspection application made for consumer guarantee dispute application.....	37

Part 2.5 General procedures for all applications

66	Lodgment and fees	37
67	General conduct of proceeding	38
68	Representation of party	38
69	Power to amend where defect or error in form	38
70	Effect of non-compliance with procedures	39
71	Withdrawal of application	39
72	Costs	39
73	Contempt	39

Chapter 3 Proceedings before Tribunal

Part 3.1 Reviews of Commissioner's decisions

74	Reviewable decision and affected person	40
75	Review notice	40
76	Application for review	40
77	Operation and implementation of decision pending review	40
78	Review procedure	41
79	Decision on review	41

Part 3.2 Appeals against dispute decisions

80	Lodging appeal and providing copies	41
81	Operation and implementation of decision pending appeal	42
82	Appeal procedure	42
83	Decision on appeal	42
84	Appeal to Supreme Court	43

Part 3.3 Referrals to Tribunal by Commissioner

85	Questions of law	43
86	Complex proceedings	43
87	Appeal to Supreme Court	44

Chapter 4 Enforcement of decisions and consequences of contraventions

Part 4.1 Enforcement of decisions

88	Enforcement of order to pay money	44
89	Application to Local Court for enforcement of other orders	44

Part 4.2 Consequences of contraventions

90	Failure to give notice about compliance	45
91	Offence to give false or misleading information in notice about compliance	45

92	Disciplinary action for specified contravention of dispute decision	45
93	Other disciplinary action for contravention of dispute decision	46
94	Disciplinary action for contravention of Tribunal's decision.....	46
95	Offence to contravene order of decision maker	46

Chapter 5 Miscellaneous matters

96	Protection from liability	47
97	Records of applications	47
98	Commissioner to give notice of contraventions by builder	48

Schedule 1 Prescribed fees for applications

Schedule 2 Reviewable decisions and affected persons



NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 43 of 2012*

Building (Resolution of Residential Building Work Disputes) Regulations

I, Sally Gordon Thomas, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Building Act*.

Dated 14 December 2012

S. G. THOMAS
Administrator

By Her Honour's Command

J. W. ELFERINK
Attorney-General and Minister for Justice
acting for
Minister for Lands, Planning and the Environment

* Notified in the *Northern Territory Government Gazette* on 14 December 2012.

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Citation

These Regulations may be cited as the *Building (Resolution of Residential Building Work Disputes) Regulations*.

2 Commencement

These Regulations commence on the commencement of the *Building Amendment (Residential Building Consumer Protection) Act 2012*.

3 Application to public authority residential building work

Prescribed residential building work carried out, or to be carried out, in relation to a residential building owned by Defence Housing Australia is exempt from the operation of section 54A(2) of the Act.

Note for regulation 3

The effect of this regulation is that a person may make an application under these Regulations in relation to such residential building work.

Part 1.2 Interpretation

Division 1 Defined terms

4 Definitions

In these Regulations:

affected person, for a reviewable decision, see regulation 74(2).

alleged contravention, in relation to an application, means the contravention of a consumer guarantee specified in the application.

alleged defect, in relation to a consumer guarantee dispute application or a technical inspection application, means the non-structural defect or structural defect, specified in the application.

alleged defective work, in relation to a consumer guarantee dispute application or technical inspection application, means the residential building work to which the application relates.

application means one of the following:

- (a) a consumer guarantee dispute application;
- (b) a mediation or conciliation application;
- (c) a technical inspection application.

builder means a residential builder.

business day means a day other than a Saturday, Sunday or public holiday.

compensation does not include damages as defined in section 3 of the *Proportionate Liability Act*.

compliance period, for a dispute decision, see regulation 35(2).

conciliation conference means a conciliation conference under Part 2.3, Division 2.

conference means a preliminary conference, mediation conference or conciliation conference.

consumer guarantee dispute application means an application made to the Commissioner under section 54FC of the Act.

contract means a residential building contract.

contravention, of a consumer guarantee, see regulation 8(1).

convenor, for a conference, see regulation 46(1).

current owner, of land or a residential building, means a current owner mentioned in section 54AD(a) or (b) of the Act.

decision maker, for Chapter 4, means the Commissioner or Tribunal.

Defence Housing Australia means the body (however named) under the *Defence Housing Australia Act 1987* (Cth) on which is conferred the function of providing housing for, and related services to, members of the Defence Force.

dispute decision, see regulation 32(1).

effective period, for a consumer guarantee, see regulation 7(1).

legally qualified person includes a person:

- (a) who is, or has been, a lawyer or legal practitioner; or

- (b) who has the qualifications to be enrolled as a lawyer or legal practitioner in the Territory.

mediation conference means a mediation conference under Part 2.3, Division 2.

mediation or conciliation application, see regulation 10.

negotiated agreement process means the process under Part 2.3.

non-completion, of residential building work, is the failure of a builder to complete the work under the residential contract relating to the work.

non-structural defect, in relation to a residential building, see regulation 9(1).

notice means a written notice.

party means a party to an application.

preliminary conference means a conference under Part 2.3, Division 1.

prescribed fee means a fee prescribed under regulation 66(3).

proceeding means a proceeding started by an application.

qualified person, see regulation 55(2)(a).

relevant application, for Part 2.4, means a technical inspection application mentioned in regulation 55(1).

residential building, see regulation 5(3).

residential building work, in relation to:

- (a) a mediation or conciliation application – see regulation 5(1); and
- (b) a technical inspection application or a consumer guarantee dispute application – see regulation 6(2).

respondent means:

- (a) in a consumer guarantee dispute application – the builder specified in the application; or

(b) in a mediation or conciliation application or technical inspection application:

- (i) if the application is made by the current owner of a residential building – the residential builder specified in the application; or
- (ii) if the application is made by a residential builder – the current owner of the residential building specified in the application.

response, in relation to a consumer guarantee dispute application, means the response mentioned in regulation 24.

review notice, see regulation 75(1).

reviewable decision, see regulation 74(1).

specified circumstance, for a consumer guarantee dispute application, see regulation 18(1).

structural defect, in relation to a residential building, see regulation 9(2).

technical inspection means a technical inspection of alleged defective work as mentioned in section 54FB(4) of the Act.

technical inspection application, see regulation 14.

technical report means a report following a technical inspection as mentioned in section 54FB(4) of the Act.

work means residential building work.

Division 2 Important concepts

5 Residential building work for mediation or conciliation application

- (1) For section 54AB(1) of the Act, this regulation prescribes the building work in relation to which a mediation or conciliation application may be made (the **residential building work**).
- (2) The residential building work is building work, of any value, in connection with the construction of a residential building.
- (3) A **residential building** is any of the following:
 - (a) a Class 1a building;

- (b) a Class 2 building;
 - (c) a Class 10 building.
- (4) However, the residential building work does not include any work that does not require a building permit.
- (5) A reference in this regulation to a residential building of a particular Class is a reference to a building of that Class as specified under the classification of buildings in the Building Code as defined in regulation 2(1) of the *Building Regulations*.

6 Residential building work for other applications

- (1) For section 54AB(1) of the Act, this regulation prescribes the building work (the **residential building work**) in relation to which either of the following applications may be made:
- (a) a technical inspection application;
 - (b) a consumer guarantee dispute application.
- (2) The residential building work is building work to which an authorised RBI policy or fidelity certificate applies.

