



Australian Capital Territory

Building Act 1972

A1972-26

Republication No 3E

Effective: 17 September 1999 – 20 November 1999

Republication date: 9 September 2014

Last amendment made by A1999-48

Not all amendments are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Building Act 1972* effective 17 September 1999 to 20 November 1999.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



Australian Capital Territory
BUILDING ACT 1972

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Updated as at 17 September 1999

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
5. Interpretation
6. Application
- 6AA. Application—prescribed buildings
- 6A. Position of Crown
- 6B. (Not in operation—*see* Note 3)

PART II—ADMINISTRATION

Division 1—Building Controller and Inspectors

7. Building Controller
- 7A. Deputy Building Controllers
- 7B. Building Controller and Deputy Building Controllers—identity cards
8. Appointment of building inspectors
9. Inspection
- 9A. Inspection of premises for hazardous substances
- 9B. Inspection for *Legionella* bacteria with consent of occupier
- 9C. Inspection during outbreak of Legionnaires' disease

Division 2—Conduct of inquiries

10. Procedure
11. Evidence
12. Legal representation

Building Act 1972

TABLE OF PROVISIONS—continued

Section

Division 3—Builder's Licences

- 14. Classes of builder's licences
- 15. Applications for builder's licence
- 16. Eligibility for builder's licences
- 17. Grant of licence
- 18. Variation, suspension or cancellation of licences
- 18A. Preliminary suspension of builder's licence
- 19. Notification of decision to suspend or cancel
- 20. Register of Builder's Licences
- 21. Loss etc. of licence
- 22. Change of nominee
- 23. Notice of change of address

Division 3A—Owner-builders' licences

- 23A. Grants of licences
- 23B. Period for which owner-builder's licence is in effect

Division 4—The Building Code

- 24. Building Code
- 25. Publication
- 26. Inspection
- 27. Exemptions
- 28. Certified copies

PART III—BUILDING WORK

Division 1—Preliminary

- 29. Interpretation

Division 2—Certifiers

- 30. Eligibility for appointment as certifier
- 31. Appointment of certifiers
- 32. Notification of appointment or cessation of appointment of certifier
- 33. Prohibition against contracting out

Division 3—Grant of building approvals

- 33A. Application
- 34. Issue of building approvals
- 34A. External design and siting considerations
- 35. Amendment of approved plans
- 35A. Effect of issue of further building approval
- 36. Land to be used in accordance with lease
- 36A. Period for which approvals are in force

Building Act 1972

TABLE OF PROVISIONS—continued

Section

Division 4—Carrying out building work

- 37. Requirements for carrying out building work
- 37A. Notifications by owner of land in relation to building work
- 38. Notifications by certifier in relation to building work
- 38A. Stages of building work
- 39. Building inspector may specify safety precautions

Division 5—Completion of building work

- 39A. Structural engineer's certificate
- 40. Completion of building work

Division 6—Offences

- 40A. Compliance with Building Code
- 41. Notification of breaches
- 41A. Carrying out building work in breach of section 37

PART IIIA—SPECIALISED SYSTEMS

Division 1—General

- 42. Interpretation
- 42A. Application of Part

Division 2—Licensing

- 42B. Operation in accordance with a licence
- 42C. Application
- 42D. Issue
- 42E. Notification of changes
- 42F. Renewal
- 42G. Transfer
- 42H. Statements by engineers

Division 3—Suspension of licences

- 42J. Suspension
- 42K. Preliminary suspension
- 42L. Effect of suspension
- 42M. Notification of suspension

Division 4—Applicable standard

- 42N. Amending the standard
- 42P. Disallowable instrument

Division 5—Exempt systems

- 42Q. Entitlement to apply
- 42R. Exemption

PART IV—STOP AND DEMOLITION NOTICES

- 42S. Interpretation

Building Act 1972

TABLE OF PROVISIONS—continued

Section	
43.	Stop notices
44.	Further notices relating to stop notices
45.	Service of notice
45A.	Notice to produce survey plan
46.	Notice to carry out building work
51.	Compliance with notices
	PART IVA—REMOVAL OF HAZARDOUS SUBSTANCES
	<i>Division 1—Loose asbestos</i>
51A.	Treatment and removal of loose asbestos by Territory
51B.	Additional powers of the Territory
51C.	Notice to occupier that work is to be performed
51D.	Service of notices
51E.	Notice to owner that work is to be performed
51F.	Entry to building with force
51G.	Liability of the Territory
51H.	Obstruction of the Territory
	<i>Division 2—Legionella bacteria</i>
51J.	Duty to maintain and clean specialised systems
51K.	Duty to notify Building Controller
51L.	Shutdown notices
51M.	Clearance certificates
51N.	Compliance with directions
51P.	Liability of the Territory
	PART V—OCCUPANCY OF BUILDINGS
52.	Effect of certificates under this Part
53.	Certificate of occupancy
53AA.	Certificates of occupancy and use for owner-builders
53AB.	Government buildings
54.	Occupation and use of buildings
54A.	Use of buildings restricted
54B.	Occupation and use of ex-government buildings
55.	Action by building controller on unauthorised use of premises
56.	Copies of certificates of occupancy and regularisation
57.	Safe live load plates
58.	Exceeding safe live load
	PART VA—RESIDENTIAL BUILDING—STATUTORY WARRANTIES AND INSURANCE
58A.	Interpretation
58AA.	Cost of building work

