



Australian Capital Territory

# **Building Act 1972**

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## **About this republication**

### **The republished law**

This is a republication of the *Building Act 1972* effective 15 July 1992 to 8 December 1992.

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Australian Capital Territory  
**BUILDING ACT 1972**

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Australian Capital Territory  
**BUILDING ACT 1972**

An Act relating to the Erection, Alteration and Demolition of Buildings

**PART I—PRELIMINARY**

**Short title**

1. This Act may be cited as the *Building Act 1972*.<sup>1</sup>

**Commencement**

2. This Act shall come into operation on a date to be fixed by the Minister by notice published in the *Gazette*.<sup>1</sup>

**Repeal and saving**

4. (1) The *Building Ordinance 1964*, the *Building Ordinance 1967*, the *Building Ordinance 1969*, the *Building Ordinance 1970*, the *Building Ordinance (No. 2) 1970* and the Canberra Building Regulations (comprising the Regulations specified in the Schedule to the *Building Ordinance 1964* and Regulations 1965, No. 3; 1967, No. 11; 1970, No. 6; and 1971, No. 11) are repealed.

(3) Notwithstanding the repeal effected by subsection (1), the repealed laws continue to apply—

- (a) to and in relation to building work the carrying out of which was authorized by a permit issued under the repealed laws before the commencing date;
- (b) in connexion with the carrying out of that building work, to and in relation to the person to whom the permit was issued, the owner of the parcel of land on which the building work is or is to be carried out and to all other persons engaged on the building work; and

- (c) to and in relation to all matters arising out of the issue of the permit and all matters connected with the carrying out of the building work,

to the same extent that the repealed laws would have applied if they had continued in operation and the provisions of this Act (other than this subsection and any other provision in which the contrary intention is expressed) do not apply to or in relation to any matter to which the repealed laws continue to apply.

(4) For the purposes of the continued application of the repealed laws as provided for by the last preceding subsection—

- (a) all appointments made under the repealed laws and in force on the day immediately before the commencing date continue in force;
- (b) the Minister, the proper authority, a deputy proper authority, an inspector and the Canberra Building Review Committee have and may exercise the respective powers and functions conferred on them by the repealed laws;
- (c) the Supreme Court continues to have jurisdiction to hear and determine appeals against orders made by the Canberra Building Review Committee under the repealed laws, whether made before the commencing date or under the continued application of the repealed laws.

(5) A person who contravenes or fails to comply with a direction or order made by the Canberra Building Review Committee or by the Supreme Court in pursuance of the continued application of the repealed laws as provided by the last two preceding subsections is guilty of an offence against this subsection and is punishable as provided by section 18 of the *Building Ordinance 1964-1970*.

### **Interpretation**

5. (1) In this Act, unless the contrary intention appears—

“applicable standard” means the initial standard as amended from time to time by instrument under section 42N;

“approved” means approved by the Building Controller;

“asbestos” means—

- (a) any of the following minerals:
- (i) actinolite;



- (ii) amosite;
- (iii) chrysotile;
- (iv) crocidolite;
- (v) erionite;
- (vi) fibrous anthophyllite;
- (vii) tremolite; or

(b) any substance or material containing any of those minerals;

“authorised insurer” means a body corporate that has been granted authority to carry on insurance business under the *Insurance Act 1973* of the Commonwealth;

“builder’s licence” means a Builder’s Licence Class A, Builder’s Licence Class B, Builder’s Licence Class C or Builder’s Licence Class D that is in force under Division 3 of Part II;

“building” includes—

- (a) a structure upon or attached to land;
- (b) an addition to a building;
- (c) a structure attached to a building; and
- (d) a part of a building;

“Building Code” means the building code published under Division 4 of Part II;

“building inspector” means a person for the time being appointed a building inspector under section 8 of this Act;

“building permit” means a building permit that is in force under Part III;

“building work”, in relation to a building, means—

- (a) work in connection with the erection, alteration or demolition of the building;
- (b) work in connection with repairs of a structural nature to the building;
- (c) work in connection with—

- (i) the installation of a specialised system in the building;
- (ii) the structural modification or removal of such a system installed in the building; or
- (iii) the maintenance or cleaning of such a system installed in the building; or
- (d) the performance of any work in relation to the building that is carried out at the site of the building and involves the handling of asbestos or the disturbance of loose asbestos;

“Designated Area” has the same meaning as in the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“determined fee” means the fee determined pursuant to section 65 for the purposes of the provision in which the expression occurs;

“external design”, in relation to a building, includes any matter affecting the appearance of the exterior of the building;

“government agency” means an administrative unit of the Public Service, a Territory authority, a Commonwealth Department, or a body (whether incorporated or not) established by or under a Commonwealth Act;

“hazardous substance” means—

- (a) loose asbestos; or
- (b) a substance containing unacceptable *Legionella* levels;

“initial standard” means Australian Standard 3666-1989;

“licensee” means a person to whom a builder’s licence has been granted;

“loose asbestos”, in relation to a building, means asbestos that is not securely affixed to the building;

“mechanical ventilation system” includes—

- (a) an air-handling system;
- (b) a condenser; or
- (c) a cooling tower;

“owner”, in relation to land, means—

- (a) if the land is held under a lease from the Commonwealth for a term of years—the lessee;
- (b) if the land is held in fee simple—the person in whom the fee simple is vested;
- (c) if the land is subdivided into units and common property by the registration of a units plan under the *Unit Titles Act 1970*—
  - (i) where building work has been, is being or is to be carried out on the land for the corporation constituted under that Act on the registration of the units plan—the corporation;
  - (ii) where building work has been, is being or is to be carried out on the land for the proprietor of a unit—the proprietor; or
  - (iii) in any other case—the corporation; or
- (d) if the land is occupied under a tenancy from the Territory or the Commonwealth—the occupier;

“proprietor”, in relation to a unit, has the same meaning as in the *Unit Titles Act 1970*;

“residential building insurance policy” means an insurance policy that complies with section 58E;

“specialised system” means—

- (a) a warm water system; or
- (b) a mechanical ventilation system;

“specialist building work” means any prescribed building work;

“statutory warranty” means a warranty specified in section 58C;

“stop notice” means a notice under section 43 of this Act prohibiting the carrying out of building work;

“structure” includes a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, aerial, advertising device, notice or sign;

“system licence” means a licence to operate a specialised system issued under section 42D;

“Territory Planning Authority” means the Australian Capital Territory Planning Authority;

“the Building Controller” means the person for the time being appointed as the Building Controller under section 7 of this Act, and, in relation to the exercise of the functions and performance of the powers of the Building Controller, includes a Deputy Building Controller appointed under that section;

“the commencing date” means the date fixed under section 2 of this Act;

“the repealed laws” means the Ordinances and Regulations referred to in subsection (1) of section 4 of this Act;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“unacceptable *Legionella* levels” means *Legionella* bacteria at a concentration that is, or is likely to be, a source of Legionnaires’ disease;

“unit” has the same meaning as in the *Unit Titles Act 1970*;

“warm water system” means a water system within the meaning of the applicable standard in which the temperature of the water at the point of outlet is not lower than 30°C and not higher than 55°C.

(2) A reference in this Act to a builder’s licence includes a reference to a Builder’s Licence or a Builder’s Special Licence continued in force under this Act.

(3) In this Act, a reference, in relation to building work in connexion with the erection or alteration of a building, to a building permit includes a reference to a permit continued in force under this Act authorizing that building work.

(4) In this Act, unless the contrary intention appears—

(a) a reference to the erection of a building includes, as the case requires, a reference to the removal of a building and its re-erection, with or without alteration, after its removal from another location;

(b) a reference to the alteration of a building includes a reference to—

(i) the demolition of part of a building; and

(ii) an addition to a building;

- (c) a reference to the removal of a building is a reference to the removal of an existing building from one place for re-erection, with or without further alteration, at another place, and includes a reference to the demolition of part of a building so removed or proposed to be so removed; and
  - (d) a reference to the demolition of a building does not include a reference to the demolition of part of the building.
- (5) A reference in this Act to the handling of asbestos shall be read as including a reference to—
- (a) the preparation and processing of asbestos;
  - (b) the mixing of asbestos with another substance;
  - (c) the installation, repair, modification or removal of—
    - (i) thermal or acoustic insulation;
    - (ii) fireproofing material; or
    - (iii) building material;that is asbestos;
  - (d) treating or securing loose asbestos to prevent it from moving; and
  - (e) sealing a cavity in a building, or another part of a building, that contains loose asbestos to prevent movement of the loose asbestos from that cavity or part of the building.
- (6) In this Act—
- (a) “air-handling system”, “condenser” and “cooling tower” have the same respective meanings as in the applicable standard; and
  - (b) “Medical Officer of Health” has the same meaning as in the *Public Health Act 1928*.

### **Application**

**6.<sup>2</sup> (1)** This Act does not affect the operation of any other law in force in the Territory relating to the design or siting of a building or to the provision for a building of services including works for sewerage and drainage or for water or electricity supply.

**(2)** This Act does not apply to or in relation to a temporary building (not being a dwelling place) erected on the site of building work in connexion with

the erection or alteration of a building for which a building permit has been obtained and being a building that is to be removed on completion of the building work.

- (5) This Act does not apply to or in relation to a structure that is—
- (a) a shed not exceeding 2.100 metres in height and 5 square metres in area;
  - (b) an outdoor ornamental pond of a depth not exceeding 500 millimetres;
  - (c) an antenna or aerial not exceeding 5 metres in height; or
  - (d) a swimming pool the capacity of which does not exceed 10 cubic metres and designed to be assembled above ground level.

(6) The provisions of this Act are in addition to, and do not derogate from, the provisions of the *Scaffolding and Lifts Act 1957-1968*.

#### **Application—prescribed buildings**

**6AA.**<sup>2</sup> \* \* \* \* \*

#### **Binding the Crown**

**6A.** The following provisions bind the Crown:

- (a) in so far as the sections apply in relation to substances containing *Legionella* bacteria—sections 9 and 9A;
- (b) sections 9B and 9C and subsection 29 (2);
- (c) Part IIIA;
- (d) in so far as the section applies in relation to warm water systems, mechanical ventilation systems and substances containing *Legionella* bacteria—section 46;
- (e) Division 2 of Part IVA.

## **PART II—ADMINISTRATION**

### ***Division 1—Building Controller and Inspectors***

#### **Appointment of Building Controller**

**7. (1)** The Minister may, by instrument in writing, appoint a person to be the Building Controller for the purposes of this Act.

**(2)** The Building Controller shall, in addition to the powers and functions expressly conferred on him by this Act, take such steps as are necessary for securing the enforcement of this Act with respect to the erection, alteration,

demolition or occupation of buildings, the carrying out of repairs of a structural nature to buildings.

(3) The Building Controller has all the powers and may perform all the functions of a building inspector under this Act, and the provisions of this Act relating to a building inspector apply to the Building Controller accordingly.

(4) The Minister may, by instrument in writing, appoint such persons as he considers necessary to be Deputy Building Controllers for the purposes of this Act.

(5) A Deputy Building Controller has such of the powers and may exercise such functions of the Building Controller as the Minister specifies in the instrument of appointment.

(6) The Minister shall issue to the Building Controller or a Deputy Building Controller a certificate under his hand certifying that he is the Building Controller or a Deputy Building Controller under this Act.

#### **Appointment of building inspectors**

8. (1) The Building Controller may, by instrument in writing, appoint such persons as he considers necessary to be building inspectors for the purposes of this Act.

(2) The Building Controller shall cause to be issued to each building inspector an identity card that specifies the name and appointment of the building inspector and bears a recent photograph of the building inspector.

(3) A person appointed to be a building inspector shall, upon ceasing to be a building inspector, return his or her identity card to the Building Controller.

(4) A person who, without reasonable excuse, fails to comply with subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.

#### **Inspection**

9. (1) A building inspector may inspect building work, being building work in respect of which a building permit has been issued, from time to time during its execution for the purpose of ascertaining whether the building work is being or has been carried out in accordance with the approved plans and with the conditions to which the permit is, by this Act, subject.

(2) Where the Building Controller has reasonable grounds for suspecting that—

- (a) building work is being or has been carried out and a building permit has not been obtained in respect of that building work or the work is not being or has not been carried out in accordance with a building permit or a notice under Part IV;
- (b) a completed building has deteriorated to such an extent—
  - (i) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Act or under the repealed laws—as to be unfit for use as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building; or
  - (ii) in any other case—as to be unfit for any type of use;
- (c) a building or part of a building is no longer structurally sound;
- (d) by reason of the use to which the building has been or is being put, the maximum safe live load has been or is being exceeded or the load on the building has been or is in excess of the load that the building was designed to carry;
- (e) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Act or under the repealed laws—the building is being used other than as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building; or
- (f) a building or part of a building is unsafe by reason of fire hazard or unfit for use by reason of a danger to health,

the Building Controller may, by instrument in writing, authorize a building inspector to carry out an inspection of the building work or the building at any reasonable time.

**(3)** For the purposes of an inspection under this section, the Building Controller may—

- (a) authorize the making of tests of the soil or the building materials used or to be used in the building work or building; and



- (b) order the opening or cutting into or pulling down of any building work.

(4) If, on inspection, it is found that there are grounds for the giving of a stop notice, the builder shall bear the costs of any pulling down, opening or cutting into the building work carried out in the course of the inspection but, if, on inspection it is found that there are no such grounds, those costs shall be borne by the Territory.

(5) Where the requirements of a notice under Part IV have not been complied with in accordance with that notice, the Minister may, by instrument in writing, authorize a building inspector, with such assistance as the building inspector considers necessary, to enter upon the land on which the building work referred to in the notice has been, is being or should have been carried out and to carry out the requirements.

(5A) Where, either before or after the commencement of this Act, the building work in relation to a building that was required to be carried out by a notice issued in pursuance of section 8 of the *Building Ordinance 1964-1970* has not been carried out, the Minister may, by instrument in writing, authorize a building inspector, with such assistance as the building inspector considers necessary, to enter upon the land on which that building is erected and to carry out that building work.

(6) For the purposes of this section, a building inspector may enter upon any land or premises on which a building has been erected or building work is being or has been carried out.

(7) A building inspector who enters upon land or premises in pursuance of this section is not authorized to remain on the land or premises if, on request by the occupier of the land or premises, he does not produce a certificate in writing signed by the Building Controller that he is authorized so to enter.

(8) A person who, without reasonable excuse, obstructs a building inspector acting in pursuance of this section is guilty of an offence punishable, on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months, or both; or
- (b) if the offender is a body corporate—by a fine not exceeding \$25,000.

### **Inspection of premises for hazardous substances**

**9A. (1)** The Building Controller may, by instrument, authorise a building inspector to inspect a building to determine whether it contains a hazardous substance.

**(2)** Subject to this section, a building inspector who is authorised to inspect a building under subsection (1) may, at any reasonable time of the day—

- (a) enter upon the land on which the building is situated; and
- (b) inspect the building;

and may, for the purpose of performing the inspection—

- (c) open any cavity in the building, or any other part of the building, to determine whether it contains a hazardous substance;
- (d) examine or perform tests on any substance that the building inspector finds in or about the building and that he or she suspects, on reasonable grounds, may be a hazardous substance;
- (e) remove from the building, for testing, samples of any substance that the building inspector finds in or about the building and that he or she suspects, on reasonable grounds, may be a hazardous substance; or
- (f) for the purpose of an inspection in connection with a substance containing *Legionella* bacteria—
  - (i) examine, take copies of or remove for the purpose of copying records (if any) relating to the maintenance and cleaning that has been carried out in respect of the specialised systems installed in the building; or
  - (ii) require the owner of the building to provide such information in relation to the systems as the building inspector thinks necessary and reasonable.

**(3)** A building inspector shall not inspect a building to determine whether it contains loose asbestos unless—

- (a) the Building Controller has caused the occupier of the building to be given a notice in writing not less than 7 days before the day on which the inspection is to take place that states—
  - (i) the purpose of the inspection;
  - (ii) the period within which the inspection is to take place;

- (iii) the procedure that will be adopted for advising the occupier of the results of the inspection; and
  - (iv) that the building inspector who is to perform the inspection will be carrying an identity card which bears a photograph of the building inspector; and
- (b) on attending at the building to make the inspection, the building inspector endeavours to ascertain whether the occupier is present at the building and, if the building inspector finds that the occupier is present, he or she endeavours to—
- (i) advise the occupier that he or she proposes to inspect the building;
  - (ii) advise the occupier of the purpose of the inspection; and
  - (iii) show the occupier his or her identity card.

**(3A)** A building inspector shall not inspect a building under this section unless the building inspector carries an identity card which bears a photograph of the building inspector.

**(4)** A notice under paragraph (3) (a) may be given to the occupier of a building by—

- (a) leaving it at the building to be inspected; or
- (b) sending it by post addressed to the occupier at the address of the building to be inspected.

**(5)** Where a building inspector requires access to the interior of a building for the purpose of performing an inspection under this section (not being access that may be gained to a roof cavity of the building by lifting or moving roofing material) the building inspector shall make reasonable endeavours to contact the occupier of the building and make arrangements convenient to the occupier and the building inspector for the occupier to give the building inspector the access he or she requires.

**(6)** Where a building inspector has contacted the occupier of a building pursuant to subsection (5) and made arrangements of the kind referred to in that subsection, the building inspector may enter the building in accordance with those arrangements for the purpose of performing an inspection under this section.

**(7)** Where—

- (a) a building inspector has, pursuant to subsection (5), made reasonable endeavours to contact the occupier of a building to make arrangements of the kind referred to in that subsection but has been unable to—
  - (i) contact the occupier; or
  - (ii) make arrangements of that kind; or
- (b) a building inspector has, pursuant to subsection (5) made arrangements of the kind referred to in that subsection with the occupier of a building but the occupier has refused or failed to give the building inspector access to the interior of the building in accordance with those arrangements;

the Building Controller may, by instrument, authorise the building inspector to gain the access he or she requires to the interior of the building to perform an inspection under this section.

