

2002

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

---

(As presented)

(Minister for Planning)

## Building Amendment Bill 2002

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(As presented)

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## Building Amendment Bill 2002

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### A Bill for

An Act to amend the *Building Act 1972*, and for related purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 **1 Name of Act**

2 This Act is the *Building Amendment Act 2002*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 Note *The naming and commencement provisions automatically commence on*  
6 *the notification day (see Legislation Act 2001, s 75).*

7 **3 Act amended**

8 This Act amends the *Building Act 1972*.

9 Note This Act also amends the *Administrative Decisions (Judicial Review)*  
10 *Act 1989 (see s 14).*

11 **4 Interpretation**  
12 **Section 5 (1), new definition**

13 *insert*

14 *fidelity certificate*—see section 58A (Definitions for pt 5A).

15 **5 Issue of building approvals**  
16 **Section 34 (1) (fa) (ii)**

17 *substitute*

18 (ii) an approved insurer has issued a certificate that the  
19 insurer has insured the work under a residential building  
20 insurance policy; or

21 (iii) the trustees of a scheme approved under division 5A.4  
22 (Approved fidelity fund schemes) have issued a fidelity  
23 certificate for the work; and

24 **6 Section 34**

25 *renumber subsections and paragraphs when Act next republished*  
26 *under Legislation Act 2001*

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1 **7 Notifications by certifier in relation to building work**  
2 **Section 38 (2)**

3 *substitute*

4 (2) If a certifier receives a notification under section 37A about building  
5 work to which part 5A applies, the certifier must, within 7 days after  
6 the day the certifier receives the notice—

7 (a) tell the building controller in writing whether or not, in the  
8 certifier's opinion—

9 (i) the work is insured under a residential building insurance  
10 policy; or

11 (ii) a fidelity certificate has been issued for the work by the  
12 trustees of a scheme approved under division 5A.4  
13 (Approved fidelity fund schemes); and

14 (b) if the certifier is of the opinion that the work is insured or a  
15 fidelity certificate has been issued—give to the building  
16 controller particulars of the policy or certificate.

17 **8 Part 5A heading**

18 *substitute*

19 **Part 5A Residential**  
20 **building—statutory**  
21 **warranties, insurance and**  
22 **fidelity certificates**

23 **Division 5A.1 General**

1 **9** **Definitions for pt 5A**  
2 **Section 58A, new definitions**

3 *insert*

4 *actuary*, for an approved scheme, does not include a special actuary.

5 *approval criteria* means the requirements determined under  
6 section 58K (Approval criteria of fidelity fund schemes).

7 *approved scheme* means a fidelity fund scheme approved under  
8 section 58K (Approval criteria of fidelity fund schemes).

9 *fidelity certificate* means a certificate issued for building work by  
10 the trustees of an approved scheme.

11 *fidelity fund scheme* means a scheme for a building industry fidelity  
12 fund established under a trust deed.

13 *prudential standards* means the standards determined under  
14 section 58O (Prudential standards).

15 *special actuary*—see section 58ZH (Investigation of liabilities by  
16 special actuary).

17 **10** **New division 5A.2 heading**

18 *after section 58B, insert*

19 **Division 5A.2** **Statutory warranties**

20 **11** **New division 5A.3 heading**

21 *after section 58D, insert*

22 **Division 5A.3** **Residential building insurance**

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**12 New divisions 5A.4 to 5A.6**

*after section 58G, insert*

**Division 5A.4 Approved fidelity fund schemes****58H Approval of fidelity fund schemes**

- (1) The Minister may, in writing, approve a fidelity fund scheme.
- (2) An application for approval of a fidelity fund scheme must—
  - (a) be signed by all the trustees of the scheme; and
  - (b) be accompanied by—
    - (i) a copy of the trust deed certified in accordance with the approval criteria; and
    - (ii) any other information prescribed under the approval criteria.
- (3) The Minister may approve a fidelity fund scheme only if the scheme complies with the approval criteria.
- (4) An approval is a notifiable instrument.

Note *A notifiable instrument must be notified under the Legislation Act 2001.*

**58I Additional information etc**

- (1) This section applies if the trustees of a fidelity fund scheme apply to the Minister for approval of the scheme.
- (2) The Minister may, by written notice given to the trustees, require the trustees to give the Minister—
  - (a) stated additional information or documents that the Minister reasonably needs to decide the application; or
  - (b) a stated statutory declaration in relation to information or documents provided in relation to the application.