Building Act 1972

TABLE OF PROVISIONS—continued

Section	
58B.	Application
58C.	Statutory warranties
58D.	Builder's liability
58E.	Residential building work insurance
58F.	Recovery from builder
58G.	Duties of insurers
PART VI—MISCELLANEOUS	
59.	Service of notices etc.
59A.	False or misleading statements
60.	Review by Administrative Appeals Tribunal
62.	Recovery of costs of work carried out by an inspector
63.	Evidence
63A.	Legal liability for acts of Building Controller etc.
63B.	Conduct of directors, servants and agents
64.	Fees
65.	Power of Minister to determine fees
67.	Regulations



Australian Capital Territory
BUILDING ACT 1972

An Act relating to the erection, alteration and demolition of buildings

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Building Act 1972*.¹

2. Commencement

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

5.³ Interpretation

(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;

“approved plans” means plans, including amended plans, that relate to building work in relation to which a building approval is in effect;

“asbestos” means—

(a) any of the following minerals:

- (i) actinolite;
- (ii) amosite;
- (iii) chrysotile;
- (iv) crocidolite;
- (v) erionite;

Building Act 1972

- (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 approval” means a building approval under Part III;
- “Building Code” means the building code published under Division 4 of Part II;
- “Building Controller” means the Building Controller under section 7;
- “building inspector” means a person for the time being appointed a building inspector under section 8;
- “building work”, in relation to a building, means—
- (a) work in connection with the erection, alteration or demolition of the building and includes disposal of waste materials generated—
 - (i) by the alteration of a building other than a Class 1, Class 2 or Class 10a building; or
 - (ii) by the demolition of any 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

Building Act 1972

(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;

“certificate of occupancy” means a certificate under section 53;

“certificate of regularisation” means a certificate under section 53AB;

“certifier”, in relation to building work, means a person appointed to act as certifier under section 31 in relation to the work, being a person whose appointment is in effect;

“Class 1”, in relation to a building, has the same meaning as in the Building Code;

“Class 2”, in relation to a building, has the same meaning as in the Building Code;

“Class 10a”, in relation to a building, has the same meaning as in the Building Code;

“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;

“dwelling” means a Class 1 or Class 2 building;

“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, 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;

“Land Act” means the *Land (Planning and Environment) Act 1991*;

“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;

Building Act 1972

- (b) a condenser; or
- (c) a cooling tower;

“National Land” has the meaning given by section 27 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;

“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;

“owner-builder’s licence” means a licence under section 23A;

“plans”, for a building, includes—

- (a) specifications; and
- (b) any waste management plan;

“prescribed” means prescribed by the regulations;

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

“repealed laws” means the laws repealed by this Act;

“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;

Building Act 1972

- “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 prohibiting the carrying out of building work;
- “storey” has the same meaning as in the Territory Plan, as in effect from time to time under the Land Act;
- “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 Land” has the meaning given by section 28 of the *Australian Capital Territory (Planning and Land Management) Act 1988* of the Commonwealth;
- “Territory Planning Authority” means the Australian Capital Territory Planning Authority;
- “the commencing date” means the date fixed under section 2;
- “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;
- “waste management plan”, in relation to building work which involves the demolition or alteration of a building, means information which includes—
- (a) the extent of work to be undertaken;
 - (b) the nature and amount of waste that will be generated;
 - (c) the place to which each kind of waste will be taken by the builder, or the builder’s agent, for reuse, recycling or disposal; and
 - (d) any other information prescribed by the regulations.

(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.

Building Act 1972

- (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) “Chief Health Officer” means the Chief Health Officer under the *Public Health Act 1997*.

6. Application

- (1) This Act does not affect the operation of any other law in force in the Territory relating to land use or to the provision for a building of services including works for sewerage and drainage or for water or electricity supply.

Building Act 1972

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

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

6AA. Application—prescribed buildings

(1) Parts III and VA do not apply to building work commenced or carried out after the commencement of this section in relation to a prescribed building.

(2) Part V does not apply to a prescribed building.

(3) Part III does not apply to building work carried out before the commencement of this section in respect of a building if, had that building work been carried out after that commencement, it would have been building work carried out in respect of a prescribed building.

(4) Part V does not apply to a building erected or altered before the commencement of this section (being a building, the building work in respect of which was completed before that commencement) if, had that building been erected or altered after that commencement, it would have been a prescribed building.

6A.³ Position of Crown

(1) Subject to subsection (2), this Act does not bind the Territory Crown in its application in relation to—

- (a) buildings, or specialised systems in buildings, on unalienated Territory Land; or
- (b) building work carried out on unalienated Territory Land.

(2) In their application in relation to the matters referred to in subsection (1), the following provisions bind the Territory Crown:

- (a) in so far as the sections apply in relation to substances containing *Legionella* bacteria—sections 9 and 9A;
- (b) sections 9B, 9C and 40A;
- (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.

6B.³ * * * * *

PART II—ADMINISTRATION

Division 1—Building Controller and Inspectors

7. Building Controller

- (1) There may be a Building Controller.
- (2) In addition to performing his or her functions under this Act and the regulations, the Building Controller may perform any of the functions of a building inspector.
- (3) The Chief Executive shall create and maintain an office in the Government Service the duties of which include performing the functions of the Building Controller.
- (4) The Building Controller shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (3).