**(8)** A building inspector who is authorised to enter a building under subsection (7) may enter the building at any reasonable time of the day with such assistance and with such force as is necessary and reasonable for the purpose of performing an inspection under this section.

**(9)** A building inspector who gains access to a roof cavity or other part of a building by lifting or moving roofing or other material shall, as soon as practicable after the completion of his or her inspection, restore the building to the condition in which it was immediately prior to the inspection.

**(10)** A building inspector who gains access to the interior of a building in accordance with arrangements made pursuant to subsection (5) shall—

- (a) cause as little damage as is practicable to the building in the exercise of his or her powers under this section;
- (b) behave courteously to any person he or she encounters in the building;
- (c) respect the rights of privacy of any person using the building; and
- (d) where the building inspector has, in his or her arrangements with the occupier of the building under subsection (5), undertaken to close the building at the completion of the inspection—close the building securely in accordance with those arrangements.

**(11)** A building inspector who enters a building by force under subsection (8) shall—

- (a) cause as little damage as is practicable to the building in entering it and in exercising his or her other powers under this section;
- (b) behave courteously to any person he or she encounters in the building;
- (c) respect the rights of privacy of any person using the building; and
- (d) close the building securely on leaving it at the end of the inspection.

**(12)** Where a building inspector, in the exercise of his or her powers under this section in relation to a building, causes damage to the building, or the land on which it is situated, the building inspector shall, before departing from the building at the completion of the inspection, leave at the building a report addressed to the occupier of the building giving particulars of the damage so caused.

**(13)** A building inspector who inspects a building under this section shall, before departing from the building at the completion of the inspection, leave at the building a report addressed to the occupier of the building that—

- (a) states that the building inspector has not found any substance in or about the building which he or she believes may be loose asbestos or a substance containing *Legionella* bacteria (as the case may be); or
- (b) states that the building inspector has found a substance in or about the building which he or she believes may be loose asbestos or a substance containing *Legionella* bacteria (as the case may be), that he or she has taken samples of the substance for testing and that the occupier will be promptly advised of the results of the tests when those results become available.

**(14)** Where a building inspector removes a sample of a substance from a building for testing under paragraph (2) (e)—

- (a) the building inspector shall promptly arrange for the sample to be tested to determine whether it is a hazardous substance; and
- (b) the Building Controller shall arrange for a written report of the results of the tests to be promptly provided to the occupier of the building when the results become available.

**(15)** A report under paragraph (14) (b) may be provided to the occupier of a building by—

- (a) leaving it at the building to which it relates; or

- (b) sending it as a letter by post addressed to the occupier at the address of the building to which it relates.

(16) A building inspector who enters premises to perform an inspection under this section is not authorised to remain on the premises if, on request by the occupier of the premises or a person apparently in charge of the premises, he or she does not show his or her identity card.

(17) A person who, without reasonable excuse, obstructs or hinders a building inspector acting pursuant to this section is guilty of an offence punishable, on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months, or both; or
- (b) if the offender is a body corporate—by a fine not exceeding \$25,000.

#### **Inspection for *Legionella* bacteria with consent of occupier**

**9B. (1)** A building inspector may, with the consent of the occupier of a building—

- (a) inspect the building to determine whether it contains unacceptable *Legionella* levels; and
- (b) for the purposes of the inspection, exercise any power under section 9A.

(2) Before seeking the consent of the occupier, the inspector shall inform the occupier that consent may be refused.

(3) If an inspector obtains the occupier's consent, the inspector shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has been informed that consent may be refused;
- (b) that the occupier has given the inspector that consent; and
- (c) of the day on which, and the time at which, the consent was given.

(4) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of subsection (1) and an acknowledgment, in accordance with subsection (3), signed by the occupier is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

(5) A building inspector shall not inspect a building under this section unless the building inspector carries an identity card which bears a photograph of the building inspector.

(6) A building inspector who enters premises to perform an inspection under this section is not authorised to remain on the premises if, on request by the occupier of the premises or a person apparently in charge of the premises, the building inspector does not show his or her identity card.

### **Inspection during outbreak of Legionnaires' disease**

**9C. (1)** Where the Building Controller—

- (a) is notified in writing by the Medical Officer of Health that an outbreak of Legionnaires' disease has, or is suspected to have, occurred; and
- (b) believes, on reasonable grounds, that a source of the outbreak or suspected outbreak is in a particular building;

the Building Controller shall, by instrument, authorise a building inspector to inspect the building to determine whether it contains unacceptable *Legionella* levels.

(2) The building inspector shall, at any time of the day—

- (a) enter on the land on which the building is situated;
- (b) inspect the building; and
- (c) remove from the building, for testing, samples of any substance that the inspector finds in or about the building and suspects, on reasonable grounds, may be a substance containing *Legionella* bacteria.

(3) A building inspector shall not inspect a building under this section unless the building inspector carries an identity card which bears a photograph of the building inspector.

(4) A building inspector who enters premises to perform an inspection under this section is not authorised to remain on the premises if, on request by the occupier of the premises or a person apparently in charge of the premises, the building inspector does not show his or her identity card.

(5) For the purposes of paragraphs (2) (b) and (c), the building inspector may open any part of the building.

(6) The building inspector shall enter the building as soon as it is practicable to do so after receiving authorisation with such assistance and with

such force as is necessary and reasonable for the purpose of performing the inspection.

(7) A building inspector who enters a building shall—

- (a) cause as little damage as practicable to the building in entering it and in exercising his or her other powers under this section;
- (b) respect the privacy of any person using the building; and
- (c) where the inspector enters a building that immediately prior to his or her entry was closed—close the building securely on leaving it on completion of the inspection.

(8) Where a building inspector, in the exercise of his or her powers under this section, causes damage to a building, the building inspector shall give to the owner of the building a report setting out particulars of the damage.

(9) Where a building inspector removes a sample of a substance from a building for testing under paragraph (2) (c)—

- (a) the building inspector shall promptly arrange for the sample to be tested to determine whether it contains *Legionella* bacteria; and
- (b) the Building Controller shall arrange for a written report of the results of the tests to be promptly provided to the occupier of the building when the results become available.

(10) A person who, without reasonable excuse, obstructs or hinders a building inspector acting pursuant to this section is guilty of an offence punishable, on conviction—

- (a) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months, or both; or
- (b) if the offender is a body corporate—by a fine not exceeding \$25,000.

### *Division 2—Conduct of inquiries*

#### **Procedure**

**10. (1)** The procedure at an inquiry under this Act is within the discretion of the Building Controller.

**(2)** The Building Controller may adjourn an inquiry from time to time.



### **Evidence**

**11. (1)** At an inquiry the Building Controller may take evidence on oath or affirmation and for that purpose may administer an oath or affirmation.

**(2)** In conducting an inquiry, the Building Controller is not bound by rules of evidence but may inform himself or herself in such manner as he or she thinks fit.

### **Legal representation**

**12. (1)** At an inquiry a person may be represented by a barrister and solicitor who may examine witnesses and address the Building Controller on behalf of the person for whom he or she appears.

**(2)** Where an inquiry is to be held under this Act, the Building Controller may appoint a barrister and solicitor to examine witnesses and advise the Building Controller on any matter relating to the inquiry.

### ***Division 3—Builder’s Licences***

#### **Classes of builder’s licences**

**14. (1)** For the purposes of this Act, there shall be four classes of builder’s licences, namely—

- (a) Builder’s Licences Class A;
- (b) Builder’s Licences Class B;
- (b) Builder’s Licences Class C; and
- (d) Builder’s Licences Class D.

**(2)** Subject to this section, a Builder’s Licence Class A authorizes the person to whom it is granted to carry out any kind of building work other than specialist building work.

**(3)** Subject to this section, a Builder’s Licence Class B authorizes the person to whom it is granted to carry out any building work other than—

- (a) building work in connexion with a building comprising more than three storeys;
- (b) building work in connexion with a building comprising more than one storey if the building is a building that depends or will depend for its support above the first storey on a structural steel frame-work or a reinforced concrete frame-work; or

(c) specialist building work.

**(4)** Subject to this section, a Builder's Licence Class C authorizes the person to whom it is granted to carry out any building work in connexion with a building that comprises only one storey, other than—

(a) building work that involves the use of—

- (i) structural beams the maximum of any of the spans of which exceeds 6 metres;
- (ii) reinforced concrete beams; or
- (iii) suspended reinforced concrete in slabs the maximum of any of the spans of which exceeds 5 metres; or

(b) specialist building work.

**(5)** A Builder's Licence Class D authorizes the person to whom it is granted to carry out such specialist building work as is specified by the Building Controller by endorsement on the licence.

**(6)** Subject to this section, a Builder's Licence Class B, a Builder's Licence Class C or a Builder's Licence Class D also authorizes the person to whom it is granted to carry out any building work that does not affect an integral part of the structure of a building.

**(6A)** The Building Controller may, by endorsement on the relevant licence, authorize the holder of a Builder's Licence Class A, a Builder's Licence Class B or a Builder's Licence Class C to carry out such specialist building work as is specified in the endorsement.

**(6B)** The Building Controller may grant a builder's licence subject to such conditions or restrictions as he thinks fit in relation to—

- (a) the kinds of building work that may be carried out;
- (b) standards to be observed and procedures to be followed in carrying out building work;
- (c) the number of building permits that may be granted or held; and
- (d) the value of building work that may be undertaken,

under the licence, and the Building Controller shall, when he issues the licence, endorse those conditions or restrictions (if any) on the licence.

**(7)** A licensee shall not carry out building work—

- (a) knowing that he or she is not the holder of a builder's licence that authorises him or her to carry out that building work; or
- (b) with reckless indifference to whether the building work is building work that the licensee is authorised to carry out by the builder's licence held by the licensee.

Penalty:

- (a) in the case of a natural person—\$2,000; or
- (b) in the case of a body corporate—\$10,000.

**(7A)** A licensee shall not carry out building work that involves the handling of asbestos—

- (a) knowing that he or she is not the holder of a builder's licence that authorises him or her to carry out that building work; or
- (b) with reckless indifference to whether the building work is building work that the licensee is authorised to carry out by the builder's licence held by the licensee.

Penalty:

- (a) in the case of a natural person—\$5,000; or
- (b) in the case of a body corporate—\$25,000.

**(8)** For the purposes of this section, an attic storey and a basement shall each be regarded as a storey.

### **Applications for builder's licence**

**15. (1)** Subject to this section, a person may apply to the Building Controller, in writing, for the grant of a builder's licence included in one of the four classes of licences specified in the last preceding section.

**(1AA)** An applicant for a builder's licence—

- (a) in the case of a Builder's Licence Class D—shall; or
- (b) in the case of any other builder's licence—may,

in his application for the licence, specify specialist building work for authorization by endorsement on the licence under subsection 14 (5) or (6A), as the case requires.

**(1A)** An application for a builder's licence lodged by a company shall be accompanied by a certificate in writing signed by a director of the company

certifying that the information contained in the application is, to the best of his knowledge and belief, true.

(2) In the case of an application for a builder's licence by a company, the Building Controller shall refuse the application unless the company has, in its application, nominated as the person who is to be responsible for the adequate direction and supervision of building work to be undertaken by the company, a director or an employee of the company who is the holder of a licence included in the class of licences to which the application relates.

(3) In the case of an application by two or more persons carrying on business in partnership, the Building Controller shall refuse the application unless the applicants have, in the application, nominated as the person to be responsible for the adequate direction and supervision of building work to be undertaken by the partnership one of the partners who is the holder of a licence included in the class of licences to which the application relates.

(4) An application for a builder's licence shall be accompanied by the determined fee.

#### **Eligibility for builder's licences**

**16. (1)** Subject to subsection (11), a person other than a company is not eligible for the grant of a Builder's Licence Class D unless—

- (a) he has such qualifications and skills in respect of the specialist building work specified in his application for the licence as are adequate to enable him to carry out that work in accordance with the prescribed standards; and
- (b) he has satisfactorily carried out on his own account or under supervision, for periods that total not less than 3 years, specialist building work of the kind specified in his application for the licence.

**(2)** A person other than a company is not eligible for the grant of a Builder's Licence Class C unless—

- (a) he is a person who holds a Journeyman's Certificate issued by the Apprenticeship Board constituted by the *Apprenticeship Act 1936-1966* certifying that he has completed the prescribed term as an apprentice in the carpentry and joinery trade or in the bricklaying trade, that he has successfully completed the prescribed technical course for that trade and that he has attained the standards of practical and theoretical training for that trade;

- (b) he is a person who holds a certificate issued by the appropriate body in a place outside the Territory that certifies that he has completed the term required to be completed as an apprentice in such a trade, that he has successfully completed the technical course for such a trade, and that he has attained the standards of practical and theoretical training for such a trade, as required by the law in force in that place; or
- (c) he is a person who has skills and has had experience that make him as capable of carrying out building work as a person who has the certificate referred to in paragraph (a) of this subsection.

**(3)** A person other than a company is not eligible for the grant of a Builder's Licence Class B unless—

- (a) he is a person who holds a certificate issued by the Department of Technical Education of the State of New South Wales certifying that he has completed a Building Foreman and Clerk of Works course conducted by that Department;
- (b) he is a person who—
  - (i) has completed, in a place outside the Territory, a trade course in accordance with the requirements for the successful completion of that course, being a course the standard of which is equivalent to the standard of the course referred to in the last preceding paragraphs; and
  - (ii) holds a certificate issued by the authority by which the course is or was conducted that he has so completed that course; or
- (c) he is a person who has qualifications and skills that make him as capable of carrying out building work as a person who has the certificate referred to in paragraph (a) of this subsection and he has satisfactorily carried out under supervision or on his own account for periods that total not less than three years building work other than building work of the kind that the holder of a Builder's Licence Class D is authorized to carry out.

**(4)** A person other than a company is not eligible for the grant of a Builder's Licence Class A unless—

- (a) he is a person to whom a degree or diploma in architecture, civil engineering, structural engineering or building has been granted by an approved institution;

- (b) he is a person to whom a degree or diploma of a university or other institution outside Australia has been granted in a course the standard of which is equivalent to the standard required for a degree or diploma referred to in the last preceding paragraph; or
- (c) he is a person who has qualifications and skills that make him as capable of carrying out building work as a person who has a degree or diploma referred to in paragraph (a) of this subsection and has satisfactorily carried out on his own account or under supervision for periods that total not less than three years building work other than building work of the kind that the holder of a Builder's Licence Class C or a Builder's Licence Class D is authorized to carry out.

(5) For the purposes of paragraph (a) of the last preceding subsection, "approved institution" means—

- (a) a university in Australia;
- (b) the Canberra College of Advanced Education; or
- (c) an institution that is a college of advanced education within the meaning of the *States Grants (Advanced Education) Act 1969* of the Commonwealth.

(6) A company is not, or two or more persons carrying on business in partnership are not, eligible for the grant of a builder's licence included in the class of licences to which the application relates unless the person nominated in the application for the licence as the director or employee of the company or the partner, as the case requires, who is to be responsible for the adequate direction and supervision of building work to be undertaken by the company or partnership is the holder of such a licence.

(7) Where a person other than a company is otherwise eligible under this section for the grant of a builder's licence, or 2 or more persons carrying on business in partnership are so eligible, the licence shall not be granted unless that person, or each of those persons, as the case requires, is a fit and proper person to hold the relevant licence.

(8) Where a company is otherwise eligible under this section for the grant of a builder's licence, the licence shall not be granted unless each director of the company is a fit and proper person to hold the relevant licence.

(9) The Building Controller may require a person who is an applicant for the grant of a builder's licence to furnish him with—

- (a) information in writing; and

- (b) documents,

relating to the eligibility of that person for the grant of a licence.

**(10)** Where a person who is an applicant for a builder's licence is not otherwise eligible for the grant of the relevant licence under this section, the Building Controller may require the applicant to undertake an examination for the purpose of determining his ability to perform building work of the kind specified in his application.

**(11)** An applicant who satisfies the Building Controller at an examination pursuant to subsection (10) shall be taken to be eligible for the grant of a builder's licence in respect of building work of the kind specified in his application.

### **Grant of licence**

**17. (1)** The Building Controller shall consider each application for a builder's licence and—

- (a) shall approve of the grant to the applicant of the builder's licence of the kind applied for; or
- (b) subject to this section—
  - (i) may refuse to grant a builder's licence to the applicant; or
  - (ii) may refuse to grant to the applicant a builder's licence of the kind applied for and may approve of the grant to the applicant of a builder's licence for the grant of which the applicant is eligible.

**(2)** The Building Controller shall only exercise the powers referred to in paragraph (b) of the last preceding subsection if—

- (a) he has reason to believe that the applicant is not eligible for the grant of a builder's licence of any kind or of the kind applied for, as the case may be;
- (b) he has, within 30 days after the receipt of the application, given to the applicant notice in writing specifying the grounds upon which he bases his belief that the applicant is not eligible for the grant of the builder's licence for which he has applied; and
- (c) the applicant fails, within the period specified in that notice, to establish that he or it is eligible for the grant of the builder's licence for which he has applied.

(2A) The Building Controller may in writing request an applicant for a builder's licence to supply further particulars in relation to his or her application.

(2B) Where the Building Controller requests further particulars, the period referred to in paragraph (2) (b) ceases to run on the day on which the notice is—

- (a) delivered to the applicant personally; or
- (b) posted (under pre-paid postage) as a letter addressed to the applicant at his or her last known place of residence or business;

and resumes on the day on which those particulars are received by the Building Controller.

(3) Where the Building Controller grants a builder's licence to an applicant referred to in subsection 16 (11), the licence may be granted subject to such conditions or restrictions as, having regard to the results of the examination undertaken pursuant to subsection 16 (10), the Building Controller thinks fit.