- 1 (3) The Minister is not required to decide the application until the  
2 trustees comply with the requirement.

3 **58J Minister may require changes to scheme**

4 Before approving a fidelity fund scheme, the Minister may require  
5 changes to be made to the scheme to ensure that it complies with  
6 this Act.

7 Note *A reference to an Act includes a reference to the statutory instruments*  
8 *made or in force under the Act, including regulations and disallowable*  
9 *instruments (see Legislation Act 2001, s 104).*

10 **58K Approval criteria for fidelity fund schemes**

- 11 (1) The Minister may, in writing, determine requirements (the *approval*  
12 *criteria*) for this Act with which a fidelity fund scheme must comply  
13 to be an approved scheme.
- 14 (2) The approval criteria must include requirements in relation to—
- 15 (a) the management of the fidelity fund scheme in accordance with  
16 the trust deed; and
- 17 (b) qualifications or suitability for appointment as a trustee of the  
18 scheme; and
- 19 (c) the powers and duties of the trustees; and
- 20 (d) the financial management of the scheme; and
- 21 (e) the building work for which a fidelity certificate may be issued  
22 or must not be issued under the scheme; and
- 23 (f) the people who can or cannot make claims under a fidelity  
24 certificate; and
- 25 (g) applications for claims under fidelity certificates issued under  
26 the scheme; and
- 27 (h) dealing with claims under the scheme; and
- 28 (i) compliance with the prudential standards.

1 (3) The approval criteria may apply, adopt or incorporate a law or  
2 instrument, or a provision of a law or instrument, as in force from  
3 time to time.

4 Note 1 *The text of an applied, adopted or incorporated law or instrument,*  
5 *whether applied as in force from time to time or as at a particular time,*  
6 *is taken to be a notifiable instrument if the operation of the Legislation*  
7 *Act 2001, s 47 (5) or (6) is not disapplied (see s 47 (7)).*

8 Note 2 *A notifiable instrument must be notified under the Legislation Act 2001.*

9 (4) A determination is a disallowable instrument.

10 Note *A disallowable instrument must be notified, and presented to the*  
11 *Legislative Assembly, under the Legislation Act 2001.*

## 12 **58L Approval of scheme may be conditional**

13 (1) The approval of a fidelity fund scheme may be given subject to  
14 conditions.

15 (2) A condition may be expressed to have effect despite anything in the  
16 prudential standards.

17 (3) The trustees of an approved scheme each commit an offence if the  
18 trustees fail to ensure that the scheme complies with the conditions  
19 of the scheme's approval.

20 Maximum penalty: 60 penalty units.

21 (4) An offence against this section is an offence of strict liability.

## 22 **58M Application for changes to approved scheme**

23 (1) The trustees of an approved scheme may apply in writing to the  
24 Minister to change the scheme.

25 (2) The application must—

26 (a) be signed by all the trustees of the scheme; and

27 (b) set out the proposed change to the scheme and the reasons for  
28 the change.

- 1 (3) This section does not apply to a change to the scheme declared  
2 under the prudential standards to be a change to which this section  
3 does not apply.

4 **58N Approval of changes to approved scheme**

- 5 (1) The Minister may, in writing, approve or refuse to approve a change  
6 to an approved scheme.
- 7 (2) The Minister must refuse to approve a change to the scheme if not  
8 satisfied that the scheme as proposed to be changed would continue  
9 to meet the approval criteria and the prudential standards.
- 10 (3) This section does not apply to a change to the scheme declared  
11 under the prudential standards to be a change to which this section  
12 does not apply.

13 **58O Prudential standards**

- 14 (1) The Minister may, in writing, determine standards (the *prudential*  
15 *standards*) for this Act relating to prudential matters that must be  
16 complied with by an approved scheme.

17 Note *Power given under an Act to make a statutory instrument includes*  
18 *power to make different provision for different categories, eg different*  
19 *kinds of schemes (see Legislation Act 2001, s 48).*

- 20 (2) The prudential standards may—
- 21 (a) require the Minister's approval of the trustees of the approved  
22 scheme; and
- 23 (b) make provision in relation to—
- 24 (i) the capital adequacy of the scheme; and
- 25 (ii) the valuation of liabilities; and
- 26 (iii) the effectiveness of risk management strategies and  
27 techniques; and

- 1 (iv) requiring the giving of information to the commissioner  
2 for fair trading, or any other entity prescribed under the  
3 prudential standards, about decisions by the trustees to  
4 pay or refuse to pay claims.