7A. Deputy Building Controllers

- (1) There may be 1 or more Deputy Building Controllers.
- (2) A Deputy Building Controller may perform any function of the Building Controller, subject to any direction of the Building Controller.
- (3) The Chief Executive shall create and maintain 1 or more offices in the Government Service the duties of which include performing the functions of a Deputy Building Controller.
- (4) A Deputy Building Controller shall be any public servant for the time being performing the duties of a Government Service office referred to in subsection (3).

7B. Building Controller and Deputy Building Controllers—identity cards

- (1) The Chief Executive shall issue to the Building Controller an identity card that specifies the Building Controller's name and office, and on which appears a recent photograph of the Building Controller.
- (2) The Chief Executive shall issue to a Deputy Building Controller an identity card that specifies the Deputy's name and office, and on which appears a recent photograph of the Deputy.

Building Act 1972

(3) Upon ceasing to occupy, or to act in, the office of Building Controller, or an office of Deputy Building Controller, a person shall not, without reasonable excuse, fail to return his or her identity card to the Chief Executive.

Penalty: 1 penalty unit.

8. Appointment of building inspectors

(1) The Building Controller may, by instrument in writing, appoint such persons as he or she 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 1 penalty unit.

9. Inspection

(1) A building inspector may from time to time inspect building work in relation to which a building approval is in effect for the purpose of ascertaining whether the building work is being or has been carried out in accordance with this Act, the regulations and the Building Code.

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

(a) building work is being or has been carried out and—

(i) a building approval has not been obtained in respect of that building work; or

(ii) the work is not being or has not been carried out in accordance with the approved plans 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

Building Act 1972

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, authorise 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) authorise 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, authorise 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.

(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 authorised to remain on the land or premises if, on request by the occupier of the land or premises, he or she does not produce a certificate in writing signed by the Building Controller that he or she 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 50 penalty units 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 250 penalty units.

9A.³ Inspection of premises for hazardous substances

(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

Building Act 1972

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

Building Act 1972

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;

Building Act 1972

- (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.

Building Act 1972

(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 50 penalty units 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 250 penalty units.

9B.³ Inspection for *Legionella* bacteria with consent of occupier

(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.

9C.³ Inspection during outbreak of Legionnaires' disease

(1) Where the Building Controller—

- (a) is notified in writing by the Chief Health Officer 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

Building Act 1972

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 50 penalty units 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 250 penalty units.

Division 2—Conduct of inquiries

10. Procedure

- (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.

11. Evidence

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

Building Act 1972

(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.

12. Legal representation

(1) At an inquiry a person may be represented by a legal practitioner 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 legal practitioner to examine witnesses and advise the Building Controller on any matter relating to the inquiry.

Division 3—Builder’s Licences

14. Classes of builder’s licences

(1) For the purposes of this Act, there shall be 4 classes of builder’s licences, namely—

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

(2) Subject to this section, a Builder’s Licence Class A authorises 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 authorises the person to whom it is granted to carry out any building work other than—

- (a) building work in connection with a building comprising more than 3 storeys; or
- (c) specialist building work.

(4) Subject to this section, a Builder’s Licence Class C authorises the person to whom it is granted to carry out any building work in connection with a Class 1, Class 2 or Class 10a building that comprises no more than 2 storeys, 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;

Building Act 1972

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

(b) specialist building work.

(5) A Builder's Licence Class D authorises 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 authorises 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, authorise 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 or she 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 projects that may be undertaken by the builder concurrently; and
- (d) the value of building work that may be undertaken,

under the licence, and the Building Controller shall, when he or she 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—50 penalty units; or
- (b) in the case of a body corporate—250 penalty units.

(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—50 penalty units; or
- (b) in the case of a body corporate—250 penalty units.

15. Applications for builder's licence

(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 1 of the 4 classes of licences specified in section 14.

(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 or her application for the licence, specify specialist building work for authorisation 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 or her 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 2 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 1 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.

16. Eligibility for builder's licences

(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 or she has such qualifications and skills in respect of the specialist building work specified in his or her application for the licence as are adequate to enable him or her to carry out that work in accordance with the prescribed standards; and
- (b) he or she has satisfactorily carried out on his or her own account or under supervision, for periods that total not less than 3 years, specialist building work of the kind specified in his or her 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 or she holds a certificate issued by the Canberra Institute of Technology certifying that he or she—
 - (i) has successfully completed a course at the Canberra Institute of Technology approved by the Minister by instrument; and
 - (ii) has at least 12 months' experience in building work gained during or after undergoing that course;
- (b) he or she holds a certificate issued by a tertiary institution outside the Territory certifying that he or she—
 - (i) has successfully completed a course at that institution approved by the Minister by instrument; and
 - (ii) has at least 12 months' experience in building work gained during or after undergoing that course; or
- (c) he or she is a person who has skills and has had experience that make him or her as capable of carrying out building work as a person who has the certificate referred to in paragraph (a).