(6) Where the Building Controller has approved of the grant of a licence, the Building Controller shall, on payment of the fee determined by the Minister under section 65 for licences included in the class of licences in which that licence is included, issue the licence to the person to whom it is to be granted.

(7) A builder's licence is, unless sooner cancelled, in force for a period not exceeding 3 years specified in the licence and commencing on the day on which the licence is granted.

### **Variation, suspension or cancellation of licences**

**18. (1)** The Building Controller may cause notice in writing to be served on the holder of a licence requiring the holder to show cause why a licence should not be varied, suspended or cancelled on any of the following grounds:

- (a) that the licence has been granted in error or in consequence of a false statement or misleading information furnished by the holder of the licence;
- (b) that the holder carried out building work that did not comply with the standards or methods set out in the Building Code or as approved, or approved and specified, as the case may be, by the Building Controller and that further building work has not been carried out in accordance with directions given under this Act;
- (c) that—



- (i) the holder has; or
  - (ii) a person working under the direction and supervision of the holder has, to the knowledge of the holder,  
attempted to deceive the Building Controller or a building inspector with respect to building work that has been or is being carried out;
- (d) that—
- (i) the holder has; or
  - (ii) a person working under the direction and supervision of the holder has, to the knowledge of the holder,  
contravened a provision of, or requirement made pursuant to, this Act;
- (e) that the holder or, in the case of a licence issued to a company, a director of the company is no longer a fit and proper person to hold the relevant licence;
- (f) that, in the case of a licence granted to a company or partnership, the company or partnership has not had, for a period exceeding 21 days, a director or employee, or a partner, as the case requires, who holds a builder's licence included in the same class as that held by the company or partnership;
- (g) that, in the case of a licence granted to a company or partnership, the company or partnership has not, within 7 days after a person nominated by it has ceased to be responsible for the adequate direction and supervision of building work undertaken by it, notified the Building Controller of that fact;
- (h) that the holder or, in the case of a licence granted to a company or partnership, the person nominated as responsible for the adequate direction and supervision of building work undertaken by the company or partnership—
- (i) has failed to exercise due skill, care and diligence in the carrying out of building work undertaken by the holder; or
  - (ii) has failed to exercise adequate direction and supervision of that work.
- (2) A notice under subsection (1) shall—

- (a) contain full particulars of the facts or circumstances on which the Building Controller has formed his or her opinion that the ground or grounds specified in the notice exists or exist; and
- (b) specify a time not less than 14 days or more than 28 days after the date of the service of the notice within which the holder may show cause to the Building Controller why his or her licence should not be varied, suspended or cancelled.

(3) The holder of a licence may apply, by giving notice of an intention to show cause or otherwise, for an extension of the period within which he or she is required to show cause.

(4) An application may be made under subsection (3) notwithstanding that the period the extension of which is sought has expired.

(5) Upon receiving an application under subsection (3), the Building Controller may extend the period of time by not more than 28 days.

(6) The Building Controller may cause a copy of a notice under subsection (1) to be served on any owner of land in relation to which a building permit has been issued to the holder of the licence.

(7) Any owner of land in relation to which a building permit has been issued to the holder of the licence may make representations to the Building Controller concerning the proposed variation, suspension or cancellation—

- (a) if a copy of a notice under subsection (1) has been served on that owner—within the period of time specified in that notice or any extension of that period granted to the holder; or
- (b) in any other case—before the time fixed in accordance with paragraph (8) (a) for an inquiry.

(8) After the expiry of the period of time specified in a notice under subsection (1) or any extension of that period, the Building Controller may—

- (a) fix a time and place for an inquiry into the proposed variation, suspension or cancellation and shall give notice in writing of the time and place of that inquiry to the holder and any owner who has made representations in relation to that variation, suspension or cancellation;
- (b) remove any suspension imposed under section 18A and make a decision not to suspend, vary or cancel the licence; or

- (c) where no cause to the contrary has been shown and no representations have been made, vary, suspend or cancel the licence, as originally proposed in the notice.

(9) After holding an inquiry at the time and place fixed for that inquiry in accordance with paragraph (8) (a), the Building Controller may vary, suspend or cancel the licence if he or she finds that a ground specified in subsection (1) exists.

(10) Where the Building Controller varies a licence, he or she may, among other things, change the class to which the licence belongs and impose conditions or restrictions on the licence for such time and on such terms as he or she considers reasonable in the circumstances.

(11) A builder's licence shall not be in force during a period for which it is suspended under this section or section 18A.

#### **Preliminary suspension of builder's licence**

**18A. (1)** Where the Building Controller considers it necessary to do so, having regard to the circumstances leading to the service of a notice under subsection 18 (1) and the ground or grounds specified in the notice, he or she may suspend the licence in relation to which the notice has been served, before the holder shows cause to the contrary or representations are received from an owner referred to in subsection 18 (7).

(2) Where the Building Controller has suspended a licence under subsection (1), he or she shall deal with the matter as soon as practicable in accordance with the provisions of section 18.

(3) For the purposes of subsection (2), paragraph 18 (2) (b) shall be read as referring to a period of not less than 7 days and not more than 14 days.

#### **Notification of decision to suspend or cancel**

**19. (1)** The Building Controller shall notify the prescribed particulars of a decision to vary, suspend or cancel a builder's licence in a daily newspaper printed, published and circulated in the Territory.

(2) For the purposes of subsection (1), the prescribed particulars are—

- (a) the name of the holder of the licence that is varied, suspended or cancelled;
- (b) any other name under which the holder was or is carrying on business;

- (c) the address or addresses at which the holder was or is carrying on business;
  - (d) the nature of the decision;
  - (e) the date on which the variation, suspension or cancellation took effect; and
  - (f) the ground or grounds referred to in subsection 18 (1) that was or were found to exist.
- (3) A notice shall not be published under subsection (1) unless—
- (a) the period of time or any extension of the period of time within which an application for review of the decision to vary, suspend or cancel the licence may be made has expired; or
  - (b) where an application for review of the decision has been made and the decision has been affirmed or varied—
    - (i) the period of time within which an appeal may be instituted from that decision, or from any decision following such an appeal, has expired; or
    - (ii) an appeal from such a decision has been instituted but has been withdrawn or dismissed.

### **Register of Builder's Licences**

**20. (1)** There shall be kept in the office of the Building Controller a register to be called the Register of Builder's Licences in which the Building Controller shall enter the names and addresses of persons holding builder's licences granted under this Act, in appropriate cases, the nominees of those persons and the class of licences in which the licence issued to each of those persons is included.

**(2)** The Building Controller shall record in the Register of Builder's Licences—

- (a) any decision to vary, suspend or cancel a licence when that decision becomes final; and
- (b) any failure on the part of a holder to show cause within the time specified by the Building Controller under subsection 18 (1) or any extension of that time granted under subsection 18 (5), as to why his or her licence should not be varied, suspended or cancelled.

(2A) A decision becomes final for the purposes of subsection (2) if the requirements of paragraph 19 (3) (a) or (b) have been satisfied in relation to that decision.

(3) A person may, on payment of the determined fee, inspect the Register of Builder's Licences at the office of the Building Controller during the hours during which that office is open for business.

#### **Loss etc. of licence**

21. If the Building Controller is satisfied that a builder's licence granted to a person under this Act has been lost, defaced or destroyed, he may issue to that person a certified copy of the builder's licence and that copy shall be deemed to have, for the purposes of this Act, the same effect as the builder's licence.

#### **Change of nominee**

22. (1) A company that is the holder of a builder's licence may, by notice in writing lodged with the Building Controller, nominate a director or an employee of the company who is the holder of a builder's licence included in the class of builder's licences in which the company's licence is included as the person responsible, in the place of a person previously nominated, for the adequate direction and supervision of building work undertaken by the company.

(1A) Two or more persons who carry on business in partnership and are the holders of a builder's licence may, by notice in writing lodged with the Building Controller, nominate a partner who is the holder of a builder's licence included in the class of builder's licences in which the licence held by those persons is included as the person responsible, in the place of a person previously nominated, for the adequate direction and supervision of building work undertaken by those persons in partnership.

(2) The Building Controller shall, as soon as practicable after receipt of the notice, enter particulars of the change in the Register of Builder's Licences.

#### **Notice of change of address**

23. (1) Where the address of the holder of a builder's licence is changed, the holder shall, within seven days after the change, furnish to the Building Controller notice in writing of the change.

(2) The Building Controller shall, as soon as practicable after the receipt of the notice, enter the particulars of the change of address in the Register of Builder's Licences.

### ***Division 4—The Building Code***

**Building Code**

**24.<sup>2</sup> (1)** The Minister shall cause a code, to be called the Building Code, to be prepared and published for the purposes of this Act.

**(2)** For the purposes of subsection (1), the Minister may—

- (a)** by instrument, adopt all or part of the provisions of the Building Code of Australia prepared and published by the Australian Uniform Building Regulation Co-ordinating Council, as in force at a particular time, with such modifications (if any) as are specified in the instrument; and
- (b)** cause to be prepared and published an Australian Capital Territory Appendix to the Building Code of Australia.

**(3)** The Building Code prepared in accordance with this section, and each instrument under paragraph (2) (a), is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**(4)** The Building Code, or any amendment, takes effect on the day on which notice of it is published in the *Gazette* pursuant to section 25.

**Publication**

**25.** The Minister shall publish in—

- (a)** the *Gazette*; and
- (b)** a daily newspaper published and circulating in the Territory;

notice of the preparation of the Building Code and each amendment to it.

**Inspection**

**26. (1)** The Building Controller shall keep a copy of the Building Code at his or her office at all times.

**(2)** A person may, upon request, at any time at which the Building Controller's office is open for business, inspect the Building Code kept by the Building Controller.

**Exemptions**

**27. (1)** The Minister may, by instrument, exempt, either generally or in a particular case, a government agency, or a government agency included in a class of government agencies, from the application of all or any of the provisions of the Building Code.

(2) An instrument under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Certified copies**

**28.** In any proceedings before a court or the Tribunal, evidence of the Building Code as in force on a specified date or during a specified period may be given by the production of an office copy of the Building Code certified by the Building Controller as a true copy as at that date or during that period.

## **PART III—PLANS AND BUILDING PERMITS**

### **Compliance with Building Code**

**29. (1)** A person shall not, without reasonable excuse, carry out building work except in accordance with the Building Code.

Penalty:

- (a) in the case of a natural person—\$5,000;
- (b) in the case of a body corporate—\$25,000.

(2) A government agency shall not, without reasonable excuse, carry out building work except in accordance with the Building Code.

### **Carrying out building work**

**30. (1)** Building work (other than maintenance or cleaning of a specialised system) shall not be commenced or carried out unless—

- (a) a building permit for the building work has been granted by the Building Controller under this Part; or
- (b) the building work is building work to and in relation to which the repealed laws continue to apply by virtue of subsection 4 (3).

(2) Subject to this section, building work shall not be commenced or carried out except by the licensee to whom the building permit for the building work has been granted by the Building Controller under this Part or by an employee of, or by a person who carries out the work in pursuance of a contract entered into by him with, or at the request and on the instructions of, the licensee to whom the building permit has been granted.

(3) Subsection (2) does not apply to or in relation to building work in respect of which the Building Controller has, in pursuance of section 39, issued

a building permit for that building work endorsed in accordance with that section.

**(4)** Where building work is commenced or carried out in contravention of subsection (1) or (2), the owner of the parcel of land on which the building work is carried out and a person who carries out the building work are each guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$2,000; or
- (b) in the case of a body corporate—\$10,000.

**(4A)** Where building work that involves the handling of asbestos is commenced or carried out in contravention of subsection (1) or (2), the owner of the parcel of land on which the building work is carried out and a person who carries out the building work are each guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$5,000; or
- (b) in the case of a body corporate—\$25,000.

**(5)** It is a defence to a prosecution against an owner of a parcel of land for an offence against this section if the owner satisfies the Court that he believed on reasonable grounds that a building permit for the building work had been granted under this Part to the person by whom or by whose employees or contractors, the work was carried out.

**(6)** It is a defence to a prosecution against a person other than the owner of a parcel of land if the person charged satisfies the Court that—

- (a) he was employed to carry out the building work by another person; or
- (b) he had carried out the building work in pursuance of a contract entered into by him with another person or at the request and on the instructions of another person,

and that he believed, on reasonable grounds, that a building permit for the building work had been granted under this Part to that other person.

**(7)** A person who carries out building work that involves the handling of asbestos is not guilty of an offence against subsection (4A) if the person adduces evidence—

- (a) that he or she did not know that the building work involved the handling of asbestos; and



- (b) that he or she was not recklessly indifferent to whether the building work involved the handling of asbestos;

and that evidence is not rebutted by the prosecution.

### **Grant of building permits**

**31. (1)** The Building Controller shall not grant a building permit for building work unless—

- (a) he has approved the plans in respect of the building work as provided by this Part; or
- (b) plans and specifications in respect of the building work were, before the commencing date, approved under the Canberra Building Regulations.

**(2)** The Building Controller shall not approve plans in respect of building work—

- (a) where the building work relates to the external design and siting of a building—unless the Territory Planning Authority has, on the basis of those plans, given an approval under section 6 of the *Buildings (Design and Siting) Act 1964*; or
- (b) where the building work is to be carried out on land that is a Designated Area—if the work is prohibited by section 12 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth.

### **Requirements with respect to plans for the erection or alteration of a building**

**32. (1)** An application for approval under this Part of plans for the erection or alteration of a building shall be accompanied by—

- (a) not less than two copies of the plans—
  - (i) specifying the block, section, division and district (within the meaning of the *Districts Act 1966*) of the parcel of land on which the proposed building is to be erected or the building to be altered is erected;
  - (ii) incorporating a site plan showing the location, boundaries and dimensions of the parcel of land on which the proposed building is to be erected or on which the building as proposed to be altered is erected, and showing the siting of the proposed

- building or building as proposed to be altered on the parcel of land;
- (iii) specifying the class of the building, classified as provided by the Building Code according to the use to which it is intended that the building will be put when erected or altered;
  - (iv) specifying the type of construction of the building or of the building as proposed to be altered in accordance with the classification as provided by the Building Code;
  - (v) specifying the dimensions of all parts, including the foundations, of the building as proposed to be erected or of the proposed alteration;
  - (vi) showing floor plans, sections and elevations (including existing and finished ground levels) to scale and structural details of the building as proposed to be erected or of the proposed alteration;
  - (vii) where the building or part of the building as proposed to be erected or altered is designed to be used as offices (including a studio or bank), as a shop (including a hairdresser's shop, restaurant, service station, hotel bar, library or undertaker's establishment), as a warehouse (including a public garage, hangar or showroom), as a factory or as a public building (including a hospital, nursing home, theatre, church, school, club, public baths or other assembly building) or for the manufacture, repair, preparation, packing or cleaning of foodstuffs or other goods, or for a laboratory process with chemicals, explosives, inflammable materials or materials of high fire hazard—specifying the maximum live load for which the several floors of the building or proposed building, or that part of it, have been designed; and
  - (viii) specifying the materials to be used in the building as proposed to be erected or in the proposed alteration;
- (b) if required by the Building Controller—a statement showing the results of soil tests and evidence of drainage of the parcel of land on which the building is to be erected or on which the building as proposed to be altered is erected;

- (c) if required by the Building Controller—a statement showing structural calculations in respect of any reinforced concrete or structural steel proposed to be used in the building work;
- (d) a statement specifying the name of the owner of the parcel of land on which the building is to be erected or of the land on which the building proposed to be altered is erected and, if the application is not made by the owner personally or by his solicitor or architect, the consent in writing of the owner to the application being made by his agent;
- (e) a statement showing an estimate of the cost of the building work involved in the erection or alteration;
- (f) where building work is proposed to be carried out at or near a street or place that is open to or used by the public, a statement showing particulars of the safety precautions proposed to be taken during the period in which the building work is to be carried out to protect the safety of persons using that street or place; and
- (g) a statement showing a reference to the certificate of title or lease or other evidence of title of the parcel of land on which the building is to be erected or on which the building as proposed to be altered is erected.

(2) The application for approval under this Part of plans for the alteration of a building shall, in addition to the matters referred to in the last preceding subsection, be accompanied—

- (a) if required by the Building Controller—by not less than two copies of the approved plans of the existing building; and
- (b) by not less than two copies of a statement relating to the existing building showing particulars of—
  - (i) the class and type of construction of the existing building classified as provided by the Building Code according to occupancy; and
  - (ii) the materials used in the existing building.

(3) Where an application for the approval under this Part of plans in respect of building work involving the erection or alteration of a building also specifies building work involving the demolition in whole or in part of a building, the Building Controller may, if the plans do not show, in relation to the demolition, the particulars and details referred to in paragraphs 34 (1) (a),

(b) and (c), require the applicant to furnish further plans showing those particulars and details.

(4) Where the plans and other information submitted under this section are not adequate for the purpose of approval under this Part, the Building Controller may require the applicant to submit further plans or information.

### **Approval of plans to erect or alter buildings**

**33. (1)** Subject to this Part, the Building Controller shall consider the plans submitted to him for approval relating to the carrying out of building work for the erection or alteration of a building and shall—

- (a) if—
  - (i) the building as proposed to be erected or altered is structurally sufficient, safe and stable for the purpose; and
  - (ii) in the case of a building proposed to be altered—the building is not a building to which subsection (2A) applies,

approve the plans; or

- (b) in any other case—refuse to approve them or approve them subject to amendments agreed upon between him and the applicant for approval.

(2) In considering whether a building as proposed to be erected or altered will be structurally sufficient, safe and stable for the purpose, the Building Controller shall consider, in particular, whether the building will make adequate provision for the following matters:

- (a) protection against fire, having regard to the proposed provision in the building for access and egress, the sub-division of rooms, the use of fire-resistant materials, the type of heating and the type of construction proposed to be used;
- (b) health and comfort, including—
  - (i) insulation against heat, cold, dampness and noise having regard to the location, siting and class of building;
  - (ii) sanitation and disposal of refuse and waste (including smoke, gas, fumes and ash);
  - (iii) sewerage and drainage;
  - (iiia) warm water systems;

- (iv) light (artificial and natural) and ventilation (including mechanical ventilation); and
  - (v) room dimensions (including ceiling heights); and
- (c) services, installations and ancillary equipment.