7 Effective period for consumer guarantees

- (1) For section 54B(2) of the Act, this regulation prescribes the effective period for the consumer guarantees (the **effective period**) during which a current owner mentioned in section 54BB may make a consumer guarantee dispute application.
- (2) The effective period for a contravention of a consumer guarantee resulting in the non-completion of residential building work under a contract is the period:
- (a) that starts:
 - (i) if the builder has started to carry out the work – on the day the builder completely ceases to do so; or
 - (ii) if the builder has not started to carry out the work and the contract specifies a starting date – on the specified starting date; or
 - (iii) if the builder has not started to carry out the work and the contract does not specify a starting date – on the date the contract was entered into; and

- (b) that ends 90 days after the relevant day or date mentioned in paragraph (a).
- (3) The effective period for a contravention of a consumer guarantee resulting in defective residential building work is the total of the following 2 periods:
 - (a) the construction period mentioned in subregulations (4) and (5);
 - (b) the defect period mentioned in subregulations (6) and (7).
- (4) Subject to subregulation (5), the construction period is the period:
 - (a) that starts:
 - (i) if there is a contract for the work – on the day the contract is entered into; or
 - (ii) if there is no contract for the work – on the day the building permit is granted for the work; and
 - (b) that ends:
 - (i) if an occupancy permit is required for the work – on the day the permit is granted; or
 - (ii) if no occupancy permit is required for the work – on the day the builder has made all the declarations under the Act required in relation to the work.
- (5) If the work mentioned in subregulation (4) is not fully completed within the 2 year period for which the building permit is granted, the construction period ends on the day the permit expires and does not include any period of extension.
- (6) The defect period starts immediately after the last day of the construction period and, subject to subregulation (7), continues for the following period:
 - (a) for alleged defective work resulting in a non-structural defect – 1 year;
 - (b) for alleged defective work resulting in a structural defect – 6 years.
- (7) If the current owner becomes aware of the alleged defective work within 30 days before the end of the defect period, the defect period is extended for 30 days after the day on which the owner became aware of the defect.

8 **Contravention of consumer guarantees**

A **contravention** of the consumer guarantees by a builder occurs if the builder contravenes a consumer guarantee in relation to residential building work the builder:

- (a) has agreed to carry out; or
- (b) is carrying out; or
- (c) has carried out.

9 **Non-structural defects and structural defects**

- (1) A **non-structural defect**, in a residential building, is a defect in a non-structural element of the building as a result of defective residential building work.
- (2) A **structural defect**, in a residential building:
 - (a) is a defect in a structural element of the building as a result of defective residential building work; or
 - (b) is a defect, as a result of defective residential building work, that is reasonably likely to cause a defect in a structural element of the building.

Example for subregulation (2)(b)

A waterproof membrane attached to a wall or floor of a bathroom.

- (3) In this regulation:

non-structural element, of a residential building, means a component of the building that is not a structural element.

structural element, of a residential building, means:

- (a) a load-bearing component of the building (whether internal or external) that is essential to the stability of the building or part of the building; or
- (b) a component (including weatherproofing) forming part of the external walls or roof of the building.

Examples for paragraph (a)

A foundation, floor, wall, roof, column or beam.

Chapter 2 Applications to Commissioner

Part 2.1 Making applications and decisions about acceptance

Division 1 Procedures for mediation or conciliation application

10 Mediation or conciliation application

A ***mediation or conciliation application*** is an application to the Commissioner that:

- (a) relates to any of the residential building work prescribed by regulation 5(2) and a dispute about that work between:
 - (i) the current owner of the land or residential building to which the application relates; and
 - (ii) the residential builder in relation to the work; and
- (b) is made by either the owner or the builder; and
- (c) requests the Commissioner to facilitate a negotiated agreement process between the owner and builder.

11 Making mediation or conciliation application

- (1) A mediation or conciliation application must be in the approved form.
- (2) The application must include the following:
 - (a) the name and contact details of the applicant;
 - (b) the name and contact details of the respondent;
 - (c) the location of the land or residential building and a concise description of the residential building work to which the application relates;
 - (d) a concise description of the dispute between the parties to the application;
 - (e) all other information the approved form requires.

12 Consideration of mediation or conciliation application and acceptance

- (1) Within 10 business days after a mediation or conciliation application is made, or as soon as is reasonably practicable after that time, the Commissioner must decide whether to accept the application.
- (2) The Commissioner may accept the application only if satisfied:
 - (a) the application relates to residential building work prescribed by regulation 5(1); and
 - (b) the parties to the application are the current owner and residential builder in relation to the work; and
 - (c) the prescribed fee for the application has been paid.
- (3) If there is insufficient information for the Commissioner to be satisfied about the matters mentioned in subregulation (2), the Commissioner may give the applicant a notice specifying:
 - (a) the further information required; and
 - (b) a reasonable time within which the information must be given.
- (4) If the Commissioner decides to accept the application, the Commissioner must:
 - (a) as soon as practicable – give the applicant a notice of the decision; and
 - (b) follow the relevant procedures specified in regulation 40.

13 Decision to reject mediation or conciliation application

- (1) If the Commissioner decides to reject a mediation or conciliation application, the Commissioner must give the applicant a review notice for the decision.
- (2) The Commissioner may also give the applicant a notice about other processes that may be available to the parties for resolving the dispute.

Division 2 Procedures for technical inspection application

14 Technical inspection application

A ***technical inspection application*** is an application to the Commissioner under section 54FB(3) of the Act that:

- (a) relates to any of the residential building work prescribed by regulation 6(2) that is alleged to be defective work; and
- (b) is made by either the current owner or builder in relation to the work; and
- (c) requests the Commissioner to appoint a qualified person in relation to the alleged defective work.

15 Making technical inspection application

- (1) A technical inspection application must be:
 - (a) in the approved form; and
 - (b) made within the effective period for the consumer guarantee relevant to the alleged defective work described in the application; and
 - (c) accompanied by the prescribed fee for the application.
- (2) The application must include the following:
 - (a) the name and contact details of the applicant;
 - (b) the name and contact details of the respondent;
 - (c) the location of the residential building and a concise description of the residential building work to which the application relates;
 - (d) a concise description of the alleged defective work and whether an alleged defect is non-structural or structural;
 - (e) all the other information the approved form requires.
- (3) The applicant must give a copy of the application to the respondent no later than 5 business days after the application is made.

16 Consideration of technical inspection application and acceptance

- (1) Within 10 business days after a technical inspection application is made, or as soon as is reasonably practicable after that time, the Commissioner must decide whether to accept the application.
- (2) The Commissioner may accept the application only if satisfied:
 - (a) the application relates to the residential building work prescribed by regulation 6(2); and
 - (b) the parties specified in the application are the current owner and builder in relation to the alleged defective building work; and
 - (c) the application has been made within the effective period for the consumer guarantee relevant to the alleged defective work specified in the application; and
 - (d) the prescribed fee for the application has been paid.
- (3) If there is insufficient information for the Commissioner to be satisfied about the matters mentioned in subregulation (2), the Commissioner may give the applicant a notice specifying:
 - (a) the further information required; and
 - (b) a reasonable time within which the information must be given.
- (4) If the Commissioner decides to accept the application, the Commissioner must:
 - (a) as soon as practicable – give the applicant a notice of the decision; and
 - (b) follow the relevant procedures specified in regulation 55.

17 Decision to reject technical inspection application

- (1) If the Commissioner decides to reject a technical inspection application, the Commissioner must give the applicant a review notice for the decision.
- (2) The Commissioner may also give the applicant a notice about other processes that may be available to the parties for resolving the dispute.