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

- (a) he or she holds a certificate issued by the Canberra Institute of Technology certifying that he or she—

Building Act 1972

- (i) has successfully completed a course at the Canberra Institute of Technology approved by the Minister by instrument; and
 - (ii) has at least 12 months' experience in building work gained during or after undergoing that course;
 - (b) he or she holds a certificate issued by a tertiary institution outside the Territory certifying that he or she—
 - (i) has successfully completed a course at that institution approved by the Minister by instrument; and
 - (ii) has at least 12 months' experience in building work gained during or after undergoing that course; or
 - (c) he or she is a person who has qualifications and skills that make him or her as capable of carrying out building work as a person who has the certificate referred to in paragraph 3 (a) and he or she has satisfactorily carried out under supervision or on his or her 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 authorised 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 or she holds an Australian tertiary qualification, approved by the Minister by instrument, in architecture, civil engineering, structural engineering or building;
 - (b) he or she holds an overseas tertiary qualification in architecture, civil engineering, structural engineering or building the standard required for attaining which is equivalent to, or higher than, that required for attaining a corresponding qualification referred to in paragraph (a); or
 - (c) he or she is a person who has qualifications and skills that make him or her as capable of carrying out building work as a person who has a tertiary qualification referred to in paragraph (a) and has satisfactorily carried out on his or her 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 authorised to carry out.
- (5) An instrument made by the Minister for the purposes of paragraph 16 (2) (a) or (b), (3) (a) or (b) or (4) (a) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.
- (6) A company is not, or 2 or more persons carrying on business in partnership are not, eligible for the grant of a builder's licence included in the

Building Act 1972

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 or her 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 or her ability to perform building work of the kind specified in his or her 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 or her application.

17. Grant of licence

(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

Building Act 1972

- (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 (1) (b) if—

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

18. Variation, suspension or cancellation of licences

(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

Building Act 1972

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 the owner of any land on which building work is being carried out by the licensee on whom the notice has been served.

(7) The owner of land on which building work is being carried out by a licensee on whom a notice under subsection (1) has been served 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 by the Building Controller; or

Building Act 1972

(b) in any other case—before the time fixed under 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.

18A. Preliminary suspension of builder's licence

(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.

19. Notification of decision to suspend or cancel

(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.

20. Register of Builder's Licences

(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—

Building Act 1972

- (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.

21. Loss etc. of licence

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 or she 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.

22. Change of nominee

(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.

23. Notice of change of address

(1) Where the address of the holder of a builder's licence is changed, the holder shall, within 7 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 3A—Owner-builders' licences

23A. Grants of licences

(1) A natural person who—

- (a) is the owner of a parcel of land; and
- (b) personally or under his or her own supervision, intends to carry out building work on the land;

may apply to the Building Controller, in accordance with this section, for the grant of an owner-builder's licence.

(2) An application for an owner-builder's licence shall be in writing, signed by the applicant and accompanied by—

- (a) a copy of the building approval and approved plans in relation to the proposed work;
- (b) particulars of the applicant's skills and experience in relation to the proposed building work;
- (c) the determined fee; and
- (d) such other information and documents as are prescribed.

(3) Subject to this section, the Building Controller may grant an owner-builder's licence if satisfied that the application complies with subsection (2) and the proposed building work—

- (a) involves the erection or alteration of the principal place of residence of the applicant; or
- (b) is of such a nature that it can be carried out in accordance with this Act by a person who is not the holder of a builder's licence.

(4) The Building Controller shall not grant an owner-builder's licence unless he or she is satisfied that the applicant possesses the skills and experience required to carry out the work in respect of which the application has been made.

Building Act 1972

(5) The Building Controller may, by notice in writing, request an applicant for an owner-builder's licence to provide such further information or documents as the Building Controller may reasonably require in order to make a decision under subsection (3).

(6) Where a request under subsection (5) is not complied with within 14 days of the date of the notice or such longer period as is stated in the notice or the Building Controller allows, the Building Controller may refuse the application.

(7) An application for an owner-builder's licence shall not be granted in respect of proposed building work that involves the erection or alteration of the principal place of residence of the applicant if, during the period of 5 years immediately preceding the lodgment of the application, the Building Controller has granted to the applicant a specified permission.

(8) In subsection (7)—

“specified permission” means—

- (a) an owner-builder's licence; or
- (b) a building permit under section 39 as in force immediately before the commencement of this section;

in relation to building work for the erection or alteration of the applicant's principal place of residence on land other than the land in relation to which the application under subsection (1) has been made.

(9) An owner-builder's licence does not entitle the licensee to carry out any building work other than the work in relation to which it has been granted.

23B. Period for which owner-builder's licence is in effect

An owner-builder's licence lapses when—

- (a) the certifier in relation to the building work gives to the Building Controller a certificate under paragraph 40 (1) (g) in relation to the work; or
- (b) the relevant building approval lapses otherwise than by virtue of section 35A;

whichever sooner happens.

Division 4—The Building Code

24. Building Code

- (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 Building Codes Board, 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.

25. Publication

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.

26. Inspection

- (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.

27. Exemptions

- (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*.

28. Certified copies

In any proceedings before a court or the Administrative Appeals 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—BUILDING WORK

Division 1—Preliminary

29. Interpretation

In this Part—

“stage”, in relation to building work, means a stage prescribed under subsection 38A (1).

Division 2—Certifiers

30. Eligibility for appointment as certifier

(1) The regulations may specify the categories of building work in relation to which a registered construction practitioner is qualified to be appointed certifier.

(2) A registered construction practitioner is eligible to be appointed certifier in relation to building work if he or she—

- (a) is entitled under the *Construction Practitioners Registration Act 1998* to perform services as certifier in relation to the work; and
- (b) is qualified to be appointed in accordance with the regulations in relation to the work.

(3) The appointment of a certifier who, after being appointed, ceases to be eligible to be appointed in relation to the relevant building work, ceases to be in effect, by virtue of this subsection, when the certifier ceases to be so eligible.