**(2A)** In considering plans for the alteration of a building, the Building Controller may declare that the building is a building to which this subsection applies if—

- (a) the building does not make adequate provision for the safety of persons accommodated in, or resorting to, the building;
- (b) the building does not make adequate provision for protection against fire; or
- (c) where the aggregate volume (measured by reference to roof and walls) of the proposed alteration and any other alteration made, or proposed to be made, to the building in pursuance of a building permit granted during the period of 3 years immediately preceding the making of the application for approval of the plans is more than one-half of the volume (measured by reference to roof and walls) of the original building—the building does not conform to the requirements and standards set out in the Building Code in respect of such a building.

**(2B)** In approving, subject to amendments agreed upon between the Building Controller and an applicant for approval, plans for the alteration of a building to which subsection (2A) applies, the amendments that may be agreed upon include amendments relating to a part of the building that was not affected by the plans as originally submitted.

**(3)** The Building Controller shall not refuse to approve plans for the erection or alteration of a building on the ground of the inadequacy of a matter referred to in subsection (2) if the plans and other information submitted by the applicant in respect of that matter show that the matter will conform to the appropriate acceptable requirements and standards for that matter set out in the Building Code in respect of such a building.

**(3A)** The Building Controller shall not declare a building to be a building to which subsection (2A) applies on the ground of the inadequacy of a matter referred to in paragraph (2A) (a) or (b) if the building conforms to the appropriate acceptable requirements and standards for that matter set out in the Building Code in respect of such a building.

(4) Nothing in subsection (3) prevents the Building Controller from granting approval of a matter in plans, being a matter the acceptable requirements and standards of which are not set out in the Building Code, if the Building Controller is satisfied in accordance with subsection (1) in relation to that matter.

(6) The Building Controller shall signify his approval (including any amendments to which his approval is subject) of plans under this section by signing a memorandum of that fact attached to, or inscribed on, the copies of the plans submitted to him and return to the applicant one of the copies with the memorandum attached to it or inscribed on it.

(7) In calculating the aggregate volume of alterations for the purposes of paragraph (2A) (c), no regard shall be had to an alteration in respect of which a building permit was granted during the period referred to in that paragraph but which ceased to be in force before any building work in connection with the alteration was carried out.

#### **Period for which approval in force**

**33A.** (1) Subject to this section, an approval of plans given by the Building Controller under this Part after the commencement of the *Building (Amendment) Act 1979* shall lapse upon the expiration of the period of 12 months after the date of the approval or, where that period had been extended on one or more occasions by the Building Controller in accordance with subsection (2), upon the expiration of that extended period, unless a building permit is issued in respect of the building work referred to in the plans within that period or extended period.

(2) The Building Controller shall, in respect of plans that have been approved under this Part after the commencement of the *Building (Amendment) Act 1979*, upon application being made to him in accordance with subsection (3), where he would approve the plans if they were then and there being submitted to him for approval under this Part, extend or further extend, as the case may be, for a period of 12 months the period during which the approval of those plans remains in force notwithstanding that the period or a previous extension may have lapsed.

(2A) An extension or further extension under subsection (2) shall commence immediately after the lapse of the previous period during which the approval of the plans had remained in force.

(3) An application under subsection (2)—

- (a) may be made within the period commencing 3 months before the date on which the approval is to lapse and ending 12 months after that date;
- (b) shall be made in writing by the owner of the parcel of land on which the building work referred to in the plans is to be carried out, or by his agent; and
- (c) shall be accompanied by the determined fee.

(4) For the purposes of subsection (1), an extended period therein referred to shall be taken not to have expired where that extended period is further extended in accordance with subsection (2).

### **Building permit for removal or demolition of a building**

**34. (1)** An application for approval of plans for building work involving the removal or demolition of an existing building and not involving the erection of a building in its stead shall be accompanied by plans showing—

- (a) particulars of the existing building, including its location by reference to the block, section, division and district (within the meaning of the *Districts Act 1966*), the boundaries and dimensions of the parcel of land on which the building is erected;
- (b) details of the methods to be employed in the execution of the building work;
- (c) where the building work is proposed to be carried out on or near a street or place open to or used by the public, particulars of safety precautions proposed to be taken during the period during which the removal or demolition is to be carried out to protect the safety of persons using the street or place;
- (d) a statement showing the name of the owner of the parcel of land from which the building is to be removed or demolished and, if the owner is not the applicant, a written consent of the owner to the application being made by his agent;
- (e) a statement showing an estimate of the cost of the building work involved in the removal or demolition; and
- (f) such other information as is required by the Building Controller.

(2) Subject to this Part, the Building Controller shall approve plans and specifications for building work involving the demolition or removal of a building if the proposed methods to be employed in the execution of the

building work and the safety precautions, submitted in or with the application, proposed to be taken during the demolition or removal are adequate.

### **Grant of building permits**

**35. (1)** Where plans have been approved under section 33 or 34, the Building Controller shall, on application made for the purpose, grant, subject to this Part, a building permit for the building work referred to in the approved plans.

**(2)** An application under this section for a building permit shall—

- (a) be made by a person who holds a builder's licence that authorizes him to carry out building work of the kind involved in the approved plans and specifications;
- (b) be in writing; and
- (c) be accompanied by the determined fee.

**(3)** A building permit shall not be granted for residential building work to which Part VA applies unless the Building Controller is satisfied—

- (a) that the work is insured;
- (b) if each approved insurer has refused to insure the work—
  - (i) that the owner of the land on which the work is to be carried out does not require the work to be insured; and
  - (ii) that it is fair in the circumstances to issue the permit;
- (c) if there are no approved insurers—that it is fair in the circumstances to issue the permit.

**(4)** In addition to complying with subsection (2), an application for a building permit for residential building work to which Part VA applies shall be accompanied by—

- (a) a residential building insurance policy that has been issued in respect of the work;
- (b) a certificate by an approved insurer to the effect that the insurer has insured the work; or
- (c) in a case referred to in paragraph (3) (b)—
  - (i) an application for the permit to be granted notwithstanding that the work is not insured;



- (ii) a statement by each approved insurer to the effect that the insurer has refused to insure the work; and
- (iii) a statutory declaration by the owner of the land on which the work is to be carried out to the effect that the owner does not require the work to be insured.

(5) Where the applicant for a building permit for residential building work is the owner of the land on which the work is to be carried out, or an employee of the owner, a reference in subsection (3) or (4) to the owner of the land shall be read as a reference to the person to whom title in the land is to be transferred by the person who was the owner at the time the application was made.

(6) In subsections (3), (4) and (5)—

“approved insurer” means an authorised insurer who—

- (a) has had a form of residential building insurance policy approved by the Building Controller; and
- (b) has not notified the Building Controller under section 58G that the insurer has ceased to be in the business of issuing such policies, or that the insurer’s authority to carry on insurance business has been cancelled;

“employee”, in relation to the owner of the land on which residential building work is to be carried out, includes a contractor engaged by the owner to carry out part or all of the work;

“insured” means insured under a residential building insurance policy;

“residential building work” has the same meaning as in Part VA.

### **Stages of building work for inspection purposes**

**36. (1)** The Building Controller shall, in a building permit for building work involving the erection or alteration of a building, specify each stage in the building work in respect of which the holder of the building permit is required to give to the Building Controller notice in accordance with subsection (5), each being a stage included in the stages of building work specified in the Schedule.

**(3)** The holder of a building permit shall not proceed with any building work above damp course level unless the Building Controller has received a plan signed by a surveyor licensed under the *Surveyors Act 1967* specifying the exact position of the building in relation to the boundaries of the parcel of land

on which the building is to be erected and, if the building permit so requires it, specifying the level that the floor or floors of the building will have in relation to a level specified in the building permit.

(4) The Building Controller may, in a building permit involving the alteration or addition to a building or the erection of a building of prefabricated timber or steel construction that can be dismantled and re-constructed elsewhere specify that subsection (3) does not apply to or in relation to the building work and, in such a case, that subsection does not apply.

(5) The holder of a building permit for building work involving the erection or alteration of a building shall not proceed beyond a stage in the building work specified in that permit under subsection (1) unless:

- (a) the holder has given the Building Controller notice of the fact that the stage has been reached and 2 working days have elapsed since that notice was given; or
- (b) the holder has given the Building Controller notice of the period during which the holder expected that the stage would be reached (being a period that commenced at the expiration of 2 working days after the notice was given and ending at the expiration of 4 working days after the notice was given) and the stage was reached at any time during that period.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

(6) In this section, “working day” means a day other than a Saturday, Sunday or public holiday.

(10) The holder of a building permit shall keep records of—

- (a) test borings, test loadings or other investigations made for the purpose of determining the permissible loadings on piles used in the building work, pile-driving operations, calculations of allowable loadings and details of the location of the piles;
- (b) tests loadings and excavations made for the purpose of determining the bearing capacity of the foundation for the building or proposed building or building as proposed to be altered; and
- (c) tests referred to in subsection (11),

until a certificate in respect of the building work is issued under section 53 of this Act, and, when the certificate is issued, the holder of the building permit shall deliver those records to the Building Controller.

(11) The Building Controller may, by notice in writing, require the holder of a building permit, before, during or after the carrying out of the building work specified in the permit, to conduct on the materials used or to be used in the work, or on the structure of the building, or in relation to any other matter concerned with the work, such tests as are specified in the notice.

(12) The holder of a building permit who is required to conduct tests referred to in subsection (11) shall, as soon as practicable after the tests are completed, submit to the Building Controller, in a form approved by him, the results of those tests.

#### **Building inspector may specify safety precautions**

**36A.** Where building work in respect of which a permit has been granted is being carried out at or near to a street or place that is open to or used by the public and a building inspector finds, on inspection, that—

- (a) the safety precautions, particulars of which were submitted with the application for approval of the plans in respect of the building work, are inadequate to protect the safety of persons using that street or place; or
- (b) in a case in which particulars of safety precautions were not so submitted, inadequate safety precautions in connection with the building work are being taken to protect the safety of such persons,

the building inspector may specify such safety precautions to be taken in respect of that building work as are reasonable in the circumstances.

#### **Land to be used in accordance with lease**

**37.** The use of a parcel of land held under a lease from the Commonwealth for a purpose other than that for which the lease was granted or the use of the parcel contrary to a provision, covenant or condition of the lease is not authorized by reason of—

- (a) the approval of plans;
- (b) the grant of a building permit; or
- (c) the issue of a certificate under section 53,

in respect of building work involving the erection or the alteration of a building on that parcel of land.

### **Building Controller not to have regard to external design and siting**

**38.** The Building Controller shall not refuse an application for a building permit by reason of the external design or siting of a proposed building, or of a building as proposed to be altered, except where the Building Controller is satisfied that it is necessary to do so in order to prevent a contravention of a provision of this Act or of another law.

### **Endorsement where no builder's licence required**

**39. (1)** Notwithstanding anything contained in section 35, where plans have been approved under this Part and an application for a building permit for the building work referred to in the plans is made to the Building Controller in writing, then, in a case in which—

- (a) the building work is of such a nature that it can be carried out by a person who is not a licensee; or
- (b) subsection (1A) applies;

the Building Controller shall, upon payment to him of the fee determined by the Minister under section 65, grant for that building work a building permit bearing the endorsement “No Builder’s Licence Required”.

**(1A)** The Building Controller may grant a building permit under subsection (1) where—

- (a) the building work is to be carried out on a parcel of land owned by the person seeking the building permit and involves the erection or alteration of the principal place of residence of that person;
- (b) that person possesses the skills and experience to carry out the building work; and
- (c) the Building Controller has not granted more than one other such building permit, in respect of more than one other parcel of land, to that person within the period of 5 years immediately preceding the making of the application.

**(2)** Where a person applies for a building permit endorsed in accordance with subsection (1) on the ground specified in paragraph (1) (b), his application shall contain details of the skills and experience upon which he relies for the grant of a permit so endorsed.

### **Conditions of building permits**

**40.** The grant of a building permit for building work is subject to the conditions that—

- (a) the materials used in the building work will conform to the standards for those materials as set out in the Building Code or as otherwise approved and specified in the permit by the Building Controller;
- (b) the methods of use of those materials in the building work will conform to the acceptable methods of use as set out in the Building Code or as otherwise approved and specified in the permit by the Building Controller;
- (c) the building work will be carried out in a proper and workmanlike manner;
- (d) the building work will be carried out in accordance with the approved plans in respect of which the building permit is granted;
- (e) the building work will be carried out by a person who is the holder of a builder's licence, or a building permit issued for that work endorsed under the last preceding section, or by a person employed by or under contract to him;
- (ea) a notice in accordance with subsection 36 (5) will be given by the holder of the building permit to the Building Controller in respect of each stage in the building work specified in the permit; and
- (f) the safety precautions submitted in or with the application for the building permit will be taken together with any other safety precautions that a building inspector may specify under section 36A.

### **Period for which building permit in force**

**41. (1)** Subject to subsection (1A), a building permit shall, unless extended by the Building Controller, lapse at the expiration of the period of three years, or such other lesser period as is specified in the permit, after the date of issue of the permit.

**(1A)** A building permit that has been issued to a licensed builder or a person referred to in paragraph 39 (1) (b) shall lapse upon the builder ceasing to be licensed or the person ceasing to be the owner of the parcel of land, as the case may be.

(2) The Building Controller may, upon application in writing by the holder of a building permit and payment of the determined fee, extend the building permit for such period as is reasonable in the circumstances.

(3) The application for extension shall specify the stage of the building work so far carried out under the building permit and the reasons why the period of the permit is sought to be extended.

### **Cancellation of building permit**

**41A. (1)** The Building Controller may cancel a building permit if—

- (a) building work has not commenced and is not likely to do so;
- (b) building work carried out under the permit has ceased and is not likely to recommence; or
- (c) building work can no longer be carried out under the permit in accordance with the terms and conditions set out in section 40; or
- (d) the building permit was issued in error.

(2) Where building work that is being carried out, or is required to be carried out, under a building permit is the subject of a dispute as to the terms and conditions of a contract relating to that work, the Building Controller shall not cancel the permit on a ground set out in paragraph (1) (a) or (b).

(3) The holder of a building permit, the owner of the land on which building work may be carried out under the permit or the holder and owner jointly may apply in writing to the Building Controller for cancellation of the permit.

(4) An application under subsection (3) shall set out particulars of the ground on which cancellation is sought.

(5) Where the Building Controller receives an application under subsection (3), he or she may—

- (a) decide that no ground exists for cancelling the building permit referred to in that application;
- (b) initiate action under subsection (6); or
- (c) in the case of a joint application—cancel the permit in accordance with subsection (1).

(6) The Building Controller shall give notice in writing to the holder of the permit and the owner of the parcel of land on which building work may be carried out under the permit, specifying—

- (a) the ground on which it is proposed to cancel the permit; and
- (b) a time not less than 14 days and not more than 28 days after the service of the notice within which the person on whom the notice has been served may make representations in writing in relation to the proposed cancellation.

(7) A person on whom a notice has been served in accordance with subsection (6) may apply in writing for an extension of the period within which he or she may make representations.

(8) An application under subsection (7) may be made notwithstanding that the period the extension of which is sought has expired.

(9) Upon receiving such an application, the Building Controller may grant an extension of that period of not more than 28 days.

(10) A person on whom notice of an application has been served may, within the period specified in that notice or any extension under subsection (9), make representations in writing to the Building Controller concerning the proposed cancellation.

(11) After the expiry of the period specified in a notice under subsection (6) or any extension of that period, the Building Controller may, after considering any representations made—

- (a) by notice in writing served on any person notified under subsection (6) fix a time and place for an inquiry into the proposed cancellation of the building permit; or
- (b) cancel the building permit or refuse to cancel the building permit.

(12) After holding an inquiry in accordance with paragraph (11) (a), the Building Controller may, after considering any representations made, cancel the building permit or refuse to cancel the building permit.

## **PART IIIA—SPECIALISED SYSTEMS**

### *Division 1—General*

#### **Interpretation**

42. In this Part—

“licensee” means the holder of a system licence;

“practising mechanical engineer” means an engineer with qualifications in mechanical engineering which are acceptable to the Institution of Engineers of Australia for the grade of corporate member and who is actively engaged in the design, and supervision of the installation, of warm water systems or mechanical ventilation systems (as the case requires).

### **Application of Part**

**42A.** This Part applies in relation to all specialised systems except—

- (a) those which are, or are proposed to be, installed in buildings referred to in Class 1 or 10 of the classifications of buildings in the Building Code; or
- (b) those which are exempt under Division 5.

### ***Division 2—Licensing***

#### **Operation in accordance with a licence**

**42B.** A person shall not, without reasonable excuse, operate a specialised system except in accordance with a system licence.

Penalty:

- (a) if the offender is a natural person—\$2,000;
- (b) if the offender is a body corporate—\$10,000.

#### **Application**

**42C. (1)** The following persons are entitled to apply for a system licence:

- (a) the owner of a building in which a specialised system is, or is proposed to be, installed;
- (b) the owner of a parcel of land on which such a building is being, or is proposed to be, erected.