Division 3 Procedures for consumer guarantee dispute application

18 Specified circumstance for consumer guarantee dispute application

- (1) For section 54FC(2)(b) of the Act, the ***specified circumstance*** for a consumer guarantee dispute is that there must be no contractual relationship between the current owner and builder in relation to the residential building work to which the dispute relates.
- (2) If the current owner making a consumer guarantee dispute application is the contracting owner in relation to the residential building work, the contractual relationship between the parties to the application is taken to have ended if:
 - (a) the residential building work has been completed under the contract and the parties consider the contractual obligations have been fulfilled; or
 - (b) regardless of whether the residential building work has been completed under the contract – there is a dispute between the parties about an alleged contravention and the relationship between the parties has broken down irretrievably.
- (3) For subregulation (2)(b), it is not necessary for the contract to have been terminated at law.

19 Making consumer guarantee dispute application

- (1) A consumer guarantee dispute application must include the following information:
 - (a) the name and contact details of the applicant;
 - (b) if known – the name and contact details of the builder;
 - (c) if the applicant is unable to locate the builder – a statement to that effect and concise details of the steps taken to locate the builder;
 - (d) a statement that there is no contractual relationship between the applicant and the respondent and the facts to support the statement;
 - (e) the location of the land or residential building and a concise description of the residential building work, as prescribed by regulation 6(1), to which the dispute relates;
 - (f) a concise description of the alleged contravention;

- (g) if the contravention relates to alleged defective work – a description of the work and whether an alleged defect is non-structural or structural;
- (h) the date on which the applicant first became aware of the alleged contravention;
- (i) if the applicant has previously made a consumer guarantee dispute application in relation to the same respondent and the same residential building work (the **previous application**) – concise details of the alleged contravention specified in that application and the outcome of that application;
- (j) all the other information the approved form requires.

Note for subregulation (1)(b) and (c)

The name and location of the builder may not be known to the current owner of the residential building if the owner is a successor in title to the contracting owner.

- (2) The application must be accompanied by the prescribed fee.
- (3) For subregulation (1)(i), the applicant is not prevented from making a further consumer guarantee dispute application in relation to the same residential building work if:
 - (a) the further alleged contravention is different from the alleged contravention specified in the previous application; and
 - (b) the previous application has been decided or otherwise concluded; and
 - (c) the further application relates to an alleged contravention the applicant was not aware of, and could not reasonably have been aware of, at the time of that decision or conclusion.

20 Decision whether to accept consumer guarantee dispute application

- (1) Within 10 business days after a consumer guarantee dispute application is made, or as soon as is reasonably practicable after that time, the Commissioner must decide whether to accept the application.
- (2) The Commissioner may accept the application only if satisfied about the following:
 - (a) the application relates to the residential building work prescribed by regulation 6(2);

- (b) the parties specified in the application are the current owner and builder in relation to the specified residential building work;
 - (c) the specified circumstance for the application exists;
 - (d) the application has been made within the effective period relevant to the alleged contravention;
 - (e) the matter in dispute has not previously been the subject of a consumer guarantee dispute application for which a decision has been made by the Commissioner or Tribunal;
 - (f) the prescribed fee for the application has been paid.
- (3) If there is insufficient information for the Commissioner to be satisfied about the matters mentioned in subregulation (2), the Commissioner may give the applicant a notice specifying:
 - (a) the further information required and whether any of the information is to be given by statutory declaration; and
 - (b) a reasonable time within which the information must be given.
- (4) For the Commissioner to be satisfied about the matter mentioned in subregulation (2)(c), the Commissioner is not required to decide whether the contract has been terminated at law.
- (5) If the Commissioner is satisfied about the matter mentioned in subregulation (2)(c), a party to the application is not entitled to rely on the acceptance of the application as a basis to assert the contract between the parties has been legally terminated.
- (6) If the Commissioner decides to accept the application, the Commissioner must follow the procedures under Part 2.2, Division 1.

21 Decision to reject consumer guarantee dispute application

- (1) If the Commissioner decides to reject a consumer guarantee dispute application, the Commissioner must give the applicant a review notice for the decision.
- (2) The Commissioner may also give the applicant a notice about other processes that may be available to the parties for resolving the dispute.

Part 2.2 Procedures for consumer guarantee dispute applications accepted by Commissioner

Division 1 Procedures before making dispute decision

22 Assistance to locate respondent

If the applicant in a consumer guarantee dispute application is unable to locate the respondent, the Commissioner may take any steps the Commissioner considers reasonable to locate the respondent.

23 Procedure after acceptance of application

(1) As soon as practicable after accepting a consumer guarantee dispute application, the Commissioner must give the respondent:

- (a) a copy of the application; and
- (b) a notice, in the approved form, that includes the following:
 - (i) a statement that the Commissioner has accepted the application;
 - (ii) a statement that the respondent may, in accordance with regulation 24, respond to the matters included in the application within the time specified in the notice;
 - (iii) information about the procedures relevant to the application under this Part;
 - (iv) information about the negotiated agreement process and the provisions relating to a technical inspection and technical report;
 - (v) a request as to whether the respondent agrees to participate in the negotiated agreement process;
 - (vi) a statement that the respondent is not precluded from applying to a court, tribunal or administrative body in relation to a claim against the applicant that is not related to a consumer guarantee dispute.

Example for subregulation (1)(b)(vi)

A claim alleging a breach of contract by the applicant.

- (2) The time mentioned in subregulation (1)(b)(ii) must be reasonable, taking into account the apparent level of complexity of the matters specified in the application.
- (3) The Commissioner must also give the applicant a notice, in the approved form, that includes the following information:
 - (a) a statement that the Commissioner has accepted the application;
 - (b) a statement that the Commissioner has given the respondent a notice:
 - (i) informing the respondent of the right to respond to the matters specified in the application; and
 - (ii) requesting whether the respondent agrees to participate in the negotiated agreement process;
 - (c) the time the Commissioner has allowed for the response to the matters specified in the application;
 - (d) information about the procedures relevant to the application under this Part;
 - (e) information about the negotiated agreement process and the provisions relating to a technical inspection and report;
 - (f) a request as to whether the applicant agrees to participate in the negotiated agreement process.

24 Response to application

- (1) A response by a respondent to a consumer guarantee dispute application must be in writing and include the following:
 - (a) a statement about any matters specified in the application that are disputed or rejected by the respondent;
 - (b) any submission or documents relevant to the application;
 - (c) a statement as to whether the respondent agrees to participate in the negotiated agreement process.
- (2) The respondent may dispute or reject an alleged contravention on the basis that the contravention occurred because the respondent carried out instructions given by the applicant contrary to the respondent's written advice.

- (3) The respondent may apply to the Commissioner for an extension of time within which to respond to the application.
- (4) The respondent must give the response to the Commissioner, and a copy to the applicant, within the time allowed by the Commissioner under regulation 23(1)(b)(ii) or subregulation (3).

25 Procedure if response given

- (1) As soon as practicable after the Commissioner receives a response to a consumer guarantee dispute application, the Commissioner must take action under this regulation.
- (2) If both parties have agreed to participate in the negotiated agreement process, the Commissioner must follow the procedures in regulation 41.
- (3) If one or both parties do not agree to participate in the negotiated agreement process, the Commissioner may do any of the following:
 - (a) give one or both of the parties a notice requiring further submissions to be made or further information to be given (which may be by statutory declaration);
 - (b) decide to hold a directions hearing and give each party a notice of the date, time and place of the hearing;
 - (c) fix a date, time and place for a hearing of the application and give the parties a notice of those details;
 - (d) refer a question of law or the application to the Tribunal under regulation 31.

26 Failure to give response

If the respondent does not give the Commissioner a response within the time mentioned in regulation 24(3), the Commissioner must:

- (a) fix a time and place for a hearing of the application; and
- (b) give the applicant and respondent a notice about the hearing and the reasons for it.