(4) In this section—

“registered construction practitioner” means a person who is registered under the *Construction Practitioners Registration Act 1998*.

31. Appointment of certifiers

(1) The owner of a parcel of land on which it is proposed to carry out building work may, in writing, appoint to act as certifier in relation to the work a person who is eligible under section 30 to act as certifier in relation to it.

(2) Subject to subsection 30 (3), an appointment under subsection (1) ceases to be in effect if—

- (a) the owner of the parcel of land revokes the appointment by notice in writing given to the certifier; or
- (b) the certifier relinquishes the appointment by notice in writing given to the owner of the parcel of land.

32. Notification of appointment or cessation of appointment of certifier

Where, after the issue of a building approval in relation to building work—

- (a) a person is appointed certifier in relation to that work;
- (b) a person's appointment as certifier in relation to that work ceases to be in effect by virtue of subsection 30 (3) or is revoked; or
- (c) a person relinquishes his or her appointment as certifier in relation to that work;

the person shall, within 7 days of the appointment, cessation, revocation or relinquishment (as the case requires), notify the Building Controller of the occurrence by lodging an approved form.

Penalty: 1 penalty unit.

33. Prohibition against contracting out

A provision in a contract or agreement that limits or modifies, or purports to limit or modify, the operation of this Part, including this section, in relation to a certifier or building work, is void.

Division 3—Grant of building approvals

33A. Application

(1) The owner of a parcel of land may apply, in accordance with this section, to the certifier for a building approval in relation to building work to be carried out on the land.

(2) An application under subsection (1) may be made by an agent of the owner of the parcel of land on the owner's behalf.

Building Act 1972

- (3) An application under subsection (1)—
- (a) shall be in writing;
 - (b) shall specify—
 - (i) the name of the owner of the parcel of land; and
 - (ii) the block, section, division and district (within the meaning of the *Districts Act 1966*) of the parcel of land;
 - (c) shall be accompanied by the prescribed number of copies of the plans relating to the proposed work; and
 - (ca) if the building work involves the demolition of any building, or the alteration of a building other than a Class 1, Class 2 or Class 10a building—shall be accompanied by a waste management plan; and
 - (d) shall comply with the prescribed requirements.

34. Issue of building approvals

- (1) Subject to section 34A, the certifier to whom application for a building approval is made shall issue the approval if he or she is satisfied that—
- (a) the application complies with subsection 33A (3);
 - (b) where the application is made on behalf of the owner of the parcel of land—it is made by an agent authorised in writing by the owner;
 - (c) the plans that accompany the application comply with the prescribed requirements;
 - (d) the prescribed requirements relating to consultation with, or obtaining the consent or approval of, any person, body or authority, have been satisfied;
 - (e) subject to subsection (2), where the plans are for the erection of a building—the building as erected will comply with this Act, the regulations and the Building Code;
 - (f) subject to subsection (2), where the plans are for the substantial alteration of a building—the building as altered will comply with the Building Code; and
 - (fa) if the application relates to residential building work—
 - (i) a residential building insurance policy has been issued in respect of the work; or
 - (ii) an approved insurer has issued a certificate that the insurer has insured the work under a residential building insurance policy; and

Building Act 1972

- (fb) if a waste management plan is required to accompany the application—the plan is adequate; and
 - (g) the building as proposed to be erected or altered (as the case requires) will be structurally sufficient, safe and stable.
- (2) Paragraph (1) (e) does not require compliance with the Building Code and paragraph (1) (f) does not apply in so far as the plans contain matter the acceptable requirements for which are not dealt with in the Building Code.
- (3) For the purposes of paragraph (1) (f), plans are for the substantial alteration of a building if the aggregate volume (measured in accordance with subsection (4)) of the proposed alteration and any other alteration made to the building during the period of 3 years immediately preceding the making of the application for the building approval is more than 50% of the volume of the original building.
- (3A) For paragraph (1) (fb), a waste management plan is adequate if—
- (a) where—
 - (i) a facility exists in the Territory; or
 - (ii) the Minister has, in writing, specified a facility outside the Territory as being suitable;
for the reuse or recycling of materials of the kind described in the plan—the plan stipulates that the materials will be disposed of, where practicable, at such a facility; and
 - (b) the plan satisfies any other prescribed requirements
- (4) For the purposes of subsection (3), the volume of a building shall be measured by reference to roof and outer walls.
- (5) A building approval—
- (a) shall be in the prescribed form; and
 - (b) shall be—
 - (i) marked on;
 - (ii) attached to; or
 - (iii) partly marked on and partly attached to;the plans in respect of which it has been issued.
- (6) Where a building approval is not, or not entirely, marked on the plans, the certifier shall annotate the plans with an indication that the approval, or part of the approval (as the case requires), is in a separate document.

Building Act 1972

- (7) A certifier who issues a building approval shall—
- (a) give a copy of the approval and the relevant plans as soon as practicable to the person who has applied for the approval; and
 - (b) within 7 days after the issue give to the Building Controller—
 - (i) a copy of the approval;
 - (ii) a copy of the relevant plans;
 - (iii) if notification of his or her appointment as certifier has not previously been given to the Building Controller—notification of the appointment in the approved form; and
 - (iv) the determined fee.

- (8) In this section—

“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 given to the building controller a notice under section 58G;

“residential building work” has the same meaning as in Part 5A.