**(2)** An application shall—

- (a) be in a form approved by the Building Controller;
- (b) specify—
  - (i) the name and address of the applicant;



- (ii) the name under which the applicant carries on, or proposes to carry on, business in connection with the building in which the specialised system is, or is proposed to be, installed;
  - (iii) if the application is made on behalf of the applicant by the applicant's agent—the name and address of the agent;
  - (iv) the location, or proposed location, of the building;
  - (v) the class of the building referred to in subparagraph 32 (1) (a) (iii);
  - (vi) the date on which a certificate under section 53 (if any) was issued in respect of the building and the number of that certificate;
  - (vii) the manufacturer, model and year of manufacture of the specialised system;
  - (viii) the capacity of the system;
  - (ix) the maintenance and cleaning procedures for the system;
  - (x) the period (not exceeding 5 years) for which the licence is sought; and
  - (xi) such other information in respect of the building and the system as the Building Controller thinks necessary;
- (c) be accompanied by a statement by a practising mechanical engineer specifying the extent to which—
- (i) the design, installation and operation of; and
  - (ii) the maintenance and cleaning procedures for;
- the system or proposed system comply or would comply with the applicable standard; and
- (d) be accompanied by the determined fee.

### **Issue**

**42D. (1)** The Building Controller shall—

- (a) on receipt of an application in accordance with section 42C; and

- (b) if satisfied that the design, installation and operation of, and the maintenance and cleaning procedures for, the specialised system comply or would comply with the applicable standard;

issue to the applicant a system licence in respect of that system for the period specified in the application.

**(2)** Where the Building Controller is not satisfied of a matter referred to in paragraph (1) (b), the Building Controller may—

- (a) if the system was installed before the commencement of this Part— issue a system licence for the period specified in the application notwithstanding that the Building Controller is not so satisfied; or
- (b) issue a system licence for the period specified in the application subject to such conditions as the Building Controller considers necessary, including but not limited to a condition requiring—
  - (i) specified modifications to be made to the design, installation or operation of, or the maintenance or cleaning procedure for, the specialised system by a specified date; or
  - (ii) a notice under subsection 46 (1) be complied with.

**(3)** In considering whether to issue a system licence under paragraph (2) (a) or (b), the Building Controller shall have regard to—

- (a) the extent to which the design, installation and operation of, and the maintenance and cleaning procedures for, the specialised system do not, or would not, comply with the applicable standard; and
- (b) any resultant risk to the health of persons entering the building.

**(4)** A system licence shall specify the following information:

- (a) the name and address of the licensee;
- (b) the name under which the licensee carries on, or proposes to carry on, business in connection with the building in which the specialised system is, or is proposed to be, installed;
- (c) the street address of the building;
- (d) the name and address of the licensee's agent (if any);
- (e) particulars of the system licensed (including the manufacturer, model, serial number and capacity);
- (f) the date on which the licence was issued;

- (g) the date on which the licence expires;
- (h) the conditions (if any) to which the licence is subject.

**Notification of changes**

**42E.** A licensee shall, within 1 month of any change in the information specified in the licence, notify the Building Controller in writing of that change.

Penalty:

- (a) if the offender is a natural person—\$500;
- (b) if the offender is a body corporate—\$2,500.

**Renewal**

**42F. (1)** A licensee may, before the expiration of the term of the system licence, apply to the Building Controller for its renewal.

**(2)** An application for renewal shall—

- (a) be in a form approved by the Building Controller;
- (b) specify—
  - (i) the licensee's name;
  - (ii) the licence number;
  - (iii) the period (not exceeding 5 years) for which the renewal is sought; and
  - (iv) any change in the particulars included in the previous application for, or renewal of, the licence; and
- (c) be accompanied by the determined fee.

**(3)** On receipt of an application in accordance with this section, the Building Controller—

- (a) shall, if satisfied of the matters referred to in paragraph 42D (1) (b), renew the system licence for the period specified in the application; or
- (b) may, if not so satisfied—
  - (i) if the system was installed before the commencement of this Part—renew the system licence for the period specified in the application notwithstanding that he or she is not so satisfied; or

- (ii) renew the system licence for the period specified in the application subject to a condition of a kind referred to in subparagraph 42D (2) (b) (i) or (ii).

(4) In considering whether to renew a system licence under subparagraph (3) (b) (i) or (ii), the Building Controller shall have regard to the matters referred to in paragraphs 42D (3) (a) and (b).

### **Transfer**

**42G. (1)** Where the ownership of a building to which a system licence relates changes, the new owner shall within 1 month of the change apply for a transfer of the licence.

(2) An application shall—

- (a) be in a form approved by the Building Controller;
- (b) specify—
  - (i) the licence number;
  - (ii) the name of the previous owner;
  - (iii) the name and address of the new owner; and
  - (iv) the name under which the new owner carries on, or proposes to carry on, business in connection with the building;
- (c) be signed by the new owner and the previous owner; and
- (d) be accompanied by the determined fee.

(3) On receipt of an application in accordance with this section, the Building Controller shall transfer the licence to the new owner.

(4) Section 42B applies to the new owner after the expiration of 1 month from the date on which the ownership of the building changed.

### **Statements by engineers**

**42H.** For the purposes of sections 42D and 42F, a statement signed by a practising mechanical engineer specifying the extent to which—

- (a) the design, installation and operation of; and
- (b) the maintenance and cleaning procedures for;

a specialised system or proposed specialised system comply or would comply with the applicable standard is evidence of that fact.

**Division 3—Suspension of licences****Suspension**

**42J. (1)** The Building Controller may, by notice in writing given to a licensee, require the licensee to show cause why the licence should not be suspended on 1 or more of the following grounds:

- (a) that the licensee has failed to comply with a notice under subsection 46 (1);
- (b) that the licensee has failed to comply with a condition subject to which the licence was issued;
- (c) that the licensee has failed to operate the specialised system in accordance with this Act or another law in force in the Territory;
- (d) that the licensee has failed to maintain records relating to the maintenance and cleaning that has been carried out in respect of the specialised system;
- (e) that the licensee has attempted to deceive the Building Controller or a building inspector in relation to the specialised system;
- (f) that the licensee has otherwise failed to comply with the provisions of this Act in so far as they relate to substances containing *Legionella* bacteria.

**(2)** A notice shall—

- (a) contain full particulars of the facts or circumstances on which the Building Controller has formed his or her opinion that the ground specified in the notice exists; and
- (b) specify a period of not less than 14 days and not more than 28 days after the date of service of the notice within which the licensee may show cause to the Building Controller why the licence should not be suspended.

**(3)** A licensee who receives a notice may apply for an extension of the period within which the licensee is required to show cause and application may be made notwithstanding that the period the extension of which is sought has expired.

**(4)** The Building Controller may, on receipt of an application in accordance with subsection (3), extend the period by not more than 28 days.

(5) After the expiry of the period specified in a notice under subsection (1) or any extension of that period, the Building Controller may—

- (a) fix a time and place for an inquiry into the proposed suspension and shall give notice in writing of the time and place of that inquiry to the licensee;
- (b) remove any suspension imposed under section 42K and make a decision not to suspend the licence; or
- (c) where no cause to the contrary has been shown—suspend the licence.

(6) If, on holding an inquiry in accordance with paragraph (5) (a), the Building Controller is satisfied that the ground specified in the notice exists, the Building Controller may suspend the licence.

(7) A suspension under paragraph (5) (c) or subsection (6) has effect—

- (a) in the case of suspension on a ground specified in paragraph 42J (1) (a), (b) or (c)—until the Building Controller is satisfied that the ground no longer exists; or
- (b) in any other case—for such period as the Building Controller considers appropriate having regard to the circumstances of the case.

(8) For the purpose of subsection (1), it shall be sufficient if the notice is given to the licensee's agent.

### **Preliminary suspension**

**42K.** (1) Where the Building Controller considers it necessary to do so, having regard to the circumstances leading to the giving of a notice under subsection 42J (1) and the grounds specified in the notice, the Building Controller may suspend a system licence before the licensee shows cause to the contrary.

(2) Where the Building Controller has suspended a licence under subsection (1), he or she shall deal with the matter as soon as practicable in accordance with section 42J.

(3) For the purposes of subsection (2), paragraph 42J (2) (b) shall be read as referring to a period of not less than 7 days and not more than 14 days.

### **Effect of suspension**

**42L.** A system licence shall not be in force during a period for which it is suspended.

**Notification of suspension**

**42M. (1)** The Building Controller shall notify the following particulars of a decision to suspend a system licence in a daily newspaper printed, published and circulated in the Territory:

- (a) the name of the licensee;
- (b) the name under which the licensee carries on business in connection with the building in which the system is installed;
- (c) the street address of the building;
- (d) the nature of the decision;
- (e) the date on which the decision took effect;
- (f) the grounds on which the decision was made.

**(2)** A notice shall not be published under subsection (1) unless—

- (a) the period, or any extension of the period, within which an application for review of the decision to suspend the licence may be made has expired; or
- (b) where an application for review of the decision has been made and the decision has been affirmed or varied—
  - (i) the period of time within which an appeal may be instituted from that decision, or from any decision following such an appeal, has expired; or
  - (ii) an appeal from such a decision has been instituted but has been withdrawn or dismissed.

***Division 4—Applicable standard*****Amending the standard**

**42N.** The Minister may, by instrument, amend the applicable standard.

**Disallowable instrument**

**42P.** An instrument made under section 42N is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

***Division 5—Exempt systems*****Entitlement to apply**

**42Q. (1)** A person referred to in paragraph 42C (1) (a) or (b) is entitled to apply for an exemption under this Division.

**(2)** An application shall be in a form approved by the Building Controller.

### **Exemption**

**42R.** The Building Controller may, on receipt of an application in accordance with section 42Q, by instrument exempt a specialised system from the operation of this Part if the Building Controller is satisfied that the system is of a type and size ordinarily used for domestic purposes.

## **PART IV—STOP AND DEMOLITION NOTICES**

### **Interpretation**

**42S.<sup>2</sup>** \* \* \* \* \*

### **Stop notices**

**43.<sup>2</sup> (1)** Where building work is being carried out—

- (a) by a person who is not a holder of a building permit for that building work or is not employed by or under contract to the holder of a building permit for that building work;
- (b) otherwise than in accordance with the approved plans for that building work;
- (c) otherwise than in accordance with the conditions subject to which a building permit for the building work is granted;
- (d) contrary to a provision of this Act relating to that building work;
- (e) where the building work is being carried out on a parcel of land held under lease from the Commonwealth, contrary to a provision, covenant or condition of the lease;
- (f) contrary to the approval of the Territory Planning Authority or a condition of that approval given under the *Buildings (Design and Siting) Act 1964* in respect of that building work; or
- (g) on a building that contains loose asbestos;

the Building Controller or a building inspector may, by notice in writing, prohibit the carrying out of any further building work or of such building work as he specifies in the notice.

**(3)** A stop notice ceases to be in force—



- (a) if the Building Controller, by notice in writing signed by him revokes the notice given under subsection (1);
  - (b) except in the case of a notice given on the ground specified in paragraph (1) (a) or a notice of a kind referred to in paragraph (ba)—on the expiration of 7 days after the service of the notice unless the Building Controller, before the expiration of that period, gives a further notice under section 44;
  - (ba) in the case of a notice given on the ground specified in paragraph (1) (d) in connection with the carrying out of building work in contravention of subsection 36 (3)—when the plan referred to in that subsection is received by the Building Controller;
  - (d) if it is deemed to have been revoked under the next succeeding subsection; or
  - (e) if a further notice is given under the next succeeding section—when the work specified in that further notice is carried out.
- (4) Where, if a stop notice in relation to building work is given on the ground specified in paragraph 43 (1) (a)—
- (a) an application for a building permit in respect of that building work is made under this Act within 14 days of the giving of the notice; and
  - (b) having regard to all the circumstances and the building work so far carried out, the Building Controller grants a building permit,

the notice shall be deemed to have been revoked.

**Notice specifying building work, including demolition of building to which stop notice relates**

44.<sup>2</sup> (1) Where a stop notice has been given on a ground other than that specified in paragraph 43 (1) (a), the Building Controller may, within the period of seven days after the service of the stop notice, by a further notice, specify the building work (including work by way of demolition) that is required to be carried out to ensure that the building work for which the building permit was issued will be carried out in accordance with the approved plans, the provisions of this Act and any conditions subject to which the building permit was issued, and shall, by that further notice, require the building work specified in the notice to be carried out within such period as is specified in that further notice.

(3) Where—

- (a) an application for a building permit is not made as provided by subsection 43 (4); or

(b) the Building Controller rejects an application under that subsection, the Building Controller, in a case in which the stop notice has not ceased to be in force, may, by notice in writing, require the owner of the parcel of land on which the building work was being carried out before the giving of the stop notice to carry out such building work (including demolition) as is specified in the notice within such period as is specified in the notice.

(4) An act or thing done by a person for the purpose of complying with a notice under this section shall not be deemed to be a contravention of a stop notice.

### **Service of notice**

45. A notice under either of the last two preceding sections may be served—

- (a) on the owner of the parcel of land on which the building work referred to in the notice is being carried out;
- (b) on the person by whom the building work referred to in the notice is being carried out;
- (c) in the case of a stop notice, on any person carrying out building work referred to in the notice; or
- (d) jointly on any two or more of the persons to whom the notice may be given in the appropriate case under the preceding paragraphs of this section.

### **Notice to produce survey plan**

45A. Where building work for which a building permit has been granted under this Act has been carried out in contravention of subsection 36 (3), the Building Controller may serve on—

- (a) the owner of the parcel of land on which the building work was carried out; or
- (b) the person by whom the building work was carried out,

a notice requiring the person on whom it is served to produce to the Building Controller, within such period as is specified in the notice, being a period of not less than 7 days after the date of service of the notice, the plan referred to in subsection 36 (3).

### **Notice to carry out building work**

**46.<sup>2</sup> (1)** Where—

- (a) building work has been carried out, either before or after the commencement of this Act, without a permit for that building work having been issued under the Canberra Building Regulations or without a building permit granted under this Act for that building work having been in force at the time the building work was carried out;
- (b) building work for which a building permit has been granted under this Act has been carried out in contravention of subsection 36 (5), or otherwise than in accordance with the conditions referred to in section 40;
- (c) building work, in respect of which a notice has been served under this Part, has been carried out otherwise than in accordance with that notice;
- (d) building work has been carried out on a parcel of land held under lease from Australia, contrary to a provision, covenant or condition of the lease;
- (e) building work has been carried out contrary to the approval of the Territory Planning Authority or a condition of that approval given under the *Buildings (Design and Siting) Act 1964* in respect of that building work;
- (f) the Building Controller finds, on inspection, that—
  - (i) a completed building has deteriorated to such an extent—
    - (A) in the case of a building in relation to the erection or alteration of which plans or plans and specifications, as the case may be, have been approved under this Act or under the repealed laws—as to be unfit for use as a building of the class specified, or for the purpose stated, as the case may be, in the plans or plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building; or
    - (B) in any other case—as to be unfit for any type of use;
  - (ii) building work has not been completed when the building permit in respect of the building work lapsed;

- (iii) a building or part of a building is not structurally sound;
  - (iv) the maximum safe live load or the load that a building was designed to carry has been exceeded;
  - (v) the external condition of a building is such that injury to persons or damage to property may result from a part of the building becoming detached; or
  - (vi) a building or part of a building is unsafe by reason of fire hazard or unfit for use by reason of a danger to health; or
- (g) a building inspector finds, on inspection, that—
- (i) a specialised system to which Part IIIA applies is not operating, or is not being maintained or cleaned, in accordance with the applicable standard; or
  - (ii) a building contains a hazardous substance;

the Building Controller may serve on the owner of the parcel of land on which the building work has been carried out or on which the building has been erected, as the case may be, a notice directing him to carry out, or cause to be carried out, such building work (including demolition) on that parcel of land as is specified in the notice within such period as is specified in the notice and may in the notice, with respect to building work other than maintenance or cleaning of a specialised system, direct the owner to submit plans for approval and require the person carrying out the work to obtain the grant of a building permit.

**(2)** Where building work has been carried out in the circumstances mentioned in paragraph (1) (a), a notice given by the Building Controller in pursuance of subsection (1) shall be deemed to have been revoked if the Building Controller, on application by or on behalf of the owner of the parcel of land made under this Act within 14 days after the service of the notice, grants a building permit for that building work.

**(3)** A notice served on the owner of a parcel of land by the Building Controller in pursuance of subsection (1) directing that person to carry out, or cause to be carried out, building work may specify safety precautions to be taken in carrying out that building work, being safety precautions that are reasonable in the circumstances.

**(4)** Where the owner of a parcel of land—

- (a) is directed by a notice under subsection (1) to carry out, or cause to be carried out, building work (other than demolition, or maintenance or cleaning of a specialised system); and
- (b) the notice contains no requirements relating to the approval of plans or the obtaining of a building permit,

he shall pay to the Building Controller those fees that would have been payable if he had been required to submit plans for approval and that would have been payable by an applicant for a building permit in respect of that building work.

### **Compliance with notices**

**51. (1)** A person shall not, without reasonable excuse, fail to comply with the requirements of a notice served on him or her under this Part.

**(2)** A person who contravenes subsection (1) is, in respect of each day on which he or she contravenes that subsection (including any such day on which the person is convicted of an offence under this subsection and any subsequent day), guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$500; or
- (b) in the case of a body corporate—\$2,500.

## **PART IVA—REMOVAL OF HAZARDOUS SUBSTANCES**

### *Division 1—Loose asbestos*

#### **Treatment and removal of loose asbestos by Territory**

**51A.** Where a building inspector has found loose asbestos in a building, the Territory may, for the purposes of public health and safety, by its servants, agents or contractors enter the building and—

- (a) treat or secure the loose asbestos to prevent it from moving;
- (b) seal any cavity in the building, or other part of the building, that contains loose asbestos to prevent movement of the loose asbestos from that cavity or part of the building;
- (c) remove the loose asbestos or any part of it; or
- (d) perform any 2 or more of the procedures referred to in paragraphs (a), (b) and (c) at the same time or at different times.