5 Note *An Act that authorises the making of a statutory instrument*  
6 *(eg prudential standards) also authorises an instrument to be made with*  
7 *respect to any matter required or permitted to be prescribed under the*  
8 *authorising law or that is necessary or convenient to be prescribed for*  
9 *carrying out or giving effect to the authorising law (see Legislation Act*  
10 *2001, s 44).*

11 (3) The prudential standards may—

12 (a) provide for the exercise of discretions under the standards,  
13 including discretions to approve, impose, adjust or exclude  
14 particular prudential requirements in relation of an approved  
15 scheme; and

16 (b) apply, adopt or incorporate a law or instrument, or a provision  
17 of a law or instrument, as in force from time to time.

18 Note 1 *The text of an applied, adopted or incorporated law or instrument,*  
19 *whether applied as in force from time to time or as at a particular time,*  
20 *is taken to be a notifiable instrument if the operation of the Legislation*  
21 *Act 2001, s 47 (5) or (6) is not disapplied (see s 47 (7)).*

22 Note 2 *A notifiable instrument must be notified under the Legislation Act 2001.*

23 (4) A determination under this section is a disallowable instrument.

24 Note *A disallowable instrument must be notified, and presented to the*  
25 *Legislative Assembly, under the Legislation Act 2001.*

26 (5) In this section:

27 ***prudential matters***, for an approved scheme, means matters relating  
28 to the conduct by the trustees of the scheme of any of the scheme's  
29 affairs—

30 (a) in a way that keeps the scheme's affairs in a sound financial  
31 position; and

32 (b) with integrity, prudence and professional skill.

1 **58P Compliance with prudential standards by trustees**

2 (1) The trustees of an approved scheme each commit an offence if the  
3 trustees fail to ensure that the scheme complies with the prudential  
4 standards.

5 Maximum penalty: 60 penalty units.

6 (2) An offence against this section is an offence of strict liability.

7 **58Q Notice to trustees to comply with prudential standards**

8 (1) This section applies if the Minister is satisfied on reasonable  
9 grounds that an approved scheme—

10 (a) is contravening a provision of the prudential standards; or

11 (b) is likely to contravene a provision of the prudential standards  
12 in a way that is likely to give rise to prudential risk.

13 (2) The Minister may, by written notice given to the trustees of the  
14 approved scheme, require the trustees to comply with the provision  
15 of the prudential standards within a stated time.

16 (3) The trustees must comply with the notice despite anything in the  
17 trust deed or in any contract or arrangement to which they are party.

18 (4) The trustees of an approved scheme each commit an offence if the  
19 trustees fail to comply with a notice given to the trustees under this  
20 section.

21 Maximum penalty: 60 penalty units.

22 (5) An offence against this section is an offence of strict liability.

23 **58R Notice to trustees requiring information**

24 (1) The Minister may, by written notice given to the trustees of an  
25 approved scheme, require the trustees to give the Minister stated  
26 information about anything relevant to the scheme's ability to meet  
27 its liabilities and potential liabilities at a particular date or time or at  
28 particular intervals, including, for example, information about—

- 
- 1 (a) the scheme's liabilities and potential liabilities; and  
2 (b) contributions to the scheme; and  
3 (c) administrative or other costs of the scheme  
4 (d) claims received by the scheme.
- 5 (2) The notice must state a reasonable period for complying with the  
6 notice.
- 7 (3) Without limiting subsection (1) (d), the notice may require  
8 information about—
- 9 (a) the number of claims received by the scheme; and  
10 (b) the amount of each claim; and  
11 (c) the number of claims that have been paid; and  
12 (d) the amount paid on each claim; and  
13 (e) if a claim was rejected—the reason for its rejection.
- 14 (4) The trustees of an approved scheme each commit an offence if the  
15 trustees fail to comply with a notice given to the trustees under this  
16 section.
- 17 Maximum penalty: 60 penalty units.
- 18 (5) An offence against this section is an offence of strict liability.