34A. External design and siting considerations

(1) An application for a building approval shall not be granted if the certifier is satisfied that, by reason of the external design or siting of a proposed building, or of a building as proposed to be altered, the carrying out of the building work to which the application relates would result in the contravention of this Act or any other law.

(2) Subsection (1) does not apply where the building work forms part of a development that is not required to be approved under Division 2 of Part VI of the Land Act.

35. Amendment of approved plans

(1) This section applies where, after the issue of a building approval in relation to building work, it is desired to amend the plans that relate to that work.

(2) Where this section applies, the owner of the parcel of land to which the building approval relates may apply, in accordance with this section, to the certifier for approval of the amendment to the plans.

Building Act 1972

(3) An application under subsection (1) shall comply with the prescribed requirements.

(4) A certifier to whom an application under subsection (2) has been made—

(a) shall, if satisfied that the nature or extensiveness of the proposed amendments requires reconsideration of the building approval, refuse the application; or

(b) may, if—

(i) the requirements of subsection 34 (1) and the regulations, in so far as they apply to plans, are satisfied in relation to the plans as amended;

(ii) if the application were an application for a building approval, it would not be refused by reason of section 34A; and

(iii) in his or her view, reconsideration of the building approval is not required;

approve the amendment to the approved plan and amend the building approval accordingly.

(5) A certifier who amends a building approval shall comply with subsections 34 (5), (6) and (7) (other than subparagraph (b) (iv)) in respect of the amended plans as if a reference in those subsections to plans were a reference to the plans as amended.

35A. Effect of issue of further building approval

Upon the issue of a building approval in relation to building work in respect of which a building approval is already in effect, the previously issued building approval is superseded and ceases, by virtue of this section, to be in effect.

36. Land to be used in accordance with lease

The issue of a building approval in respect of building work on a parcel of land does not authorise—

(a) if the parcel of land is held under a lease from the Commonwealth—its use for a purpose other than that for which the lease was granted; or

(b) the use of the parcel of land contrary to a provision, covenant or condition of the lease.

36A. Period for which approvals are in force

(1) Subject to section 35A and this section, a building approval is valid until the expiry of—

- (a) the period of 3 years commencing on the day of its issue; or
- (b) the development period applicable to the building work;

whichever sooner occurs.

(2) Where the development period applicable to the building work is extended, the certifier may, subject to subsection (3), extend the period of validity of the building approval to a day that is no later than the day on which the extended development period expires.

(3) Nothing in subsection (2) authorises the extension of the period of validity of a building approval to a day that is more than 3 years after the day on which the approval was issued.

(4) In this section—

“development period” means a period of time within which, under another law or a condition of the relevant lease, the building work is required to be completed.

Division 4—Carrying out building work

37. Requirements for carrying out building work

Building work shall not be carried out otherwise than in accordance with the following requirements:

- (a) the materials used in the building work shall conform to the standards for those materials set out in the Building Code;
- (b) the methods of use of those materials in the building work shall conform to the acceptable methods of use set out in the Building Code;
- (c) the building work shall be carried out in a proper and skilful manner;
- (d) the building work shall be carried out in accordance with the approved plans;
- (e) where an owner-builder’s licence has not been granted in relation to the building work—the building work shall be carried out by a person who is the holder of a builder’s licence of a class that authorises the carrying out of the building work;

Building Act 1972

- (f) where an owner-builder's licence has been granted in relation to the building work—the building work will be carried out by the person to whom the licence has been granted;
- (g) the licensee in charge of the building work shall take—
 - (i) all the safety precautions specified in or with the application for the building approval; and
 - (ii) any other safety precautions that a certifier or a building inspector may from time to time specify.

37A. Notifications by owner of land in relation to building work

(1) Subject to subsection (3), the owner of a parcel of land shall not authorise the carrying out of building work on that land unless he or she, or his or her agent, has notified in writing the certifier of the name and licence number of the licensee who is to carry out the building work.

Penalty:

- (a) in the case of a natural person—20 penalty units;
- (b) in the case of a body corporate—100 penalty units.

(2) Where—

- (a) a notification under subsection (1) has been given; and
- (b) the work is to be continued by a person other than the person last notified under subsection (1) or this subsection;

the owner of the parcel of land on which the building work is, or is to be, carried out shall not authorise the continuation of the work unless he or she, or his or her agent, has notified in writing the certifier of the name and licence number of the licensee who is to continue to carry out the building work.

Penalty:

- (a) in the case of a natural person—20 penalty units;
- (b) in the case of a body corporate—100 penalty units.

(3) A person to whom an owner-builder's licence has been granted in relation to building work shall not commence to carry out the work until he or she has notified in writing the certifier of the number of the licence.

Penalty: 20 penalty units.

38. Notifications by certifier in relation to building work

(1) A certifier who receives a notification under section 37A shall, within 7 days of receiving it, notify the Building Controller by means of the approved form of—

- (a) the name of the person who is to carry out the building work; and
- (b) the number of that person's licence and whether or not, in the certifier's opinion, the licence authorises the carrying out of the relevant building work.

(2) Where—

- (a) the building work is building work within the meaning of Part VA; and
- (b) Part VA applies to that work by virtue of section 58B;

a certifier who receives a notification under section 37A shall, within 7 days of receiving it—

- (c) advise the Building Controller by means of the approved form whether or not, in the certifier's opinion, there is in effect an insurance policy in respect of the building work that complies with section 58E; and
- (d) if the certifier is of the opinion that an insurance policy that complies with section 58E is in effect—give to the Building Controller sufficient particulars to identify the policy.