27 Conducting proceeding

Without limiting regulation 67(2), the Commissioner may do any of the following at any stage of a proceeding for a consumer guarantee dispute application:

- (a) with the agreement of the parties – arrange for a conference to be held to facilitate the negotiated agreement process;
- (b) on the application of a party and payment of the prescribed fee – appoint a qualified person to conduct a technical inspection and give a technical report relating to any of the alleged defective work specified in the application;
- (c) hold a directions hearing;
- (d) adjourn the proceeding until conditions fixed by the Commissioner are met;
- (e) fix a period within which an action in the proceeding is to be taken;
- (f) extend a period within which an action in the proceeding is to be taken, whether or not the period has expired;
- (g) allow an amendment of an application or another document as the Commissioner considers appropriate;
- (h) fix a time and place for hearing the application.

28 Directions hearing

- (1) At a directions hearing for a consumer guarantee dispute application, the Commissioner may give directions on any matters in the proceeding as the Commissioner considers appropriate.
- (2) Without limiting subregulation (1), the directions may relate to any of the following matters:
 - (a) the requirement for a party to do any of the following:
 - (i) make a written submission;
 - (ii) make a statutory declaration;
 - (iii) give other information or documents;
 - (b) the place and time of the hearing of the application;
 - (c) the way in which the hearing is to be conducted.

29 Conducting hearing

- (1) The Commissioner may conduct a hearing for a consumer guarantee dispute application in the way the Commissioner considers appropriate, including by hearing the application in private or public or in the absence of a party.
- (2) The Commissioner may conduct one hearing for multiple consumer guarantee dispute applications if the Commissioner considers it appropriate to do so.

Example for subregulation (2)

The applications relate to alleged contraventions by the same respondent.

- (3) The Commissioner may dismiss a consumer guarantee dispute application if the applicant is absent from the hearing without a reasonable excuse.

30 Evidence at hearing

- (1) The Commissioner has the following powers in conducting a hearing for a consumer guarantee dispute application:
 - (a) by summons, to require a person to attend before the Commissioner;
 - (b) by summons, to require the production of documents;
 - (c) to inspect documents produced to the Commissioner, retain the documents for a reasonable period and make copies of any of the contents;
 - (d) to require a person appearing before the Commissioner to do one or both of the following:
 - (i) give evidence on oath;
 - (ii) whether summonsed to appear or not – answer relevant questions put by the Commissioner or a person appearing before the Commissioner;
 - (e) to receive in evidence a transcript of evidence in a proceeding before a court, tribunal or administrative body and draw conclusions of fact from that evidence.

- (2) Without limiting subregulation (1), the Commissioner may require:
- (a) the qualified person for the application, and any expert mentioned in regulation 59, to give evidence in the hearing; and
 - (b) a technical report and any report given by the expert to be produced as evidence.
- (3) A person must comply with a requirement given to the person under this regulation.

Maximum penalty: 100 penalty units.

31 Referrals to Tribunal

- (1) At any stage of a proceeding for a consumer guarantee dispute application, including during the hearing, the Commissioner may refer a question of law to the Tribunal for its determination.
- (2) At any stage of a proceeding for a consumer guarantee dispute application, other than at the hearing, the Commissioner may refer the application to the Tribunal for its consideration and decision if:
- (a) the application involves complex questions of fact or law (or both); and
 - (b) the Commissioner is of the opinion that the application should be dealt with by the Tribunal.
- (3) The Commissioner must:
- (a) give a notice of a referral under this regulation to the parties to the application; and
 - (b) give the Tribunal all the relevant information about the proceeding.

Division 2 Making dispute decision

32 Dispute decisions generally

- (1) The Commissioner may make one of the following decisions in a consumer guarantee dispute application (a ***dispute decision***):
- (a) the respondent has contravened all of the consumer guarantees as alleged in the application;

- (b) the respondent has contravened some of the consumer guarantees as alleged in the application;
 - (c) the respondent has not contravened any of the consumer guarantees as alleged in the application and the application is dismissed.
- (2) A dispute decision made under subregulation (1)(a) or (b) may include any of the orders mentioned in regulations 33 to 35 as relevant.
- (3) The Commissioner must refer a dispute decision made under subregulation (1)(a) or (b) to the Tribunal if:
 - (a) the Commissioner has decided it is appropriate in the circumstances to make an order for the respondent to pay compensation to the applicant; and
 - (b) the amount of compensation assessed to be payable exceeds \$100 000.
- (4) The Commissioner must give notice of the dispute decision to both parties to the application together with the reasons for the decision.

33 Orders relating to non-completion of work

- (1) If a dispute decision relates to a contravention of a consumer guarantee because of the non-completion of work, the Commissioner may order the respondent to complete the work.
- (2) However, if the Commissioner is satisfied there are circumstances that make an order for completion impracticable, the Commissioner may order the respondent to pay a specified amount, not exceeding \$100 000, as compensation to the applicant.

34 Orders relating to defective work

- (1) If a dispute decision relates to a contravention of a consumer guarantee because of defective work, the Commissioner may order the respondent to rectify the work, including rectification in a way recommended by:
 - (a) the technical report given by a qualified person; or
 - (b) any other person who gave evidence about the matter to the Commissioner.

- (2) However, if the Commissioner is satisfied there are circumstances that make an order for rectification impracticable, the Commissioner may order the respondent to pay a specified amount, not exceeding \$100 000, as compensation to the applicant.
- (3) If the dispute decision orders the respondent to rectify the defective work, the Commissioner may also require:
 - (a) the applicant to engage a suitably qualified person to inspect the rectified work; and
 - (b) the respondent to pay the reasonable costs of the inspection incurred by the applicant.
- (4) A respondent who is ordered by the Commissioner to rectify defective work may comply with the requirement by engaging another suitably qualified residential builder to complete the work.

35 Compliance period and order to notify compliance

- (1) This regulation applies if a dispute decision includes an order for the respondent to:
 - (a) rectify defective work; or
 - (b) complete residential building work within a time specified by the Commissioner; or
 - (c) pay compensation to the applicant.
- (2) The Commissioner must specify a reasonable period for compliance with the order (a **compliance period**), which must not be less than 25 business days after the date of the decision.

Note for subregulation (2)

The compliance period takes into account the period allowed for an appeal against the dispute decision under regulation 80(1).

- (3) The decision must also:
 - (a) order the respondent to give the Commissioner a notice confirming compliance with the order as soon as practicable after compliance and no later than 5 business days after the end of the compliance period; and

- (b) include information about the matters mentioned in Chapter 4.

36 Appeal to Tribunal

A party to a consumer guarantee dispute application may appeal to the Tribunal under regulation 80 against a dispute decision.

37 Publication of dispute decision

- (1) The Commissioner may publish a dispute decision:
 - (a) if the period permitted by regulation 80(1) for making an appeal has expired and no appeal has been made – after the expiry of that period; or
 - (b) if an appeal is lodged under regulation 80(1) – after the Tribunal has decided the application.
- (2) The publication of a dispute decision must include details about the outcome of the consumer guarantee dispute application for which the decision was made.

Examples of outcomes for subregulation (2)

- 1 In relation to work found to be defective – whether the builder rectified or completed the defective work or paid the compensation as ordered and whether that was done within the compliance period specified in the dispute decision.*
- 2 In relation to work found not to be defective – whether the dispute decision was varied or set aside by the Tribunal and, if so, a brief description of the Tribunal's decision.*
- (3) Publication of a dispute decision may be in any form the Commissioner considers appropriate, including on the Internet.
- (4) A dispute decision published on the Internet is to be removed 5 years after publication.