19 **58S Suspension or cancellation of approval of approved**  
20 **scheme**

- 21 (1) The Minister may take action under this section in relation to an  
22 approved scheme on any of following grounds:
- 23 (a) the trustees of the scheme have contravened this Act or another  
24 Territory law in relation to the scheme;

25 Note *A reference to an Act includes a reference to the statutory instruments*  
26 *made or in force under the Act, including regulations and disallowable*  
27 *instruments (see Legislation Act 2001, s 104).*

- 1 (b) the scheme is insolvent and is unlikely to return to solvency  
2 within a reasonable time;
- 3 (c) the scheme has inadequate capital and is unlikely to have  
4 adequate capital within a reasonable time;
- 5 (d) the scheme is, or is likely to become, unable to meet its  
6 liabilities;
- 7 (e) there is, or there may be, a risk to the security of the scheme's  
8 assets;
- 9 (f) there is, or there may be, a sudden deterioration in the  
10 scheme's financial condition;
- 11 (g) the scheme has ceased to issue fidelity certificates in the ACT;
- 12 (h) a ground prescribed under the prudential standards exists for  
13 the suspension or cancellation of the approval of the scheme.
- 14 (2) If the Minister proposes to suspend or cancel the approval of the  
15 scheme, the Minister must give the trustees of the scheme a written  
16 notice—
- 17 (a) stating the grounds on which the Minister proposes to suspend  
18 or cancel the approval; and
- 19 (b) stating the facts that, in the Minister's opinion, establish the  
20 grounds; and
- 21 (c) telling the trustees that the trustees may, within a stated  
22 reasonable time, give a written response to the Minister about  
23 the matters in the notice.
- 24 (3) If, after considering any response given to the Minister in  
25 accordance with subsection (2) (c), the Minister is satisfied that the  
26 grounds for suspending or cancelling the approval have been  
27 established, the Minister may, in writing, suspend or cancel the  
28 approval.
- 29 (4) If the Minister suspends or cancels the approval, the Minister must  
30 give written notice of the suspension or cancellation to the trustees.

1 (5) Suspension or cancellation of an approval takes effect on the day  
2 when notice of the suspension or cancellation is given to the trustees  
3 or, if the notice states a later date of effect, that date.

4 (6) A suspension or cancellation under this section is a notifiable  
5 instrument.

6 Note *A notifiable instrument must be notified under the Legislation Act 2001.*

### 7 **58T Cancellation of approval on application**

8 (1) The Minister may, in writing, cancel the approval of an approved  
9 scheme if the trustees of the scheme ask the Minister, in writing, to  
10 do so.

11 (2) If the Minister cancels the approval, the Minister must give written  
12 notice of the cancellation to the trustees.

13 (3) A cancellation under this section is a notifiable instrument.

14 Note *A notifiable instrument must be notified under the Legislation Act 2001.*

### 15 **58U Orders consequential on etc suspension or cancellation**

16 (1) If the Minister suspends or cancels the approval of a fidelity fund  
17 scheme under this division, the Minister may apply to the Supreme  
18 Court for orders to give effect to, or consequential on, the  
19 suspension or cancellation.

20 (2) On application under subsection (1), the Supreme Court may make  
21 the orders it considers just, including—

22 (a) orders for the winding-up of the scheme; and

23 (b) orders in relation to the assets and liabilities of the scheme.

### 24 **58V Address for service for trustees**

25 (1) The trustees of an approved scheme must, at all times, have an  
26 address for service in the ACT for this Act.

27 (2) An address becomes the address for service for the trustees when  
28 written notice of the address is given by the trustees to the Minister.

- 1 (3) The address continues to be the address for service until the Minister  
2 is given written notice by the trustees of another address for service  
3 for the trustees.

4 **Division 5A.5 Auditors and actuaries of**  
5 **approved schemes**

6 **58W Appointment of auditor and actuary for approved scheme**

- 7 (1) The trustees of an approved scheme must appoint—

- 8 (a) an auditor for the scheme; and  
9 (b) an actuary for the scheme.

10 Note *For the making of appointments (including acting appointments), see*  
11 *Legislation Act 2001, div 18.3.*

- 12 (2) Within 6 weeks after a person stops being the auditor or actuary for  
13 an approved scheme, the trustees must appoint another person to be  
14 auditor or actuary.