#### **Additional powers of the Territory**

**51B.** For the purposes of performing work specified in section 51A the Territory may, by its servants, agents or contractors—

- (a) enter the land on which the building is situated;
- (b) on or over that land—
  - (i) construct, build or place any plant, machinery, equipment or goods;
  - (ii) deposit materials or things;
  - (iii) erect sheds or other structures; and
  - (iv) manufacture or work materials of any kind;
- (c) demolish, destroy or remove on or from that land any plant, machinery, equipment, sheds, structures, goods, materials or things constructed, erected, built, placed or deposited on the land under paragraph (b);
- (d) enter the building in which loose asbestos has been found at any reasonable time of the day with such assistance and by such force as is necessary and reasonable;
- (e) in, on or over the building—
  - (i) construct, build or place any machinery, equipment, materials, goods or things;
  - (ii) erect structures;
  - (iii) place coverings; and
  - (iv) manufacture or work materials of any kind;
- (f) demolish, destroy or remove in, on or from the building any machinery, equipment, structures, coverings, goods, materials or things constructed, erected, built or placed in, on or over the building under paragraph (e); and
- (g) open any cavity in the building, or any other part of the building, that the servant, agent or contractor suspects, on reasonable grounds, may contain loose asbestos.

**Notice to occupier that work is to be performed**

**51C.** The Territory shall not perform any work in relation to a building in the exercise of its powers under section 51A unless the Building Controller has

caused the occupier of the building to be given, not less than 28 days before the day on which the work is to commence, a notice in writing that—

- (a) describes the work to be performed;
- (b) briefly describes the manner in which it is proposed that the work should be carried out;
- (c) specifies the powers under which the work is to be performed;
- (d) specifies the day on which it is expected that the work will commence;
- (e) specifies the day on which it is expected that the work will be completed;
- (f) where it will be necessary or desirable for those who occupy the building to leave it while the work is being performed—
  - (i) states that it will be necessary or desirable, as the case may be, for the occupants to leave the building during that period;
  - (ii) specifies the day before which the occupants should have vacated the building to enable the work to be carried out; and
  - (iii) specifies the day on which it is expected that the occupants will be able to safely resume occupation of the building; and
- (g) gives the name, business address and telephone number of a public servant who can give the occupier further information concerning the arrangements for the work.

### **Service of notices**

**51D.** A notice under section 51C may be given to the occupier of a building—

- (a) by delivering it to the occupier personally; or
- (b) by sending it by post to the occupier at the address of the building to which it relates.

### **Notice to owner that work is to be performed**

**51E. (1)** Where the Building Controller causes a notice under section 51C to be given to the occupier of a building and the occupier is, to the knowledge of the Building Controller, not the owner of the building, the Building Controller shall, at the time of causing the notice to be given to the occupier, cause a copy of the notice to be sent by post to the owner at the address of the owner last known to the Building Controller.

(2) The Building Controller shall, before causing a notice under section 51C to be given to the occupier of a building, make reasonable enquiries to ascertain—

- (a) the identities of the occupier of the building and the owner of the building; and
- (b) if the Building Controller finds that the owner of the building is not the occupier of the building—the address of the owner of the building.

### **Entry to building with force**

**51F. (1)** The Territory shall not by its servants, agents or contractors enter a building by force under section 51B unless the Building Controller has made reasonable endeavours to contact the occupier of the building and make arrangements convenient to the occupier and the Territory for the occupier to give the Territory access to the building to exercise its powers under sections 51A and 51B without the use of force.

(2) A servant, agent or contractor of the Territory who enters a building by force under section 51B shall—

- (a) cause as little damage as is practicable in entering the building;
- (b) behave courteously to any person he or she encounters in the building; and
- (c) close the building securely if he or she leaves it unattended.

### **Liability of the Territory**

**51G.** Where the Territory performs work in relation to a building in the exercise of any of its powers under section 51A or 51B it shall not have a liability to any person in respect of—

- (a) any costs or expenses incurred by persons who occupy or use the building for the occupation or use of alternative accommodation while the work is being carried out;
- (b) any costs or expenses incurred by the owner of the building, or those who occupy or use the building, for the cost of cleaning any goods or things (other than carpet and furniture) in or about the building that was made necessary or desirable by the performance of the work by the Territory; or
- (c) any diminution in the value of the building, or the land on which the building is situated, by reason of the building having had loose asbestos in it.



**Obstruction of the Territory**

**51H.** A person shall not, without reasonable excuse, obstruct or hinder the Territory or any other person in the exercise of the Territory's powers under section 51A or 51B.

Penalty: \$1,000.

**Division 2—*Legionella* bacteria****Duty to maintain and clean specialised systems**

**51J. (1)** The owner of a building shall take such steps as are necessary and reasonable to ensure that a specialised system installed in the building does not contain unacceptable *Legionella* levels.

Penalty:

- (a) if the offender is a natural person—\$5,000;
- (b) if the offender is a body corporate—\$25,000.

**(2)** Without limiting the generality of subsection (1), an owner does not contravene that subsection if the owner operates, maintains and cleans a specialised system in accordance with the applicable standard.

**Duty to notify Building Controller**

**51K. (1)** The owner of a building shall notify the Building Controller within 24 hours after obtaining knowledge that the building contains unacceptable *Legionella* levels.

**(2)** An owner who, without reasonable excuse, contravenes subsection (1) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a natural person—\$5,000; or
- (b) if the offender is a body corporate—\$25,000.

**Shutdown notices**

**51L. (1)** If—

- (a) on inspection under section 9A, 9B or 9C, a building is found to contain unacceptable *Legionella* levels; and
- (b) the Medical Officer of Health, having considered the results of the inspection, advises the Building Controller—

- (i) to shut down all specialised systems installed in the building;  
or
- (ii) to evacuate the building;

the Building Controller shall give—

- (c) a shutdown notice to the person who is responsible for the day-to-day management of the building; and
- (d) if that person is not, to the knowledge of the Building Controller, the owner of the building—a copy of the shutdown notice to the owner.

(2) For the purpose of paragraph (1) (d), it shall be sufficient if the copy is given to the owner's agent.

(3) In the shutdown notice, the Building Controller—

- (a) shall direct the owner of the building—
  - (i) to shut down all specialised systems installed in the building;  
and
  - (ii) not to operate those systems; and
- (b) if the Medical Officer of Health has advised the Building Controller to evacuate the building, shall direct the owner—
  - (i) to evacuate the building; and
  - (ii) to take such steps as are necessary and reasonable to prevent persons (except persons authorised by the Building Controller) from entering the building.

(4) A direction continues in force until the Building Controller issues—

- (a) in the case of a direction given under paragraph (3) (a)—a full clearance certificate; or
- (b) in the case of a direction given under paragraph (3) (b)—a full or partial clearance certificate;

in respect of the building.

### **Clearance certificates**

**51M. (1)** The Building Controller shall, on his or her own motion or on application by the owner of the building, issue a full clearance certificate in respect of a building the subject of a shutdown notice if satisfied—

- (a) that a notice served under subsection 46 (1) (if any) in respect of the specialised systems installed in the building has been complied with; and
- (b) that, having regard to the opinion of the Medical Officer of Health, the building no longer contains unacceptable *Legionella* levels.

(2) The Building Controller shall, on application by the owner of the building, issue a partial clearance certificate in respect of a building the subject of a shutdown notice if satisfied that, having regard to the opinion of the Medical Officer of Health, persons entering the building are not unduly at risk of contracting Legionnaires' disease.

### **Compliance with directions**

**51N. (1)** The owner of a building shall comply with a direction under subsection 51L (3).

(2) An owner who contravenes subsection (1) is, in respect of each day on which the owner contravenes that subsection, including any such day on which the owner is convicted of an offence under this subsection and any subsequent day, guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) if the offender is a natural person—\$500; or
- (b) if the offender is a body corporate—\$2,500.

### **Liability of the Territory**

**51P.** If, on inspection under section 9A, 9B or 9C, a building—

- (a) is found to contain unacceptable *Legionella* levels, the owner of the building shall bear the costs of any damage caused to the building in the course of the inspection; or
- (b) is not found to contain such levels, the Territory shall bear those costs.

## **PART V—OCCUPANCY OF BUILDINGS**

### **Application**

**52. (1)** Subject to sections 54 and 54A, this Part applies only to and in relation to buildings erected or altered after the commencement of this Act.

(2) The issue, under this Part, of a certificate in respect of a building or portion of a building does not affect the liability of a person to comply with the provisions of a law of the Territory (including this Act) relating to the building or portion of the building.

**Certificates of occupancy and use**

**53. (1)** In this section—

“practising structural engineer” means an engineer with qualifications in structural engineering which are acceptable to the Institution of Engineers of Australia for the grade of corporate member, and who is actively engaged in structural design and supervision of building construction;

“the prescribed requirements”, in relation to building work, means the approved plans for the building work, the conditions to which the building permit for the building work is subject and any directions given under section 46 in relation to the building work.

**(1A)** Subject to subsection (1B), the Building Controller may, before issuing a certificate under subsection (2), (3) or (6), require the owner of the parcel of land to furnish him with a certificate by a practising structural engineer that the building or part of the building as erected or as altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used.

**(1B)** The Building Controller shall not, under subsection (1A), require a person to furnish him with a certificate unless it appears to the Building Controller on reasonable grounds that it is desirable in the interests of persons occupying or using the building or part of the building that the building or part of the building be examined by a practising structural engineer for the purpose of ascertaining that the building or part of the building as erected or as altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used.

**(2)** Subject to subsection (2A), where building work involving the erection or alteration of a building has been completed in accordance with the prescribed requirements for the building work, the Building Controller shall, on an application by the owner of the parcel of land on which the building work was carried out, issue a certificate that the building work has been completed in accordance with those requirements and that the building as erected or as altered is fit for occupation and use as a building of the class specified in the approved plans for that building work.

**(2A)** Where, in relation to building work referred to in subsection (2), the holder of the relevant building permit refuses or fails to comply with a requirement made by the Building Controller pursuant to subsection 36 (11), the Building Controller may refuse to issue a certificate referred to in that first-mentioned subsection.

**(3)** Where building work involving the erection or alteration of a building as completed is not strictly in accordance with the prescribed requirements for the building work but is substantially in accordance with those requirements, the Building Controller may, on an application made by the owner of the parcel of land on which the building work has been carried out, issue a certificate that the building as erected or as altered, is fit for occupation and use as a building of the class specified in the approved plans for that building work.

**(4)** Where:

- (a) building work involving the erection or alteration of a building as completed is substantially but not strictly in accordance with the prescribed requirements for the building work; and
- (b) the Building Controller issues a certificate under subsection (3) in respect of that building work;

the Building Controller may, by notice in writing served on the applicant for that certificate, require the applicant to carry out such work as is specified in the notice, being work that is necessary to secure strict compliance with the prescribed requirements for the building work, within the period specified in the notice.

**(4A)** A person on whom a notice under subsection (4) is served shall not, without reasonable excuse, fail to comply with the requirements of that notice.

**(4B)** A person who contravenes subsection (4A) is, in respect of each day on which he or she contravenes that subsection (including any such day on which the person is convicted of an offence under this subsection and any subsequent day), guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

**(5)** In the case where the appropriate acceptable requirements and standards for a matter as set out in the Building Code or if the Building Controller has approved under this Act other requirements and standards in relation to that matter, those requirements and standards have not been complied with, the Building Controller may, before issuing a certificate under subsection (3) of this section, require the applicant, by notice in writing, to carry out such work as is necessary to secure compliance with the appropriate acceptable requirements and standards as set out in the Building Code for that matter or the other approved requirements and standards, as the case requires,

and the Building Controller may refuse to issue the certificate until the work specified in the notice has been carried out.

(6) Where part of a building has been erected in accordance with the prescribed requirements in so far as they relate to that part of the building, the Building Controller may, on an application made by the owner of a parcel of land on which the building is being erected, issue to the owner of the parcel of land a certificate that that part of the building is fit for occupation and use as a part of a building of the class specified in the approved plans in respect of the building work.

(7) Where—

- (a) a certificate has been issued under the last preceding subsection in relation to a portion of a building; and
- (b) the Building Controller, on completion of the whole of the building work, issues a certificate for the whole of the building,

the Building Controller shall cancel the certificate that relates to the portion of the building.

(8) Where a certificate is issued under this section in respect of the whole or a portion of a building, the Building Controller shall—

- (a) Where the building consists of two or more storeys—specify in the certificate the number of storeys in the building or portion of the building; and
- (b) where the building or portion of the building is a building or portion of a building referred to in subparagraph 32 (1) (a) (vii)—specify in the certificate the type of construction in accordance with the classification provided by the Building Code.

(9) For the purposes of this section—

- (a) a certificate under the hand of a surveyor licensed under the *Surveyors Act 1967* that the siting of a building as erected or altered is in conformity with the siting of the building as shown on the approved plans for the building work is evidence of that fact;
- (b) a certificate signed by the engineer appointed under the Canberra Sewerage and Water Supply Regulations, or by a person appointed by the engineer, that the plumbing, sewerage and drainage work carried out in the building work is in conformity with such of the prescribed

requirements for the building work as relate to plumbing, sewerage and drainage work is evidence of that fact;

- (c) a certificate signed by an engineer authorized for the purpose by the Australian Capital Territory Electricity and Water Authority certifying that the electricity wiring work, as defined by the *Electricity Act 1971*, carried out in the building work is in conformity with such of the prescribed requirements for the building work as relate to that electricity wiring work is evidence of that fact;
- (d) a certificate signed by a practising structural engineer, certifying that a building or part of a building is structurally sufficient, sound and stable for the purposes for which it is to be occupied and used is evidence of that fact; and
- (e) a certificate signed by a registered architect within the meaning of the *Architects Act 1959* or a person who is the holder of a builder's licence of a class that authorises that person to carry out building work of the relevant kind certifying that particular building work complies with the conditions to which the building permit for that building work is subject is evidence of that fact.

(10) Where building work involving the demolition of a building has been completed in accordance with the prescribed requirements for that building work, the Building Controller shall, on an application made by the owner of the parcel of land on which the building work was carried out, issue a certificate to that effect.

(11) Where building work involving the erection of a structure upon or attached to land or a building has been completed in accordance with the prescribed requirements for that building work, the Building Controller shall, on an application made by the owner of the parcel of land on which the building work was carried out, issue a certificate to that effect.

### **Statement that permit conditions are met**

**53A. (1)** The Building Controller may, on receiving:

- (a) a notice under subsection 36 (5); or
- (b) an application for the issue of a certificate under subsection 53 (2), (3), (6), (10) or (11);

require the holder of a building permit relating to the building work the subject of the notice or the application, as the case may be, to supply the Building Controller with a statement in writing:

- (c) that the conditions to which the permit is subject have been complied with in carrying out the building work; or
- (d) specifying the extent to which the conditions to which the permit is subject have not been complied with in carrying out the building work.

(2) The holder of a building permit shall not, without reasonable excuse, fail to comply with a requirement made of him or her under subsection (1).

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

### **Occupation and use of buildings**

**54. (1)** A person shall not occupy or use, or permit another person to occupy or use a building or portion of a building unless—

- (a) the Building Controller has issued a certificate under section 53 that that building or that portion of the building is fit for occupation and use; or
- (b) in the case of a building erected or altered before the commencing date or of a building to which the repealed laws continue to apply, a certificate in accordance with regulation 69A of the Canberra Building Regulations as in force at the relevant time was or is issued in respect of the building or portion of a building.

(2) Where the Building Controller has issued a certificate under section 53 that the building or a portion of a building is fit for occupation and use, a person shall not use or permit another person to use any other portion of the building except for a purpose incidental to the use of the first-mentioned part until a certificate has been issued under that section that that other portion is fit for occupation and use.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

### **Use of buildings restricted**

**54A. (1)** A person shall not occupy or use, or permit another person to occupy or use, a building or portion of a building—



- (a) in the case of a building in relation to the erection or alteration of which plans have been approved under this Act—as a building or portion of a building of a class other than the class specified in the plans so approved in respect of the most recent building work that has been carried out in relation to that building; or
- (b) in the case of a building in relation to the erection or alteration of which plans have been approved only under the repealed laws—for a purpose other than that stated in the plans and specifications so approved in respect of the most recent building work that has been carried out in relation to that building,

unless the Building Controller has given his approval in writing to such occupation and use.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

(2) The Building Controller shall, for the purposes of subsection (1), upon written application being made to him, give his approval in writing to the occupation and use of a building or portion of a building as a building or a portion of a building of a class specified in the application where he would, in accordance with this Act, approve the plans relating to the erection of that building if—

- (a) the building had not been erected and he were then and there considering the plans under section 33; and
- (b) the plans specified, in pursuance of subparagraph 32 (1) (a) (iii), the building to be of the same class as that specified in the application.

(3) An approval given by the Building Controller in pursuance of subsection (2) does not, in respect of the parcel of land on which the building has been erected, being a parcel of land held under a lease from the Commonwealth, authorize the use of that parcel for a purpose other than the purpose for which the lease was granted or the use of the parcel of land contrary to a provision, covenant or condition of the lease.

#### **Action by Building Controller upon unauthorised use of premises**

**55. (1)** Where, after being convicted for an offence against section 54 or 54A, a person continues to use or continues to permit another person to use a building or a portion of a building in contravention of the section for an offence

against which he has been so convicted, the Building Controller may, by notice in writing to the occupier or to the person permitting the occupation, or to both—

- (a) in the case of a conviction for an offence against section 54—require the building to be vacated within a period specified in the notice; and
- (b) in the case of a conviction for an offence against section 54A—require the occupation or use of the building or the portion of the building in contravention of that section to cease within a period specified in the notice.

(2) A person on whom a notice under subsection (1) is served shall not, without reasonable excuse, fail to comply with the requirements of that notice.

(3) A person who contravenes subsection (2) is, in respect of each day on which he or she contravenes that subsection (including any such day on which the person is convicted of an offence under this subsection and any subsequent day), guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$500; or
- (b) in the case of a body corporate—\$2,500.

### **Copies of certificates of occupancy**

**56. (1)** A copy of each certificate issued under this Part shall be kept in the office of the Building Controller, and a person may inspect a certificate at that office during the hours during which the office is open for business.