38 No liability for publication of report in good faith

- (1) A person is not civilly or criminally liable for publishing, in good faith for the information of the public, a fair and accurate report of matters before the Commissioner at a public hearing of a consumer guarantee dispute application.
- (2) A report mentioned in subregulation (1) is taken to be published in good faith for the information of the public if the publication was not actuated by ill-will towards a person defamed or by another improper motive.

Part 2.3 Negotiated agreement process

Division 1 Preliminary conference

39 Application of Division

This Division applies if one of the following circumstances applies:

- (a) the Commissioner has accepted a mediation or conciliation application under regulation 12;
- (b) both parties to a technical inspection application or consumer guarantee dispute application have agreed to participate in the negotiated agreement process.

40 Procedure for mediation or conciliation application

- (1) As soon as practicable after accepting a mediation or conciliation application, the Commissioner must give the respondent:
 - (a) a copy of the application; and
 - (b) a notice, in the approved form, that includes the following:
 - (i) a statement that the Commissioner has accepted the application;
 - (ii) a request as to whether the respondent agrees to participate in the negotiated agreement process;
 - (iii) a statement that if the respondent agrees to participate, the respondent must complete and return the relevant part of the form within 5 business days after receiving the notice;
 - (iv) information about the negotiated agreement process.
- (2) The Commissioner must give the applicant a copy of the notice given to the respondent.

41 Facilitating preliminary conference for any application

As soon as practicable after both parties to an application have agreed to participate in the negotiated agreement process, the Commissioner must:

- (a) decide who will be the convenor for the preliminary conference; and
- (b) fix a time and place for the conference; and

- (c) give the parties a notice that includes the following information:
 - (i) the time and place at which the conference is to be held;
 - (ii) the matters mentioned in this Part about the purpose of, and attendance at, the conference;
 - (iii) all relevant information about the negotiated agreement process.

42 Purpose of preliminary conference and role of convenor

- (1) The purpose of the preliminary conference is to enable the convenor of the conference to:
 - (a) give information to ensure the parties to the relevant application are fully aware of their rights and obligations under the Act; and
 - (b) encourage full and open communication between the parties about the matters in dispute between them; and
 - (c) encourage the parties to:
 - (i) reach agreement about the facts relevant to the matters in dispute; and
 - (ii) consider options for reaching agreement about the matters in dispute; and
 - (d) explain to the parties the different purposes of a mediation conference and conciliation conference; and
 - (e) with the agreement of the parties – arrange for their attendance at a mediation conference or conciliation conference (unless the parties have reached agreement at the preliminary conference).
- (2) The convener may provide advice on the matters in dispute and suggest options for reaching agreement about those matters.

Division 2 Mediation conference and conciliation conference

43 Facilitating mediation conference or conciliation conference

As soon as practicable after both parties to an application have agreed to participate in a mediation conference or conciliation conference, the Commissioner must:

- (a) decide who will be the convenor for the conference; and
- (b) fix a time and place for the conference; and
- (c) give the parties a notice that includes the following information:
 - (i) the time and place at which the conference is to be held;
 - (ii) the matters mentioned in this Part about the purpose of, and attendance at, the conference;
 - (iii) any other relevant information.

44 Purpose of mediation conference and role of convenor

- (1) The purpose of a mediation conference is to provide for a process in which the parties to an application are able to:
 - (a) identify the matters in dispute; and
 - (b) develop options, consider alternatives, and attempt in good faith to reach an agreement.
- (2) In conducting the conference, the convenor must apply the principles of natural justice and, in particular, must:
 - (a) give each party every opportunity to be heard; and
 - (b) allow proper consideration by each party of any written statement submitted by the other party.
- (3) The convenor:
 - (a) acts only as a facilitator at the conference; and
 - (b) has no advisory role about the matter in dispute; and
 - (c) must not decide the matter in dispute.
- (4) However, the convenor may advise on, or decide, the process of mediation for resolution of the dispute.

45 Purpose of conciliation conference and role of convenor

- (1) The purpose of a conciliation conference is to enable the parties to an application, with the assistance of the convenor, to negotiate an agreement about the matters in dispute between the parties.
- (2) The convenor for the conference may give advice to the parties about possible options for resolving the matters in dispute.

Division 3 General provisions

46 Convenor for conference

- (1) The **convenor** for a conference is one of the following persons:
 - (a) for a preliminary conference – the Commissioner or a delegate of the Commissioner;
 - (b) for a mediation conference – a person who has the relevant qualifications to conduct mediation;
 - (c) for a conciliation conference – a person who has the relevant qualifications to conduct conciliation in relation to the matters in dispute.
- (2) The convenor for a conciliation conference must have knowledge of one or both of the following, as appropriate:
 - (a) the rights and obligations of the parties in relation to the matters in dispute;
 - (b) matters relevant to residential building work.
- (3) In relation to a consumer guarantee dispute application, the convenor for a mediation conference or conciliation conference must not take any further part in the proceeding for the application unless both parties agree.

47 Attendance at conference

- (1) The parties to an application in relation to which a conference is held must attend the conference.
- (2) A party that is a body corporate may be represented at the conference by an officer or employee of the body corporate.
- (3) A party attending the conference must not be represented by a legally qualified person unless:
 - (a) the other party agrees to the representation; or

- (b) the convenor is of the opinion that neither party will be disadvantaged by the representation.
- (4) A party may be represented by a person who is not legally qualified if:
 - (a) both parties have agreed to the representation and the convenor is satisfied:
 - (i) the representation will not unfairly disadvantage an unrepresented party; or
 - (ii) if the appropriate information or assistance (or both) can be given by the convenor to an unrepresented party – the unrepresented party will not be unfairly disadvantaged; or
 - (b) the convenor is satisfied the party is unable, without assistance, to make a proper contribution towards achieving the purpose of the conference.

48 Place for holding conference

- (1) Subject to subregulation (2), a conference may be held at any place the Commissioner considers appropriate.
- (2) Only a conciliation conference may be held at the location of the residential building work to which the application relates.

49 Conference not open to public

A conference must not be open to the public.

50 Record of conference and outcomes

- (1) At a conference, the convenor must make a written record of the following matters in relation to the application:
 - (a) the parties;
 - (b) the matters in dispute;
 - (c) the outcome of the conference.
- (2) The record must not include any details of the discussions at the conference.

- (3) If agreement is reached on any matter at the conference, the convenor must:
 - (a) make a written record of:
 - (i) the details of the agreement; and
 - (ii) the names of the parties; and
 - (b) have the record signed by the parties; and
 - (c) explain to the parties the effect of the agreement as mentioned in regulation 51.
- (4) If the parties do not reach agreement at a conference, the convenor must explain to the parties the procedures relevant to the application under regulation 52.

51 Effect of agreement and related decision

- (1) An agreement recorded at a conference is binding on the parties.
- (2) If the convenor for the conference is the Commissioner, he or she may make a decision at the conference in accordance with the agreement (a ***negotiated agreement decision***).
- (3) If the convenor for the conference is not the Commissioner, the convenor must give the Commissioner a copy of the agreement and the Commissioner may make a negotiated agreement decision in accordance with the agreement.
- (4) Chapter 4 applies in relation to the enforcement and contravention of a negotiated agreement decision as if the decision were a dispute decision.

52 Effect if no agreement reached

- (1) If the parties to an application do not reach agreement at a conference, the convenor (if not the Commissioner) must give the Commissioner a notice of that fact and give a copy to each party.
- (2) If the conference is held for a mediation or conciliation application, or a technical inspection application made under regulation 15, the Commissioner:
 - (a) need take no further action in relation to the application; and
 - (b) must give the parties a notice to that effect.