- 15 (3) A person may only hold an appointment as auditor or actuary for an  
16 approved scheme if—

- 17 (a) the Minister has approved the appointment and its terms; and  
18 (b) the approval has not been revoked.

- 19 (4) An appointment of a person as auditor or actuary for an approved  
20 scheme cannot take effect while an appointment of another person  
21 in that position is current.

22 **58X Approval of appointment of auditor or actuary**

- 23 (1) The trustees of an approved scheme may, in writing, ask the  
24 Minister to approve—

- 25 (a) the appointment of a person as auditor for the scheme; or  
26 (b) the appointment of a person as actuary for the scheme.

- 
- 1 (2) The Minister may approve the appointment only if satisfied that the  
2 person meets the eligibility criteria for the appointment prescribed  
3 under the prudential standards.
- 4 (3) The Minister must give the trustees notice of the Minister's decision  
5 to approve or refuse to approve the appointment.
- 6 (4) If the Minister refuses to approve the decision, the notice must  
7 include the reasons for the refusal.

8 **58Y Revocation of approval of appointment of auditor or**  
9 **actuary**

- 10 (1) The Minister may, in writing, revoke the approval of a person's  
11 appointment as auditor or actuary for an approved scheme if  
12 satisfied that the person—
- 13 (a) has failed to exercise adequately and properly the functions of  
14 the appointment under this Act; or
- 15 Note *A reference to an Act includes a reference to the statutory instruments*  
16 *made or in force under the Act, including regulations (see Legislation*  
17 *Act 2001, s 104).*
- 18 (b) does not meet 1 or more of the criteria for fitness and propriety  
19 prescribed under the prudential standards; or
- 20 (c) does not meet the eligibility criteria for the appointment  
21 prescribed under the prudential standards.
- 22 (2) The revocation of the approval takes effect on the day the revocation  
23 is made.
- 24 (3) The Minister must give a copy of the revocation to the person and to  
25 the trustees of the approved scheme.

26 **58Z When person stops holding appointment as auditor or**  
27 **actuary**

28 A person stops holding an appointment as auditor or actuary of an  
29 approved scheme if—

- 1 (a) the approval of the person's appointment is revoked under  
2 section 58Y (Revocation of approval of appointment of auditor  
3 or actuary); or
- 4 (b) the person resigns the appointment by giving written notice to  
5 the trustees of the approved scheme; or
- 6 (c) the trustees end the appointment by giving written notice to the  
7 person.

8 **58ZA Notification of appointment or ending of appointment of**  
9 **auditor or actuary**

- 10 (1) Within 14 days after the trustees for an approved scheme appoint a  
11 person as auditor or actuary for the scheme, the trustees must give  
12 the Minister written notice of the appointment and any other matters  
13 prescribed under the prudential standards.
- 14 (2) Within 14 days after a person stops being auditor or actuary for an  
15 approved scheme, the trustees must give the Minister written notice  
16 of that event, including the date when it happened and the reasons  
17 for and circumstances of that event.
- 18 (3) Subsection (2) does not apply in relation to the revocation by the  
19 Minister of the approval of a person's appointment.

20 **58ZB Compliance with prudential standards by auditors and**  
21 **actuaries**

- 22 (1) The auditor or actuary for an approved scheme commits an offence  
23 if the auditor or actuary contravenes the prudential standards in  
24 relation to the exercise of his or her functions as auditor or actuary  
25 for the scheme.
- 26 Maximum penalty: 60 penalty units.
- 27 (2) An offence against this section is an offence of strict liability.

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1 **58ZC Auditor and actuary to tell Minister if scheme insolvent**  
2 **etc**

3 (1) This section applies if the auditor or actuary for an approved scheme  
4 has reasonable grounds for believing that—

5 (a) the scheme is insolvent, or there is a significant risk that it will  
6 become insolvent; or

7 (b) the trustees have contravened this Act or another Territory law  
8 in relation to the scheme.

9 Note *A reference to an Act includes a reference to the statutory instruments*  
10 *made or in force under the Act, including regulations and prudential*  
11 *standards (see Legislation Act 2001, s 104).*

12 (2) The auditor or actuary must give the Minister written notice about  
13 the matter within 7 days of having the reasonable grounds.