(2) Where the Building Controller issues a certificate under subsection 53 (2) or (6) in respect of a building or portion of a building and a copy of a certificate of occupancy in respect of that building or portion of a building is already being kept in his office, the Building Controller shall replace the earlier certificate with a copy of the later certificate of occupancy.

### **Safe live load plates**

**57. (1)** Where a certificate is issued under this Part on the completion of a building referred to in subparagraph 32 (1) (a) (vii) or on the completion of the alteration of such a building, the owner of the building shall affix, in a conspicuous place on the walls of each storey of the building, in an approved manner, metal plates of approved size and form showing the maximum live load for which the floor on that storey has been designed.

(2) Where—

- (a) a later certificate is issued under this Part in respect of an altered building; and
- (b) at the time that certificate is issued the safe live load for a floor of that building is different from that shown in respect of that floor on the metal plates affixed to the walls in pursuance of subsection (1),

the owner of the building shall substitute other plates showing the maximum permissible safe live load on that floor.

(3) The owner of the building shall maintain the plates affixed under this section.

(4) A person shall not occupy a building or portion of a building in respect of which plates are required to be affixed or substituted under this section until they have been so affixed or substituted.

Penalty:

- (a) in the case of a natural person—\$1,000; or
- (b) in the case of a body corporate—\$5,000.

### **Exceeding safe live load**

58. The owner and occupier of a building in respect of a floor of which a metal plate referred to in section 57 shows a maximum live load shall each ensure that the maximum live load shown on the metal plate is not exceeded on that floor.

Penalty:

- (a) in the case of a natural person—\$2,000; or
- (b) in the case of a body corporate—\$10,000.

## **PART VA—RESIDENTIAL BUILDING—STATUTORY WARRANTIES AND INSURANCE**

### **Interpretation**

58A. In this Part—

“builder” in relation to residential building work or a residential building, means—

- (a) the person who applies for, holds or held a building permit in relation to the work or the building; or

- (b) if that person is an employee of another person, or a contractor engaged by another person—the other person;

“building” does not include paving or a structure that is a fence, retaining wall, outdoor swimming pool, outdoor ornamental pond, mast, antenna, aerial, advertising device, notice or sign;

“building work” does not include work in connection with the demolition of a whole building;

“cost”, in relation to residential building work, has the same meaning as in subregulation 2 (1) of the Building Regulations;

“dwelling” means a house, unit, flat or any other building or part of a building used or intended to be used or designed or adapted to be used as a self-contained private residence;

“flat” has the same meaning as in the Building Code;

“ground storey” has the same meaning as in the Building Code;

“habitable room” has the same meaning as in the Building Code;

“house” has the same meaning as in the Building Code;

“mezzanine” has the same meaning as in the Building Code;

“residential building” means a building intended primarily for use for private residential purposes or as an adjunct to such a building, being a building containing not more than 3 storeys at any point (including the ground storey unless the ground storey contains no habitable rooms);

“residential building work” means building work in connection with a residential building;

“storey” has the same meaning as in the Building Code.

### **Application**

**58B.** This Part does not apply in relation to residential building work—

- (a) carried out or to be carried out by or for the Territory or the Commonwealth or an authority established under a Territory or Commonwealth Act;
- (b) if a building permit under subsection 39 (1) is granted for the work;
- (c) if the cost of the work is less than \$5,000; or

- (d) carried out or to be carried out in respect of buildings or dwellings other than buildings or dwellings referred to in Class 1 or 2 of the classifications of buildings in the Building Code.

### **Statutory warranties**

**58C. (1)** There is implied, by force of this section, in every contract for the sale of a residential building, and every contract to carry out residential building work (being a contract to which the builder is a party), a warranty by the builder—

- (a) that the residential building work, on the building, or to be carried out, has been or will be carried out in accordance with this Act;
- (b) that the work has been or will be carried out in a proper and workmanlike manner and in accordance with the plans approved for the work by the Building Controller;
- (c) that good and proper materials for the work have been or will be used in carrying out the work;
- (d) if the work has not been completed, and the contract does not specify a date by which, or a period within which, the work is to be completed—that the work will be carried out with reasonable diligence; and
- (e) if the owner of the land on which the work is being or is to be carried out is not the builder, and the owner expressly makes known to the builder, or a servant or agent of the builder, the particular purpose for which the work is required, or the result that the owner desires to be achieved by the work, so as to show that the owner is relying on the builder's skill and judgment—that the work and any material used in carrying out the work is or will be reasonably fit for that purpose or of such a nature and quality that they might reasonably be expected to achieve that result.

**(2)** Each of the owner's successors in title succeeds to the rights of the owner in respect of the statutory warranties.

**(3)** The warranties expire at the end of the period of 5 years after the date on which a certificate is issued under section 53 in relation to the building or the building work.

**(4)** In subsection (2), "owner" means—

- (a) in the case of a contract referred to in subsection (1) for the sale of a residential building—the person to whom title in the land on which the building was built is transferred under the contract; or
- (b) in the case of a contract referred to in subsection (1) to carry out residential building work—the owner of the land on which the work is to be carried out under the contract.

**Builder's liability**

**58D.** Nothing in this Act shall be taken to limit the liability that a builder would have had to any person if this Act had not been made.

**Residential building work insurance**

**58E. (1)** An insurance policy issued in respect of residential building work complies with this section if—

- (a) it is issued by an authorised insurer;
- (b) it provides for a total amount of insurance cover of at least \$50,000, or an amount equal to the cost of the work, whichever is less, in respect of each dwelling that forms part of the work;
- (c) if the builder is not the owner of the land on which the work is to be carried out—it insures the owner and the owner's successors in title for the period beginning on the date on which a building permit is granted for the work and ending 5 years after the date on which a certificate is issued under section 53 in respect of the work;
- (d) if the builder is the owner of the land on which the work is to be carried out—it insures the builder's successors in title for the period beginning on the date on which the title in the land is transferred to another person and ending 5 years after the date on which a certificate is issued under section 53 in respect of the work;
- (e) the whole of the premium payable in relation to the respective period has been paid;
- (f) it insures the owner (if the builder is not the owner) and the owner's successors in title against the risk of being unable to enforce or recover under the contract pursuant to which the work has been, is being or is to be carried out because of the insolvency, disappearance or death of the builder;
- (g) it insures the owner (if the builder is not the owner) and the owner's successors in title against the risk of loss resulting from a breach of a statutory warranty;

- (h) it insures the owner (if the owner is not the builder) and the owner's successors in title against the risk of loss resulting, by virtue of the builder's negligence, from subsidence of the land;
- (j) it provides that a claim under it may only be made within 90 days (or some specified period of more than 90 days) after the claimant becomes aware of the existence of grounds for the claim; and
- (k) the form of the policy has been approved in writing by the Building Controller.

(2) A residential building insurance policy may provide that the authorised insurer who issues the policy is not liable for the first \$500 (or some specified lesser amount) of each claim.

(3) For the purpose of calculating the amount of the premium payable in respect of a residential building insurance policy, the value of the work shall be taken to be equal to the cost of the work.

(4) Any provision, stipulation, covenant or agreement (whether made before or after the commencement of this Part) which negatives, limits or modifies or purports to negative, limit or modify the operation of this Part is void and of no effect.

(5) A residential building insurance policy shall not be taken to be invalid only because it contains any term, condition or warranty not contained in the form of policy approved by the Building Controller, but any such term, condition or warranty is void and of no effect.

(6) An authorised insurer is not entitled to avoid liability under a residential building insurance policy on the grounds that the policy was obtained by misrepresentation or non-disclosure by the builder.

(7) Where—

- (a) a builder is not the owner of the land on which the builder is carrying out residential building work;
- (b) as a result of becoming insolvent, the builder fails to complete the work;
- (c) the owner has paid the builder part or all of the cost of the work; and
- (d) the work is insured under a residential building insurance policy;

the owner is not entitled to recover from the insurer any amount by which the amount paid exceeds the cost of the work done except, where the owner has

paid a deposit on the work and the cost of any work done is less than the amount of the deposit, the owner may recover from the insurer—

- (e) an amount equal to the amount of the deposit less the cost of any work done; or
- (f) \$5,000 less the cost of any work done;

whichever is less.

(8) For the purposes of this section, a builder shall be taken to be insolvent if the builder becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

(9) In subsection (7), “deposit”, in relation to residential building work, means an amount that was paid or payable by the owner to the builder, under the contract to carry out the work, before the commencement of the work.

### **Recovery from builder**

**58F. (1)** Where—

- (a) a court gives judgment in favour of a person in respect of a matter for which the person is insured under a residential building insurance policy;
- (b) the insurer is a party to the proceedings in which the judgment is given; and
- (c) the judgment is not satisfied in full within the period of 30 days after the judgment is entered;

the judgment creditor may apply to the court for a direction that judgment be entered in favour of the creditor against the authorised insurer who issued the policy.

(2) The judgment creditor shall give the insurer at least 7 days’ written notice of his or her intention to make an application.

(3) A judgment entered against an authorised insurer is enforceable only to the extent that it had not been satisfied at the time the judgment was entered.

(4) An authorised insurer may, in addition to any other right or remedy, recover from a builder in respect of whose work a residential building insurance policy was issued so much of—

- (a) any judgment entered or obtained against the insurer;



- (b) any sums paid by the insurer in payment, settlement or compromise of a claim or of a judgment against the builder or of a judgment entered or obtained against the insurer; and
- (c) the costs of and expenses reasonably incurred by the insurer;

as the insurer has paid under or in consequence of the policy.

### **Duties of insurers**

**58G. (1)** Where—

- (a) an authorised insurer has been in the business of issuing residential building insurance policies; and
- (b) the insurer ceases to be in that business, or the insurer's authority to carry on insurance business is cancelled under the *Insurance Act 1973* of the Commonwealth;

the insurer shall notify the Building Controller of the cessation or cancellation within 7 days of its occurrence.

(2) An authorised insurer shall not knowingly represent falsely that an insurance policy issued or to be issued by the insurer complies with section 58E.

Penalty: \$5,000.

## **PART VI—MISCELLANEOUS**

### **Service of notices etc.**

**59. (1)** A notice or other document under this Act addressed to one person may be served—

- (a) by delivering the notice to the person personally;
- (b) by sending the notice by posting (under pre-paid postage) the notice as a letter addressed to the person at his last known place of residence or business; or
- (c) by affixing the notice in a prominent position on the building or, in the case of an alteration to a building, on the portion of the building being altered, to which the notice relates.

(2) Where a notice under this Act is addressed jointly to two or more persons, a number of copies of the notice equal to the number of persons to whom the notice is addressed shall be signed by the person giving the notice,

and one of those copies shall be served, in any of the manners specified in the last preceding subsection, on each of those persons.

### **False or misleading statements**

**59A.** A person who knowingly or recklessly—

- (a) makes a statement to the Building Controller that is false or misleading in a material particular; or
- (b) omits from a statement made to the Building Controller any matter or thing without which the statement is misleading in a material particular;

is guilty of an offence punishable, on conviction—

- (c) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months, or both; or
- (d) if the offender is a body corporate—by a fine not exceeding \$25,000.

### **Review by Tribunal**

**60. (1)** Application may be made to the Tribunal for the review of a decision of the Building Controller:

- (a) endorsing a condition or restriction on a builder's licence under subsection 14 (6B);
- (b) refusing under subparagraph 17 (1) (b) (i) or (ii) to grant a builder's licence;
- (c) granting of a builder's licence subject to conditions or restrictions under subsection 17 (3);
- (d) granting a builder's licence for a period of time specified under subsection 17 (7);
- (e) varying, suspending or cancelling a builder's licence under section 18;
- (g) refusing under subsection 33 (1) to approve building plans;
- (h) making a declaration under subsection 33 (2A);
- (i) refusing to extend or further extend a period under subsection 33A (2);
- (j) refusing to approve under subsection 34 (2) plans and specifications for building work involving the demolition or removal of a building;

- (k) refusing to grant a building permit under subsection 35 (1);
  - (l) requiring specified tests under subsection 36 (11);
  - (m) specifying safety precautions under section 36A;
  - (n) refusing to grant a building permit under subsection 39 (1);
  - (o) refusing to extend a building permit under subsection 41 (2);
  - (p) cancelling or not cancelling a building permit under section 41A;
  - (pa) refusing to issue a system licence under section 42D;
  - (pb) issuing a system licence subject to conditions under paragraph 42D (2) (b);
  - (pc) refusing to renew a system licence under subsection 42F (3);
  - (pd) renewing a system licence subject to conditions under subparagraph 42F (3) (b) (ii);
  - (pe) suspending a system licence under paragraph 42J (5) (c) or subsection 42J (6);
  - (pf) refusing to exempt a specialised system under section 42R;
  - (q) issuing a stop notice under section 43;
  - (r) issuing a notice under subsection 44 (1) or (3), 46 (1) or 53 (4) or (5);
  - (ra) refusing to issue a full clearance certificate under subsection 51M (1);
  - (rb) refusing to issue a partial clearance certificate under subsection 51M (2);
  - (s) refusing to issue a certificate under subsection 53 (2), (3), (6), (10) or (11); or
  - (t) refusing to grant an approval under section 54A or paragraph 58E (1) (h).
- (2)** The Tribunal shall not—
- (a) vary a decision issuing a stop notice under section 43 or a notice under subsection 44 (1) or (3) or 46 (1), or substitute a decision for such a decision it has set aside, in a manner that would be contrary to an approval under the *Buildings (Design and Siting) Act 1964* of a proposal with respect to the external design and siting of a proposed building or building as proposed to be altered; or

- (b) vary a decision issuing a notice under subsection 44 (3), or substitute a decision for such a decision it has set aside, unless approval, if required, has been given under the *Buildings (Design and Siting) Act 1964* for the external design and siting of a proposed building, or building as proposed to be altered, to which the notice relates.

(3) Where the Building Controller makes a decision referred to in subsection (1), he or she shall—

- (aa) in the case of a decision referred to in paragraph (1) (ra) or (rb)—as soon as practicable; or
- (ab) in any other case—within 28 days;

after the date of the decision give notice in writing of the decision—

- (a) in the case of a decision referred to in paragraph (1) (a), (b), (c) or (d)—to the applicant for the builder's licence;
- (b) in the case of a decision referred to in paragraph (1) (e) or (f)—to the holder of the builder's licence;
- (c) in the case of a decision referred to in paragraph (1) (g) or (h)—to the applicant for approval;
- (d) in the case of a decision referred to in paragraph (1) (i)—to the applicant for the extension;
- (e) in the case of a decision referred to in paragraph (1) (j)—to the applicant for approval;
- (f) in the case of a decision referred to in paragraph (1) (k)—to the applicant for the building permit and, if the applicant is not the owner of the parcel of land on which the building work would be carried out under that permit, to that owner;
- (g) in the case of a decision referred to in paragraph (1) (l)—to the person required to conduct the specified tests;
- (h) in the case of a decision referred to in paragraph (1) (m)—to the person required to take the specified safety precautions;
- (i) in the case of a decision referred to in paragraph (1) (n)—to the holder of the building permit;
- (j) in the case of a decision referred to in paragraph (1) (o)—to the holder of the building permit and the owner of the land on which building work may be carried out under the permit;

- (k) in the case of a decision referred to in paragraph (1) (p)—to the holder of the building permit and the owner of the land on which building work may be carried out under the permit;
- (ka) in the case of a decision referred to in paragraph (1) (pa) or (pb)—to the applicant for the system licence;
- (kb) in the case of a decision referred to in paragraph (1) (pc), (pd) or (pe)—to the holder of the system licence;
- (kc) in the case of a decision referred to in paragraph (1) (pf)—to the applicant for the exemption;
- (l) in the case of a decision referred to in paragraph (1) (q)—to the person carrying out the building work;
- (m) in the case of a decision referred to in paragraph (1) (r)—to the person required to carry out the specified building work;
- (ma) in the case of a decision referred to in paragraph (1) (ra) or (rb)—to the applicant for the certificate;
- (n) in the case of a decision referred to in paragraph (1) (s)—to the applicant for the certificate; or
- (o) in the case of a decision referred to in paragraph (1) (t)—to the applicant for approval.

**(3A)** For the purposes of paragraphs (3) (ka), (kb), (kc) and (ma), it shall be sufficient if notice is given to the agent of the applicant or of the holder.

**(4)** A notice under subsection (3) shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies, include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

**(5)** The validity of a decision to which a notice under subsection (3) relates shall not be taken to be affected by a failure to comply with subsection (4).

### **Recovery of costs of work carried out by inspector**

**62.** The costs incurred in the carrying out of the requirements of a notice under Part IV or a decision of the Building Controller, or in the carrying out of

the requirements of a notice under section 8 of the *Building Ordinance 1964*, by a building inspector or his assistants under section 9 of this Act is recoverable as a debt due to the Commonwealth from the person who was, by the notice or order, required to carry them out.

### **Evidence**

**63. (1)** In any proceedings before a court, a document purporting to be a copy of a notice under this Act and certified as a true copy by the Building Controller or of a person authorized in writing by him shall be received in evidence and shall be deemed without further proof to be a true copy of the notice.

**(2)** In any proceedings before a court, a notice certified as a true copy under this section shall be deemed, unless the contrary is proved, to have been given by the person purporting to give it and to have been given on the date specified in the certified copy of the notice.

**(3)** In any proceedings before a court, a document purporting to be a certificate given by the Building Controller and certifying that a specified person was or was not the holder of a building permit for specified building work or a building licence included in a specified class of licences on a specified date or during a specified period is evidence that on the specified date or during the specified period that person was, or was not, as the case may be, the holder of such a building permit, or building licence, as the case may be.

**(3A)** In any proceedings before a court, a document purporting to be a certificate given by the Building Controller and certifying that no person on a specified date or during a specified period was the holder of a building permit for specified building work is evidence that on the specified date or during the specified period no person was the holder of such a building permit.