- (3) The notice under subregulation (2) may include information about other processes that may be available to the parties for resolving the dispute.
- (4) If the conference is held for a consumer guarantee dispute application, the Commissioner must continue to deal with the application under Part 2.2.

53 Restriction on evidence

Evidence of anything said or done in the course of a conference is inadmissible in a proceeding under these Regulations or before a court, except with the consent of all parties to the proceeding.

54 Confidentiality

The convenor for a conference must not disclose to another person (including the Commissioner) information obtained in the course of the conference, except with the consent of all parties to the conference or in the course of the convenor's duties under these Regulations.

Maximum penalty: 100 penalty units.

Part 2.4 Technical inspection and technical report

Division 1 Appointment of qualified person and technical inspection

55 Appointment of qualified person

- (1) This regulation applies if:
 - (a) the Commissioner decides to accept a technical inspection application under regulation 16; or
 - (b) at any stage of a proceeding for a consumer guarantee dispute application a party to the application has made a technical inspection application.
- (2) The Commissioner must, as soon as practicable:
 - (a) appoint an individual (a **qualified person**), as mentioned in section 54FB(4) of the Act, to conduct a technical inspection and give a report relating to the alleged defective work specified in the relevant application; and

- (b) give the parties to the relevant application a notice of the appointment and the name and contact details of the qualified person.
- (3) The Commissioner must ensure that the individual appointed as the qualified person has the relevant qualifications and expertise to conduct the technical inspection.
- (4) The appointment of a qualified person must specify:
 - (a) the alleged defective work the person is appointed to inspect; and
 - (b) the functions and powers of the qualified person.

56 Entry to conduct technical inspection and presence of parties

- (1) For obtaining entry to the residential building to conduct a technical inspection of the alleged defective work, the qualified person must make all reasonable efforts to:
 - (a) arrange with the current owner of the building a suitable time for the inspection; and
 - (b) give the builder who carried out the alleged defective work, or a person nominated by the builder, reasonable notice before conducting the inspection.
- (2) The qualified person must also give the following persons the opportunity to be present during the technical inspection:
 - (a) the current owner;
 - (b) the builder or a person nominated by the builder.

57 Conducting technical inspection

- (1) In conducting a technical inspection, the qualified person may take any action that is reasonably required to properly assess the alleged defective work, including any of the following:
 - (a) subject to regulation 56 – enter the residential building and the land on which the building is situated;
 - (b) take photographs and make video recordings, sketches and other records;
 - (c) take samples of anything on, or in connection with, the building for analysis or testing;

- (d) with the written agreement of the applicant in the relevant application – conduct tests that may have a significant impact on the building or land (for example, by demolishing, opening or cutting into the building).
- (2) The agreement mentioned in subregulation (1)(d) must also include an agreement that the applicant in the relevant application will pay for any costs associated with conducting the tests.
- (3) If, at the time the qualified person is conducting the technical inspection, either party to the relevant application is at the residential building or on the land where the residential building is situated, the qualified person may:
 - (a) ask questions of the party; and
 - (b) request the party for assistance in conducting the inspection.
- (4) The qualified person must take into account whether the alleged defective work has been carried out in compliance with the Act, the *Building Regulations* and any standards or guidelines relevant to the work.
- (5) The qualified person must:
 - (a) confine the technical inspection to the alleged defective work; and
 - (b) act impartially in conducting the inspection.

58 Additional defective work found during technical inspection

- (1) This regulation applies if, when conducting the technical inspection, the qualified person becomes aware of residential building work:
 - (a) that is defective; and
 - (b) that was carried out by the same builder; and
 - (c) that is not specified in the relevant application as alleged defective work.
- (2) The qualified person must give a notice, in the approved form, to the Commissioner and the parties to the relevant application.
- (3) The party who made the relevant application may, within 5 business days after being given the notice by the qualified person:
 - (a) in the approved form, amend the relevant application to include the work as additional alleged defective work; and

- (b) give the notice to the Commissioner and a copy to the qualified person and the other party.
- (4) After receiving the copy of the notice, the qualified person may conduct a technical inspection of the additional alleged defective work.
- (5) If the relevant application was made in a proceeding for a consumer guarantee dispute application, either party:
 - (a) may give the Commissioner further submissions or information relevant to the additional alleged defective work; and
 - (b) if a party does so – must give copies to the other party.

59 Obtaining additional expert investigation and report

- (1) This regulation applies if the qualified person forms the opinion that the nature of particular alleged defective work requires investigation and a report by a person with particular technical expertise.
- (2) The qualified person must give a notice of that fact, in the approved form, to the Commissioner and the parties to the relevant application.
- (3) Either party may, at the party's own cost, engage a person with the relevant technical expertise to investigate the alleged defective work and give the other party a report about the work.
- (4) A party who engages a person under subregulation (3) must give notice of that fact, in the approved form, to the Commissioner and the other party.

60 Notice to building certifier

- (1) This regulation applies if the qualified person considers the builder has carried out the alleged defective work in contravention of the Act, the *Building Regulations* or any standards or guidelines relevant to the work.
- (2) The qualified person must, as soon as practicable, notify the building certifier for the work:
 - (a) of the details of the contravention; and
 - (b) that the contravention will be specified in a technical report given to the Commissioner.

61 Offences relating to technical inspection

- (1) A person must not, without reasonable excuse:
- (a) prevent a qualified person from carrying out a technical inspection; or
 - (b) obstruct a qualified person when conducting an inspection; or
 - (c) fail to answer a question asked by a qualified person in relation to an inspection; or
 - (d) fail to provide assistance to a qualified person during an inspection when requested to do so.

Maximum penalty: 100 penalty units.

- (2) In this regulation:

obstruct includes resist and hinder.

Division 2 Technical report by qualified person

62 Giving technical report to Commissioner

- (1) As soon as practicable after completing the technical inspection, the qualified person must prepare the technical report and give it to the Commissioner.
- (2) The technical report must be in writing and must specify:
- (a) whether the qualified person is of the opinion that any or all of the alleged defective work is defective; or
 - (b) whether the qualified person is unable to form such an opinion.
- (3) If the qualified person forms the opinion that any or all of the alleged defective work is defective, the qualified person must include in the report:
- (a) details of the defective work; and
 - (b) recommendations about how the defective work can be rectified.

- (4) If the qualified person considers the builder has contravened the Act, the *Building Regulations* or any standards or guidelines relevant to the work, the qualified person must include in the technical report:
- (a) a statement of the opinion; and
 - (b) the facts on which the opinion is based; and
 - (c) confirmation that the qualified person has notified the building certifier under regulation 60.
- (5) If the applicant in the relevant application did not agree to a test mentioned in regulation 69(1)(d), and the qualified person considers the test was necessary to finalise the technical report, the qualified person:
- (a) must specify that fact in the report; and
 - (b) if relevant – may specify there is inadequate evidence from the visual inspection to reach a conclusion about whether the alleged defective work is actually defective.

63 Giving technical report and notice to parties

As soon as practicable after being given a technical report for a relevant application, the Commissioner must consider the report and give the parties to the application:

- (a) a copy of the report; and
- (b) a notice of the Commissioner's opinion in relation to the report and the procedures relevant to the application as specified in regulation 64 or 65.

64 Technical inspection application other than for consumer guarantee dispute application

- (1) This regulation applies if the technical report is given in relation to a technical inspection application made under regulation 15.
- (2) If the report does not identify any defective work as alleged in the application, the Commissioner:
- (a) need take no further action in relation to the application; and
 - (b) must give the parties a notice to that effect.