14 Maximum penalty: 100 penalty units, imprisonment for 1 year or  
15 both.

16 **58ZD Giving of information to Minister by auditor or actuary etc**

17 (1) This section applies to a person who is, or has been, an auditor or  
18 actuary for an approved scheme.

19 (2) The person may give information to the Minister about the approved  
20 scheme if the person considers that giving information will assist the  
21 Minister to exercise the Minister's functions under this part.

22 (3) If this section applies to a person, the Minister may, by written  
23 notice given to the person, require the person to give stated  
24 information about the approved scheme to the Minister within a  
25 stated reasonable time.

26 (4) A person commits an offence if the person contravenes a notice  
27 under this section.

28 Maximum penalty: 100 penalty units, imprisonment for 1 year or  
29 both.

1 (5) A person commits an offence if the person gives the Minister  
2 information that is false, or misleading in a material particular, in  
3 compliance or purported compliance with a notice under this  
4 section.

5 Maximum penalty: 200 penalty units, imprisonment for 2 years or  
6 both.

7 **54ZE Auditor's role**

8 (1) The auditor for an approved scheme must, in accordance with the  
9 prudential standards—

10 (a) exercise the functions of auditor for the scheme prescribed  
11 under the prudential standards; and

12 (b) find out and report on whether the trustees of the scheme are  
13 complying with the prudential standards; and

14 (c) prepare, and give to the trustees of the scheme, any reports  
15 required under the prudential standards to be prepared by the  
16 auditor; and

17 (d) give the trustees any certificates relating to the scheme's  
18 accounts that are required under the prudential standards to be  
19 prepared by the auditor.

20 (2) A report under subsection (1) (c) must deal with all of the matters  
21 required under the prudential standards to be dealt with in the report.

22 (3) A certificate under subsection (1) (d) must contain statements of the  
23 auditor's opinion on the matters required under the prudential  
24 standards to be dealt with in the certificate.

25 **58ZF Actuary's role**

26 (1) The actuary for an approved scheme must, in accordance with the  
27 prudential standards—

28 (a) exercise the functions of actuary for the scheme prescribed  
29 under the prudential standards; and

1 (b) prepare, and give to the trustees of the scheme, the reports  
2 (if any) required under the prudential standards to be prepared  
3 by the actuary.

4 (2) A report under subsection (1) (b) must deal with all of the matters  
5 required under the prudential standards to be dealt with in the report.

6 **58ZG Certificates and reports required to be given to Minister**

7 (1) The trustees of an approved scheme must, in accordance with the  
8 prudential standards, give to the Minister—

9 (a) a copy of each certificate given to the trustees under  
10 section 54ZE (Auditor’s role); and

11 (b) the reports mentioned in that section and section 58ZF  
12 (Actuary’s role).

13 Maximum penalty: 60 penalty units.

14 (2) An offence against this section is an offence of strict liability.

15 **58ZH Investigation of liabilities by special actuary**

16 (1) The Minister may, by written notice given to the trustees of an  
17 approved scheme, require the trustees to appoint, at the scheme’s  
18 expense, an additional actuary (the *special actuary*) to—

19 (a) investigate completely or partially the scheme’s liabilities as at  
20 a particular time; and

21 (b) give the Minister a written report within a stated period.

22 (2) The special actuary must not be—

23 (a) the actuary appointed under section 58W (Appointment of  
24 auditor and actuary for approved scheme); or

25 (b) a trustee or officer of the scheme.

26 Note *For who can be appointed a special actuary, see section 58ZJ (Who can*  
27 *be appointed as a special actuary).*

- 1 (3) Within 7 days after the trustees are given the notice, the trustees  
2 must appoint the special actuary and give the Minister written notice  
3 of the actuary's name.
- 4 (4) Within 7 days after being notified of the special actuary's name, the  
5 Minister may give written notice to the trustees that the actuary is  
6 not acceptable to the Minister.
- 7 (5) If the trustees are given a notice under subsection (4), the trustees  
8 must within 7 days—
- 9 (a) appoint a different special actuary; and  
10 (b) give the Minister written notice of the name of that actuary.
- 11 (6) Subsection (4) applies whether the notification of the special  
12 actuary's name is under subsection (3) or subsection (5) (b).
- 13 (7) The trustees must ensure that the special actuary's report is given to  
14 the Minister—
- 15 (a) within 30 days after the Minister gave the notice under  
16 subsection (1); or
- 17 (b) within any additional further time the Minister allows in  
18 writing.
- 19 (8) The report must be signed by the special actuary.
- 20 (9) Also, the report must contain a statement of the special actuary's  
21 opinion about each of the following:
- 22 (a) the adequacy of the whole or part of the amount stated in the  
23 scheme's accounts in relation to its liabilities, and the amount  
24 that the actuary considers would be adequate in the  
25 circumstances;
- 26 (b) the accuracy of any relevant valuations made by the actuary;
- 27 (c) the assumptions used by the actuary in making the valuations;
- 28 (d) the relevance, appropriateness and accuracy of the information  
29 on which those valuations were based;