(3) A certifier shall not, without reasonable excuse, fail to comply with subsection (1) or (2).

Penalty: 5 penalty units.

38A. Stages of building work

(1) There shall be such stages of building work as are prescribed.

(2) A licensee in charge of building work shall not proceed with any building work above damp course level unless—

- (a) the certifier has received a plan signed by a surveyor registered under the *Surveyors Act 1967* specifying the position of the building in relation to the boundaries of the parcel of land on which the building is to be erected and specifying the level that the floor or floors of the building will have in relation to a level specified in the approved plans; and

Building Act 1972

- (b) the certifier is satisfied that the position of the building and the level of the floor or floors are in accordance with—
 - (i) the approved plans; and
 - (ii) the conditions to which any compulsory consent is subject.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(3) In subparagraph (2) (b) (ii)—

“compulsory consent” means a consent or approval required to be obtained under paragraph 34 (1) (d) or any other law of the Territory.

(4) A licensee in charge of building work who has reached a stage shall not proceed beyond that stage unless—

- (a) he or she has given to the certifier notice that the stage has been reached; and
- (b) the certifier has inspected the building work and has given written permission for the work to proceed.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(5) A certifier who has received a notice under paragraph (4) (a) shall inspect the building work to which the notice refers as soon as practicable.

(6) Where, in the course of an inspection under this section, a certifier forms the opinion on reasonable grounds that the building work is not in compliance with section 37, the certifier shall give to the licensee in charge of the building work such written directions as are reasonable and appropriate for achieving compliance.

(7) A certifier who is satisfied, after an inspection under this section, that building work complies with section 37, shall certify accordingly and give the certificate to the licensee in charge of the building work.

(8) A certifier shall not fail, without reasonable excuse, to comply with subsection (5), (6) or (7).

Penalty: 10 penalty units.

(9) A licensee in charge of building work shall keep records of—

Building Act 1972

- (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 (10);

until a certificate of occupancy for the building work is issued, and, when the certificate is issued, the licensee in charge of the building work shall deliver those records to the certifier.

(10) A certifier may, by notice in writing, require the licensee in charge of the building work to conduct, on the materials used or to be used in the work, 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.

(11) A licensee in charge of building work who is required under subsection (10) to conduct a test shall, as soon as practicable after the test is completed, submit to the person who requested it, in writing, the results of that test.

39. Building inspector may specify safety precautions

(1) Where—

- (a) building work in respect of which a building approval 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
- (b) a building inspector finds, on inspection, that inadequate safety precautions in connection with the building work are being taken to protect the safety of persons using that street or place;

the building inspector may direct that such safety precautions as the inspector specifies and are reasonable in the circumstances be taken in respect of that building work.

(2) Subsection (1) applies—

- (a) whether or not safety precautions were submitted to the certifier who issued the building approval; and
- (b) where safety precautions were submitted—those precautions are being observed.

(3) The licensee in charge of the building work shall comply with a direction under subsection (1).

Division 5—Completion of building work

39A. Structural engineer's certificate

At any time before or after the completion of building work, the certifier, if satisfied on reasonable grounds that it is desirable to do so in the interests of persons who occupy or use, or are likely to occupy or use, a building or part of a building that is being, or has been, erected or altered, may require the owner of the parcel of land on which the building work is being, or has been, carried out, to furnish to the certifier such certificates by professional engineers as will reasonably satisfy the certifier that the building or part of the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used.

40. Completion of building work

(1) Where building work appears to have been completed, the certifier shall, within 7 days of being satisfied that—

- (a) the work has been completed in accordance with the requirements of this Act and substantially in accordance with the approved plans; and
- (b) the building or part of the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used;

give to the Building Controller—

- (c) written evidence of the obtaining of any consents and approvals required to have been obtained under paragraph 34 (1) (d);
- (d) a copy of the plan referred to in paragraph 38A (2) (a);
- (e) a copy of all certificates issued under subsection 38A (7) in relation to the building work;
- (f) where the regulations require that, upon completion of the building work, the consent or approval of any person, body or authority is to be obtained—written evidence of the obtaining of that consent or approval;
- (g) a certificate that the building work has been completed in accordance with the requirements of this Act and substantially in accordance with the approved plans;
- (h) any certificate obtained under section 39A or, if no certificate under that section has been obtained, a written statement to the effect that—

Building Act 1972

- (i) the certifier is satisfied that the building or part of the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used; and
 - (ii) no certificate under section 39A is required;
- (i) where, in the certifier's view, the requirements of a specified subsection of section 53 have been satisfied—written advice that the Building Controller would be justified in issuing a certificate of occupancy in respect of the building work under that subsection; and
- (j) subject to subsection (3), a copy of the following documents and papers relating to the building work:
- (i) any application to the certifier under this Act and any accompanying document;
 - (ii) all plans or drawings;
 - (iii) any approval, certificate, determination, notification or permission issued, granted or given;
 - (iv) any certificate or other document given or prepared by another person that the certifier has relied on for the purpose of issuing, granting or giving a document referred to in subparagraph (iii);
 - (v) the certifier's working papers and calculations that are relevant to the decision to issue, grant or give a document referred to in subparagraph (iii).
- (2) The Building Controller may, in writing, exempt a certifier from compliance, in whole or in part, with any subparagraph of paragraph (1) (j) in respect of building work specified in the exemption.
- (3) A certifier is not required to give to the Building Controller a copy of a document or paper referred to in paragraph (1) (j) if—
- (a) he or she has already given to the Building Controller, in pursuance of this Act, the document or paper, or a copy of the document or paper; or
 - (b) the Building Controller has exempted the certifier under subsection (2) from giving the copy.