(3) If the report identifies defective work:

- (a) the builder who carried out the defective work may rectify the work in a way that is recommended in the report; or
- (b) the parties may agree to participate in the negotiated agreement process; or
- (c) if the defective work can be the subject of a consumer guarantee dispute – the current owner in relation to the work may make a consumer guarantee dispute application; or
- (d) if paragraphs (a) to (c) do not apply – the current owner in relation to the work may seek a remedy under another law in force in the Territory.

65 Technical inspection application made for consumer guarantee dispute application

- (1) This regulation applies if the technical report is given in relation to a consumer guarantee dispute application.
- (2) The Commissioner may dismiss the application under Part 2.2, Division 2 only if:
 - (a) the report does not identify any defective work as alleged in the application; and
 - (b) the application does not also allege another contravention of the consumer guarantees (for example, non-completion of work).

Part 2.5 General procedures for all applications

66 Lodgment and fees

- (1) Any application or other document required to be made or given to the Commissioner must be lodged at an office of the Commissioner.
- (2) An application or document may be lodged:
 - (a) personally or by post; or
 - (b) by another method acceptable to the Commissioner.
- (3) Schedule 1 prescribes the fee payable for making an application mentioned in the Schedule.

67 General conduct of proceeding

- (1) The Commissioner may conduct any part of a proceeding at the time and in the place the Commissioner considers appropriate in the circumstances.
- (2) Subject to section 54FD of the Act and these Regulations, the Commissioner may decide the procedure to be followed in a proceeding and may give directions and do all things the Commissioner considers necessary or expedient in the proceeding.

68 Representation of party

- (1) A party to an application is not entitled to be represented by a legally qualified person unless:
 - (a) the other party agrees to the representation; or
 - (b) the Commissioner is of the opinion that neither party will be disadvantaged by the representation.
- (2) A party that is a body corporate may be represented by an officer or employee of the body corporate.
- (3) A party may be represented by a person who is not legally qualified if:
 - (a) both parties have agreed to the representation and the convenor is satisfied:
 - (i) the representation will not unfairly disadvantage an unrepresented party; or
 - (ii) if the appropriate information or assistance (or both) can be given by the Commissioner to an unrepresented party – the unrepresented party will not be unfairly disadvantaged; or
 - (b) the Commissioner is satisfied the party is unable, without assistance, to make a proper contribution towards achieving the purpose of the conference.

69 Power to amend where defect or error in form

- (1) A document given to a party by the Commissioner is not invalid because of a defect or error in its form alone.
- (2) The Commissioner may amend a document to correct a defect or error in its form.

70 Effect of non-compliance with procedures

A failure to comply with the procedures specified in these Regulations is an irregularity and does not nullify:

- (a) a proceeding; or
- (b) a step taken, document used or order made in a proceeding.

71 Withdrawal of application

An application may be withdrawn by the applicant at any time during the proceeding.

72 Costs

- (1) Subject to this regulation, a party to a proceeding must bear that party's own costs in the proceeding.
- (2) The Commissioner may require a party to pay the other party's reasonable administrative disbursements in connection with the proceeding (for example, photocopying costs).
- (3) In addition, if the circumstances warrant it, the Commissioner may direct a party to pay the reasonable costs of the other party incurred in relation to any of the following:
 - (a) a technical inspection and technical report;
 - (b) an investigation and report of an expert mentioned in regulation 59.

73 Contempt

A person must not:

- (a) threaten, intimidate or insult the Commissioner in the performance of the functions or exercise of the powers of the office under these Regulations; or
- (b) interrupt, obstruct or hinder a proceeding; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Commissioner is conducting a proceeding.

Maximum penalty: 100 penalty units.

Chapter 3 Proceedings before Tribunal

Part 3.1 Reviews of Commissioner's decisions

74 Reviewable decision and affected person

- (1) A **reviewable decision** is a decision mentioned in Schedule 2.
- (2) An **affected person**, for a reviewable decision, is a person mentioned in Schedule 2 for the decision.

75 Review notice

- (1) A **review notice**, for a reviewable decision, is a notice specifying the following:
 - (a) the decision and the reasons for it;
 - (b) that the affected person may apply to the Tribunal for a review of the merits of the decision;
 - (c) the period allowed for applying for the review;
 - (d) how to apply for the review.
- (2) The validity of a reviewable decision is not affected by a failure to give a review notice to the affected person for the decision.

76 Application for review

- (1) An affected person for a reviewable decision may apply to the Tribunal for a review of the merits of the decision.
- (2) The application must be made within 20 business days after the affected person is given a review notice for the decision.

77 Operation and implementation of decision pending review

- (1) An application for the review of a reviewable decision does not affect the operation or implementation of the decision.
- (2) However, the Tribunal may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Tribunal considers appropriate.
- (3) The order is subject to the conditions it specifies.
- (4) The order has effect for the period it specifies or, if no period is specified, until the Tribunal decides the application.

78 Review procedure

- (1) The Tribunal is to review a reviewable decision on the information and evidence considered by the Commissioner.
- (2) However, the Tribunal may consider additional information and evidence if satisfied there were special reasons that prevented it being given to the Commissioner.

79 Decision on review

- (1) In deciding an application, the Tribunal may:
 - (a) confirm the reviewable decision; or
 - (b) set aside the reviewable decision and replace it with its own decision; or
 - (c) set aside the reviewable decision and refer the matter back to the Commissioner for reconsideration.
- (2) In referring the matter to the Commissioner, the Tribunal may give the directions it considers appropriate for the reconsideration of the matter.
- (3) The Tribunal may make the incidental orders it considers appropriate to give effect to its decision.
- (4) The Tribunal must give reasons for its decision.

Part 3.2 Appeals against dispute decisions

80 Lodging appeal and providing copies

- (1) A party to a consumer guarantee dispute application who appeals against a dispute decision must lodge the appeal with the Tribunal within 20 business days after the party is given notice of the decision.
- (2) The appeal must:
 - (a) be in a form approved by the Tribunal; and
 - (b) attach a copy of the notice of the dispute decision and the reasons for the decision; and
 - (c) state fully the grounds on which the appeal is made.

- (3) The appellant must give a copy of the appeal to:
 - (a) the other party affected by the dispute decision; and
 - (b) the Commissioner.

81 Operation and implementation of decision pending appeal

- (1) The lodgment of the appeal does not affect the operation or implementation of the dispute decision.
- (2) However, the Tribunal may make an order staying or otherwise affecting the operation or implementation of so much of the dispute decision as the Tribunal considers appropriate.
- (3) The order is subject to the conditions it specifies.
- (4) The order has effect for the period it specifies or, if no period is specified, until the Tribunal decides the application.

82 Appeal procedure

- (1) The appeal is to be a rehearing of the evidence given to the Commissioner.
- (2) However, the Tribunal may admit evidence that was not given to the Commissioner if satisfied there were special reasons that prevented the evidence being given to the Commissioner.
- (3) If the Tribunal considers it appropriate, the Tribunal may join the Commissioner as a party to the appeal proceeding.
- (4) The Commissioner may intervene in the appeal proceeding, in which case the Commissioner becomes a party to the proceeding.

83 Decision on appeal

- (1) In deciding the appeal, the Tribunal may:
 - (a) confirm the dispute decision; or
 - (b) subject to subregulations (2) and (3), vary the dispute decision; or
 - (c) subject to subregulations (2) and (3), set aside the dispute decision and replace it with another decision the Commissioner could have made under Part 2.2, Division 2.
- (2) If the Tribunal varies or replaces the dispute decision and includes an order that the builder must pay compensation to the current owner, the amount ordered to be paid may exceed \$100 000.