- 1 (e) any other matter in relation to which the prudential standards  
2 require a statement of the actuary's opinion to be included in  
3 the report.

4 **58ZI Offences in relation to appointment of special actuary**

- 5 (1) The trustees of an approved scheme commit an offence if—
- 6 (a) the Minister requires the trustees to appoint a special actuary  
7 under section 58ZH (Investigation of liabilities by special  
8 actuary); and
- 9 (b) the trustees—
- 10 (i) fail to do so within the time required by  
11 section 58ZH (3); or
- 12 (ii) if the trustees are required under section 58ZH (5) to  
13 appoint a different actuary—fail to appoint that actuary  
14 within the time required by that subsection.

15 Maximum penalty: 100 penalty units.

- 16 (2) The trustees of the approved scheme also commit an offence if the  
17 trustees do not comply with section 58ZH (7).

18 Maximum penalty: 100 penalty units.

19 **58ZJ Who can be appointed as a special actuary**

- 20 (1) A person can only be appointed as a special actuary for  
21 section 58ZH (Investigation of liabilities by special actuary) if the  
22 person—
- 23 (a) is a Fellow of The Institute of Actuaries of Australia; or
- 24 (b) the Minister has, in writing, approved the person as an actuary  
25 for that section.
- 26 (2) The Minister may approve a person only if satisfied that the person  
27 has actuarial qualifications and experience that make the person an

1 appropriate person to exercise the functions of a special actuary for  
2 section 58ZH.

3 **58ZK Obligations of trustees to auditors and actuaries**

4 (1) The trustees of an approved scheme commit an offence if the  
5 trustees fail to make arrangements necessary to enable the auditor or  
6 actuary for the scheme, or any special actuary for the scheme, to  
7 exercise his or her functions in relation to the scheme.

8 Maximum penalty: 60 penalty units.

9 (2) An offence against this section is an offence of strict liability.

10 **58ZL Protection of auditor and actuary from liability**

11 The auditor or actuary for an approved scheme, and any special  
12 actuary for the scheme, does not incur civil liability, or criminal  
13 liability under the *Defamation Act 2001*, for an act or omission done  
14 honestly and without negligence for this part.

15 **Division 5A.6 Transitional provisions**

16 **58ZM Transitional regulations**

17 (1) The regulations may prescribe savings or transitional matters  
18 necessary or convenient to be prescribed because of the enactment  
19 of the *Building Amendment Act 2002*.

20 (2) Regulations made for this section must not be taken to be  
21 inconsistent with this Act so far as they can operate concurrently  
22 with this Act.

23 (3) This section does not limit section 58ZN (Modification of operation  
24 of divisions 5A.4 and 5A.5).

1 **58ZN Modification of operation of divisions 5A.4 and 5A.5**

- 2 (1) The regulations may modify this Act to make provision in relation  
3 to any matter that, in the Executive's opinion, is not, or not  
4 adequately, dealt with in divisions 5A.4 and 5A.5.

5 **58ZO Expiry of div 5A.6**

6 This division expires 1 year after it commences.

7 **13 Parts 5A and 6**

8 *renumber parts 5A and 6 and the sections of those parts when the*  
9 *Act is next republished under the Legislation Act 2001*

10 **14 Administrative Decisions (Judicial Review) Act 1989,**  
11 **schedule 1, new item 5**

12 *insert*

- 13 5 This Act does not apply to a decision under the *Building Act 1972*,  
14 section 58K (Approval of fidelity fund schemes) or section 58S  
15 (Suspension or cancellation of approval of approved schemes).

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**Endnotes**

**Republications of amended laws**

- 1 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

**Penalty units**

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.