**(4)** In any proceedings before a court, a certificate signed by the Building Controller certifying that a document annexed to the certificate is a true copy of plans approved by the Building Controller under this Act or of a part of such plans is evidence of the plans or of the part thereof as so approved.

**(4A)** In any proceedings before a court, a certificate signed by the Building Controller and certifying that, at a specified date—

- (a) a certificate had not been issued under section 53 in respect of the building or portion of a building specified in the first-mentioned certificate; or

- (b) a certificate in accordance with regulation 69A of the Canberra Building Regulations had not been issued in respect of the building or portion of a building specified in the first-mentioned certificate,

is evidence that, at that date, a certificate had not been issued under that section or that regulation, as the case may be, in respect of that building or portion of a building.

(5) In any proceedings before a court, unless the contrary is proved—

- (a) a certificate purporting to have been given under this section shall be deemed to have been given by the person purporting to give it without proof of the signature of the person by whom it purports to have been given.

#### **Legal liability for acts of Building Controller etc.**

**63A. (1)** An action or proceeding, civil or criminal, does not lie against a person who is, or has been, the Building Controller, a Deputy Building Controller or a building inspector personally for or in respect of any act done or omitted to be done in good faith by him in the exercise of powers or the performance of functions under this Act.

(2) Nothing in subsection (1) shall be taken to affect any liability that the Territory would, but for that subsection, have in respect of an act or omission referred to in that subsection.

#### **Conduct of directors, servants and agents**

**63B. (1)** Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show—

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where—

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been made;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person shall be read as a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to engaging in conduct shall be read as including a reference to failing or refusing to engage in conduct.

(8) A reference in this section to an offence against this Act shall be read as including a reference to—

- (a) an offence against the regulations; and
- (b) an offence against or arising out of Part VIII of the Crimes Act, 1900 of New South Wales in its application to the Territory, being an offence related to an offence against this Act or the regulations.

## **Fees**



**64. (1)** There shall be paid to the Building Controller such fees in respect of applications and other matters under this Act as are determined by the Minister under section 65.

**(2)** Where a fee is payable in respect of the doing of an act by the Building Controller, the Building Controller shall not do that act until the fee has been paid.

**(3)** Where a fee is payable in respect of an application or the lodging of a document, the application or the document shall be deemed not to have been made or lodged until the fee has been paid.

**(4)** The regulations may make provision for or in relation to the refund, in such circumstances as are prescribed, of fees paid under this Act.

#### **Power of Minister to determine fees**

**65.** The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

#### **Regulations**

**67.** The Executive may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the carrying out or giving effect to this Act.

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### **THE SCHEDULE**

Section 36

#### **INSPECTION STAGES**

1. Excavations for footings before any reinforcements or mass concrete is placed.
2. Reinforcements before any concrete is placed.
3. Damp-proofing, tanking and flashing before covering or building in.
4. Structural steelwork before building in, covering, encasing, plastering, lining or coating.
5. Stormwater drainage before backfilling.
6. Floor framing before floors are laid or ceilings are lined.
7. Supports for suspended and false ceilings before those ceilings are fixed or lined.
8. Roof framing before ceilings are lined or roof-covering is fixed.
9. Timber-framed walls before sheeting or lining.
10. Fire-protective encasing, plastering, lining or coating before covering or building in.
11. Connexions between pre-cast concrete building units and between those units and the structural frame of the building before covering or building in.
12. Duct systems before covering or building in.

## NOTE

1. The *Building Act 1972* as shown in this reprint comprises Act No. 26, 1972 amended as indicated in the Tables below.

Citation of Laws—The *Self-Government (Citation of Laws) Act 1989* (No. 21, 1989) altered the citation of most Ordinances so that after Self-Government day they are to be cited as Acts. That Act also affects references in ACT laws to Commonwealth Acts.

Table 1

Table of Ordinances

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Building Ordinance 1972</i>	26, 1972	4 Aug 1972	1 Sept 1972 (see <i>Gazette</i> 1972, No. 79, p. 14)	
<i>Building Ordinance 1974</i>	7, 1974	28 Mar 1974	28 Mar 1974	—
<i>Building Ordinance (No. 2) 1974</i>	38, 1974	3 Oct 1974	3 Oct 1974	—
<i>Building (Amendment) Ordinance 1976</i>	45, 1976	13 Sept 1976	13 Sept 1976	—
<i>Ordinances Revision (Remuneration) Ordinance 1976</i>	61, 1976	16 Nov 1976	16 Nov 1976	—
<i>Ordinances Revision Ordinance 1978</i>	46, 1978	28 Dec 1978	28 Dec 1978	—
<i>Building (Amendment) Ordinance 1979</i>	30, 1979	18 Sept 1979	26 Sept 1979 (see <i>Gazette</i> 1979, No. S188)	S. 34
<i>Building (Amendment) Ordinance 1982</i>	69, 1982	27 Aug 1982	27 Aug 1982	—
<i>Building (Amendment) Ordinance (No. 2) 1982</i>	70, 1982	27 Aug 1982	27 Aug 1982	—
<i>Building (Amendment) Ordinance (No. 3) 1982</i>	71, 1982	27 Aug 1982	27 Aug 1982	—
<i>Building (Amendment) Ordinance 1983</i>	20, 1983	24 Aug 1983	24 Aug 1983	—
<i>Building (Amendment) Ordinance (No. 2) 1983</i>	66, 1983	30 Dec 1983	27 Aug 1982	—
<i>Building (Amendment) Ordinance 1984</i>	68, 1984	5 Dec 1984	5 Dec 1984	—
<i>Building (Amendment) Ordinance 1987</i>	20, 1987	3 June 1987	3 June 1987	—
<i>Building (Amendment) Ordinance (No. 2) 1987</i>	47, 1987	16 Sept 1987	16 Sept 1987	—
<i>Electricity and Water (Consequential Amendments) Ordinance 1988</i>	31, 1988	30 June 1988	1 July 1988	Ss. 5 and 6
<i>Building (Amendment) Ordinance 1988</i>	73, 1988	30 Sept 1988	1 Oct 1988 (see <i>Gazette</i> 1988, No. S300)	—
<i>Building (Amendment) Ordinance (No. 2) 1988</i>	80, 1988	9 Dec 1988	9 Dec 1988	S. 18

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Building (Amendment) Ordinance (No. 3) 1988</i>	86, 1988	21 Dec 1988	11 May 1989 (see <i>Gazette</i> 1989, No. S161)	S. 12
as amended by <i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—
<i>Building (Amendment) Ordinance (No. 4) 1988</i>	87, 1988	21 Dec 1988	21 Dec 1988	—
<i>Interim Territory Planning Ordinance 1988</i>	88, 1988	21 Dec 1988	Ss. 1 and 2: 21 Dec 1988 Remainder: 31 Jan 1989 (see <i>Gazette</i> 1989, No. S38)	S. 19
<i>Self-Government (Consequential Amendments) Ordinance 1989</i>	38, 1989	10 May 1989	Ss. 1 and 2: 10 May 1989 Remainder: 11 May 1989 (see s. 2 (2) and <i>Gazette</i> 1989, No. S164)	—
<i>Remuneration (Miscellaneous Amendments) Ordinance 1989</i>	50, 1989	10 May 1989	10 May 1989	—

## NOTE-continued

## Self-Government day 11 May 1989

Table 2

Table of Acts

Act	Number and year	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
<i>Interim Planning (Consequential Amendments) Act 1990</i>	60, 1990	24 Dec 1990	S. 3: 12 Mar 1991 (see C'wealth Gazette 1991, No. S62) (a) Remainder: 24 Dec 1990	—
<i>Building (Amendment) Act 1991</i>	23, 1991	17 May 1991	17 May 1991	S. 21
<i>Building (Amendment) Act (No. 2) 1991</i>	43, 1991	20 Sept 1991	Ss. 1 and 2: 20 Sept 1991 Remainder: 1 Oct 1991 (see Gazette 1991, No. S105, p. 2)	S. 11
<i>Self-Government (Consequential Amendments) Act 1991</i>	53, 1991	2 Oct 1991	2 Oct 1991	—
<i>Land Planning and Environment (Consequential Provisions) Act 1991</i>	118, 1991	15 Jan 1992	Ss. 1 and 2: 15 Jan 1992 Ss. 3-8, 17-27 and 32-44: 2 Apr 1992 (see Gazette 1992, No. 13, p. 478) Remainder: 15 July 1992	—
<i>Statute Law Revision (Miscellaneous Provisions) Act 1992</i>	23, 1992	4 June 1992	4 June 1992	—

- (a) The *Building Act 1972* was amended by section 3 only of the *Interim Planning (Consequential Amendments) Act 1990*, subsection 2 (2) of which provides as follows:

“(2) Section 3 commences on the day specified as the end of the transition period under the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth in the Proclamation of the Governor-General under section 57 of that Act.”

## NOTES—continued

## Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 3	rep. No. 45, 1976
S. 4	am. No. 38, 1974; No. 86, 1988
S. 5	am. No. 30, 1979; No. 20, 1983; No. 68, 1984; No. 47, 1987; Nos. 73, 80, 86 and 88, 1988; No. 38, 1989; Act No. 60, 1990; Nos. 23 and 43, 1991
S. 6	am. No. 7, 1974; No. 20, 1987; Nos. 73 and 88, 1988; No. 38, 1989; Act No. 43, 1991
S. 6A	ad. Act No. 23, 1991 am. No. 43, 1991
S. 7	am. No. 30, 1979; No. 70, 1982; No. 66, 1983; No. 86, 1988; Act No. 43, 1991
S. 8	am. No. 80, 1988
S. 9	am. No. 38, 1974; No. 30, 1979; No. 68, 1984; Nos. 80 and 86, 1988; Acts Nos. 23, and 53, 1991; No. 23, 1992
S. 9A	ad. No. 80, 1988 am. Act No. 23, 1991
Ss. 9B, 9C	ad. Act No. 23, 1991
Div. 2 of Part II (ss. 10-13, 13A)	rep. No. 86, 1988
Div. 2 of Part II (ss. 10-12)	ad. No. 86, 1988
Ss. 10, 11	am. No. 46, 1978; No. 30, 1979; No. 73, 1988 rs. No. 86, 1988
S. 12	rs. No. 86, 1988
S. 13	rs. No. 61, 1976 rep. No. 86, 1988
S. 13A	ad. No. 45, 1976 rep. 86, 1988
S. 14	am. No. 7, 1974; No. 68, 1984; Nos. 80, 86 and 87, 1988
S. 15	am. No. 30, 1979; No. 68, 1984; No. 47, 1987; Act No. 43, 1991
S. 16	am. No. 30, 1979; No. 68, 1984; No. 23, 1992
S. 17	am. No. 20, 1983; No. 68, 1984; No. 86, 1988
Ss. 17A, 17B	ad. No. 68, 1984 rep. No. 86, 1988
S. 18	am. No. 68, 1984 rs. No. 86, 1988 am. Act No. 43, 1991
S. 18A	ad. No. 70, 1982 rs. No. 86, 1988
S. 19	am. No. 68, 1984 rs. No. 86, 1988
S. 20	am. No. 47, 1987; No. 86, 1988
S. 22	am. No. 30, 1979; Act No. 43, 1991
Div. 4 of Part II (ss. 24, 24A, 25, 26, 26A, 27-	rep. Act No. 43, 1991

**NOTE**—continued**Table of Amendments**—continued

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
29)	
Div. 4 of Part II (ss. 24-28)	ad. Act No. 43, 1991
S. 24 .....	am. No. 61, 1976; No. 73, 1988; Nos. 38 and 50, 1989; Act No. 23, 1991 rs. Act No. 43, 1991
S. 24A .....	ad. No. 50, 1989 rep. Act No. 43, 1991
S. 25 .....	am. No. 38, 1974; No. 30, 1979; Act No. 23, 1991 rs. Act No. 43, 1991
S. 26 .....	am. No. 30, 1979 rs. Act No. 43, 1991
S. 26A .....	ad. No. 45, 1976 rep. Act No. 43, 1991
S. 27 .....	am. No. 86, 1988 rs. Act No. 43, 1991
S. 28 .....	rs. Act No. 43, 1991
S. 29 .....	rs. Act No. 43, 1991
Heading to Part III .....	am. No. 30, 1979
S. 29 .....	rs. Act No. 43, 1991
S. 30 .....	am. Nos. 80 and 87, 1988; Act No. 23, 1991
S. 31 .....	am. No. 30, 1979; No. 47, 1987; No. 88, 1988; Act No. 60, 1990; Nos. 43 and 118, 1991
S. 31A .....	ad. No. 88, 1988 am. No. 38, 1989; Act No. 60, 1990 rep. No. 118, 1991
S. 32 .....	am. No. 30, 1979; Act No. 43, 1991; No. 23, 1992
S. 33 .....	am. No. 30, 1979; No. 71, 1982; No. 86, 1988; Acts Nos. 23 and 43, 1991; No. 23, 1992
S. 33A .....	ad. No. 30, 1979 am. No. 47, 1987; No. 86, 1988
S. 34 .....	am. No. 30, 1979; Act No. 23, 1992
S. 35 .....	am. No. 30, 1979; No. 47, 1987; No. 73, 1988; Act No. 43, 1991
S. 36 .....	am. No. 30, 1979; No. 68, 1984; No. 20, 1987; Nos. 80 and 86, 1988; Act No. 23, 1991; No. 23, 1992
S. 36A .....	ad. No. 30, 1979
S. 37 .....	rs. No. 30, 1979
S. 39 .....	rs. No. 30, 1979 am. No. 20, 1983; No. 68, 1984; No. 86, 1988; Act No. 43, 1991
S. 40 .....	am. No. 30, 1979; No. 20, 1987; Act No. 43, 1991
S. 41 .....	am. No. 30, 1979; No. 47, 1987
S. 41A .....	ad. No. 86, 1988
S. 42 .....	am. No. 30, 1979; No. 68, 1984 rep. No. 86, 1988
Part IIIA (ss. 42, 42A-	ad. Act No. 23, 1991

**NOTE—continued**

**Table of Amendments—continued**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
42R)	
S. 42 .....	ad. Act No. 23, 1991
S. 42A .....	ad. Act No. 23, 1991 am. No. 43, 1991
Ss. 42B-42R .....	ad. Act No. 23, 1991
S. 43 .....	am. No. 38, 1974; No. 30, 1979; No. 69, 1982; Nos. 80, 86 and 88, 1988; Act No. 60, 1990; No. 23, 1991; No. 23, 1992
S. 44 .....	am. No. 38, 1974; No. 30, 1979; No. 20, 1987
S. 45A .....	ad. No. 69, 1982
S. 46 .....	rs. No. 38, 1974 am. No. 30, 1979; No. 69, 1982; No. 68, 1984; No. 20, 1987; Nos. 80, 86 and 88, 1988; Act No. 60, 1990; No. 23, 1991; No. 23, 1992
S. 47 .....	am. No. 68, 1984; No. 88, 1988 rep. No. 86, 1988
Ss. 48-50 .....	rep. No. 86, 1988
S. 51 .....	am. No. 69, 1982 rs. No. 87, 1988
Heading to Part IVA .....	rs. Act No. 23, 1991
Heading to Div. 1 of Part IVA	ad. Act No. 23, 1991
Part IVA (ss. 51A-51H) .....	ad. No. 80, 1988
Ss. 51A-51C .....	ad. No. 80, 1988 am. No. 38, 1989
Ss. 51D, 51E .....	ad. No. 80, 1988
Ss. 51F-51H .....	ad. No. 80, 1988 am. No. 38, 1989
Div. 2 of Part IVA (ss. 51J-51P)	ad. Act No. 23, 1991
Ss. 51J-51P .....	ad. Act No. 23, 1991
S. 52 .....	am. No. 30, 1979
S. 53 .....	am. No. 30, 1979; No. 68, 1984; No. 20, 1987; Nos. 31 and 87, 1988; Act No. 43, 1991; No. 23, 1992
S. 53A .....	ad. No. 20, 1987 am. No. 80, 1988
Ss. 53B, 53C .....	ad. No. 20, 1987 rep. No. 73, 1988
S. 54 .....	am. Nos. 73 and 80, 1988
S. 54A .....	ad. No. 30, 1979 am. Nos. 80 and 86, 1988
S. 55 .....	am. No. 30, 1979; No. 87, 1988
S. 56 .....	am. Act No. 23, 1992
Ss. 57, 58 .....	rs. No. 30, 1979 am. No. 80, 1988
Part VA (ss. 58A-58G) .....	ad. No. 73, 1988

**NOTE**—continued**Table of Amendments**—continued

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision	How affected
S. 58A.....	ad. No. 73, 1988 am. Act No. 43, 1991
S. 58B.....	ad. No. 73, 1988 am. No. 38, 1989; Act No. 43, 1991
Ss. 58C-58G.....	ad. No. 73, 1988
S. 59A.....	ad. No. 73, 1988 am. Act No. 23, 1991
S. 60.....	am. No. 70, 1982 rs. No. 86, 1988 (as am. by No. 38, 1989) am. Act No. 23, 1991
S. 60A.....	ad. No. 30, 1979 rep. No. 86, 1988
S. 61.....	rep. No. 86, 1988
Ss. 61A, 61B.....	ad. No. 73, 1988 am. No. 38, 1989 rep. No. 86, 1988
S. 62.....	am. No. 38, 1974; No. 86, 1988; Act No. 23, 1992
S. 63.....	am. No. 38, 1974; No. 30, 1979; No. 86, 1988; Acts Nos. 23 and 43, 1991
S. 63A.....	ad. No. 66, 1983 am. No. 38, 1989
S. 63B.....	ad. No. 73, 1988
S. 64.....	am. No. 20, 1983
S. 65.....	rep. No. 30, 1979 ad. No. 20, 1983
S. 66.....	rep. No. 30, 1979
S. 67.....	am. No. 38, 1989