- (3) To avoid doubt, if the Tribunal's decision includes an order mentioned in regulation 35(3)(a), the builder must give the notice about compliance to the Commissioner and not to the Tribunal.
- (4) The Tribunal must give the parties to the appeal reasons for its decision.
- (5) The Tribunal must also give a copy of the decision and reasons to the Commissioner if he or she is not a party to the appeal proceeding.

84 Appeal to Supreme Court

A person may appeal to the Supreme Court against a decision of the Tribunal under regulation 83(1) on a question of law only.

Part 3.3 Referrals to Tribunal by Commissioner

85 Questions of law

- (1) This regulation applies if, under regulation 31(1), the Commissioner refers a question of law in a consumer guarantee dispute application to the Tribunal for its determination.
- (2) After making the determination, the Tribunal may:
 - (a) refer the matter back to the Commissioner to continue dealing with the application; or
 - (b) if the Tribunal considers the complexity of the application warrants it:
 - (i) decide to deal with the application; and
 - (ii) give the Commissioner a notice of the decision.

86 Complex proceedings

- (1) This regulation applies if:
 - (a) under regulation 31(2), the Commissioner refers a consumer guarantee dispute application to the Tribunal; or
 - (b) under regulation 85(2)(b)(i), the Tribunal decides to deal with a consumer guarantee dispute application.
- (2) In dealing with the application, the Tribunal may exercise the powers of the Commissioner under these Regulations.

- (3) However, if the Tribunal's decision includes an order that the builder must pay compensation to the current owner, the amount ordered to be paid may exceed \$100 000.
- (4) To avoid doubt, if the Tribunal's decision includes an order mentioned in regulation 35(3)(a), the builder must give the notice about compliance to the Commissioner and not to the Tribunal.
- (5) The Tribunal must give the Commissioner a copy of its decision.

87 Appeal to Supreme Court

A person may appeal to the Supreme Court against a decision of the Tribunal under regulation 86 on a question of law only.

Chapter 4 Enforcement of decisions and consequences of contraventions

Part 4.1 Enforcement of decisions

88 Enforcement of order to pay money

- (1) If a decision maker orders a party to a proceeding to pay an amount of money to the other party, the amount is recoverable as a debt due to that other party.
- (2) The party to whom the amount is payable may apply to a court of competent jurisdiction for the registration and enforcement of the decision maker's order.
- (3) If the decision maker in a proceeding orders a builder to take an action other than to pay an amount of money to the current owner, and the builder contravenes the order:
 - (a) the current owner may apply to the decision maker to revoke the order and replace it with an order for the payment of money to the owner; and
 - (b) the amount ordered to be paid is recoverable as a debt due to the owner; and
 - (c) subregulation (2) applies.

89 Application to Local Court for enforcement of other orders

- (1) This regulation applies if a decision maker orders a builder to do an act, or abstain from doing an act, other than to pay money.

- (2) For section 23(1) of the *Local Court Act*, the Local Court is given the power mentioned in that provision in relation to the act mentioned in the order.

Part 4.2 Consequences of contraventions

90 Failure to give notice about compliance

- (1) If a decision maker makes an order mentioned in regulation 35(3)(a) and the builder does not give the Commissioner a notice about compliance as ordered, the Commissioner must give the Practitioners Board and Director a notice of the builder's contravention of the order.
- (2) The Practitioners Board may:
- (a) place on the public record that the builder has contravened the order; and
 - (b) take appropriate disciplinary action against the builder.

91 Offence to give false or misleading information in notice about compliance

A builder must not give false or misleading information in a notice about compliance mentioned in regulation 35(3)(a).

Maximum penalty: 100 penalty units.

92 Disciplinary action for specified contravention of dispute decision

- (1) This regulation applies in relation to a dispute decision made by the Commissioner under regulation 32(1)(a) or (b) that orders a builder to rectify residential building work.
- (2) For section 34X(1)(c) of the Act, a contravention of the order in the decision is specified to be professional misconduct.
- (3) However, subregulation (2) does not apply until the Commissioner and Practitioners Board are satisfied the builder:
- (a) has not appealed against the dispute decision; or
 - (b) has appealed to the Tribunal but is still subject to an order to rectify the work; or

- (c) has not applied to a court in relation to the same, or substantially the same, matter in dispute (for example, a contractual dispute which is not a consumer guarantee dispute but is about the same residential building work).

93 Other disciplinary action for contravention of dispute decision

- (1) This regulation applies in relation to a dispute decision made by the Commissioner under regulation 32(1)(a) or (b) that orders the builder to:
 - (a) complete residential building work; or
 - (b) pay a specified amount of compensation.
- (2) If the builder contravenes the order:
 - (a) the Practitioners Board may take any of the actions mentioned in section 34Y(1)(a) to (d) and (2) of the Act in relation to the builder; and
 - (b) sections 34Y(3) to (5) and 34Z of the Act apply in relation to the actions of the Board.

94 Disciplinary action for contravention of Tribunal's decision

- (1) This regulation applies in relation to a decision made by the Tribunal under Chapter 3 that a builder has contravened a consumer guarantee and is ordered to do any of the following:
 - (a) complete residential building work;
 - (b) rectify residential building work;
 - (c) pay a specified amount of compensation.
- (2) If the builder contravenes the order:
 - (a) the Practitioners Board may take any of the actions mentioned in section 34Y(1)(a) to (d) and (2) of the Act in relation to the builder; and
 - (b) sections 34Y(3) to (5) and 34Z of the Act apply in relation to the actions of the Board.

95 Offence to contravene order of decision maker

- (1) A builder who contravenes an order of a decision maker given under these Regulations commits an offence.

Maximum penalty: 100 penalty units.

- (2) It is a defence to a prosecution for an offence against subregulation (1) if the defendant establishes a reasonable excuse.

Chapter 5 Miscellaneous matters

96 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
- (a) the Commissioner;
 - (b) a delegate of the Commissioner;
 - (c) a qualified person;
 - (d) a convenor.
- (2) Subregulation (1) does not affect any liability the Territory would, apart from that subregulation, have for the act or omission.
- (3) In this regulation:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

97 Records of applications

- (1) The Commissioner must keep records of applications accepted by the Commissioner.
- (2) Without limiting subregulation (1), the records must include:
- (a) the number and nature of applications accepted; and
 - (b) the number and nature of applications that are resolved by the negotiated agreement process.
- (3) The Commissioner must give the information mentioned in subregulation (2) to the Chief Executive Officer no later than 3 months after the end of each financial year.
- (4) However, the information about the nature of the applications given to the Chief Executive Officer is to be a general description only and the confidentiality of the parties to the applications must be preserved.

98 Commissioner to give notice of contraventions by builder

If, during a proceeding, the Commissioner becomes aware that a builder has contravened the Act, a regulation made under the Act or any standards or guidelines relevant to residential building work carried out by the builder, the Commissioner must give notice of the contravention to the Practitioners Board and Director.

Schedule 1 Prescribed fees for applications

regulation 66(3)

Matter for which fee prescribed	Fee (revenue units)
Making technical inspection application under regulation 15 or during proceeding for consumer guarantee dispute application	200
Making consumer guarantee dispute application under regulation 19	100

Schedule 2 Reviewable decisions and affected persons

regulation 74

Reviewable decision	Affected person
Decision under regulation 13(1) to reject mediation or conciliation application	The person who made the application
Decision under regulation 17(1) to reject technical inspection application	The person who made the application
Decision under regulation 21(1) to reject consumer guarantee dispute application	The person who made the application
Decision under regulation 29(3) to dismiss consumer guarantee dispute application because of absence of applicant	The person who made the application