Division 6—Offences

40A. Compliance with Building Code

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—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

41. Notification of breaches

(1) Subject to subsection (3), a certifier shall, as soon as practicable, notify the Building Controller of any contravention of this Act, the regulations or the Building Code that has come to the certifier's attention.

Penalty:

- (a) in the case of a natural person—5 penalty units;
- (b) in the case of a body corporate—25 penalty units.

(2) For the purposes of subsection (1), where building work is not in compliance with section 37, no contravention of this Act shall be taken to have occurred if the licensee in charge of the building work rectifies the matter to the satisfaction of the certifier within a reasonable time of the matter being brought to the notice of the licensee.

(3) Subsection (1) applies whether or not a direction under subsection 38A (6) has been given in relation to the matter that constitutes the contravention.

41A. Carrying out building work in breach of section 37

(1) Building work (other than maintenance or cleaning of a specialised system) shall not be commenced or carried out except in compliance with section 37.

(2) Where building work is commenced or carried out in contravention of subsection (1), 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—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(3) Where building work that involves the handling of asbestos is commenced or carried out in contravention of subsection (1), 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—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

Building Act 1972

- (4) 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 or she—
- (a) believed on reasonable grounds that section 37 had been complied with; or
 - (b) was not aware, and could not reasonably have been aware, that the building work had commenced or had been carried out, as the case requires.
- (5) It is a defence to a prosecution against a person other than the owner of a parcel of land if the person satisfies the Court that—
- (a) he or she had carried out the building work in pursuance of a contract entered into by him or her with another person or at the request and on the instructions of another person; and
 - (b) that he or she believed on reasonable grounds that—
 - (i) a building approval had been issued in relation to the building work; and
 - (ii) the work has been carried out in compliance with section 37.
- (6) A person who carries out building work that involves the handling of asbestos is not guilty of an offence against subsection (3) if the person satisfies the court that—
- (a) he or she did not know that the building work involved the handling of asbestos; and
 - (b) he or she was not recklessly indifferent to whether the building work involved the handling of asbestos.

PART IIIA—SPECIALISED SYSTEMS³

Division 1—General³

42.³ Interpretation

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).

42A.³ Application of Part

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—Licensing³

42B.³ Operation in accordance with a licence

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—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

42C.³ Application

(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) (ii);
 - (vi) the date on which a certificate of occupancy (if any) was issued in respect of the building and the number of that certificate;

Building Act 1972

- (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.

42D.³ Issue

(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.

Building Act 1972

- (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.

42E.³ Notification of changes

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—5 penalty units;
- (b) if the offender is a body corporate—25 penalty units.

42F.³ Renewal

- (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;

Building Act 1972

- (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).

42G.³ Transfer

- (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.

Building Act 1972

(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.

42H.³ Statements by engineers

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 licences³

42J.³ Suspension

(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

Building Act 1972

- (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.

42K.³ Preliminary suspension

- (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.

Building Act 1972

(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.

42L.³ Effect of suspension

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

42M.³ Notification of suspension

(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 standard³

42N.³ Amending the standard

The Minister may, by instrument, amend the applicable standard.

42P.³ Disallowable instrument

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 systems³

42Q.³ Entitlement to apply

- (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.

42R.³ Exemption

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

42S. Interpretation

A reference in paragraphs 43 (1) (fa) and 46 (1) (ea) to an easement shall be deemed to include a reference to an area of land identified as an easement for electricity, telecommunication, water, drainage and sewerage services in, on or over the land on—

- (a) a certificate of title; or
- (b) a deposited plan, within the meaning of the *Districts Act 1966*;

with respect to that land.

43. Stop notices

- (1) Where building work is being carried out—
 - (a) without a building approval having been issued in relation to the work;
 - (b) otherwise than in accordance with the approved plans for that building work;
 - (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;

Building Act 1972

- (ea) in the case of building work forming part of a development requiring approval under Division 2 of Part VI of the Land Act—without that approval;
- (f) in the case of building work forming part of a development approved under Division 2 of Part VI of the Land Act—contrary to that approval, or a condition of that approval;
- (fa) if the building work is of a kind referred to in section 6AA, it is being carried out so as to encroach on an easement; 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 or she specifies in the notice.

(2) Paragraphs (1) (a) and (b) do not apply to building work of a kind referred to in section 6AA.

(2A) Paragraph (1) (fa) does not apply to building work of a kind referred to in section 6AA for which approval was obtained before the commencement of that section, if the building work is carried out in accordance with—

- (a) the approved plans for that building work; and
- (b) the conditions subject to which a building permit for the building work was granted.

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

- (a) if the Building Controller, by notice in writing signed by him or her 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 39 (2)—when the certifier notifies the Building Controller that the certifier has received the plan referred to in paragraph 39 (2) (a);
- (d) if it is deemed to have been revoked under subsection (4); or
- (e) if a further notice is given under section 44—when the work specified in that further notice is carried out.

Building Act 1972

(4) Where, if a stop notice in relation to building work is given on the ground specified in paragraph (1) (a)—

- (a) an application for a building approval in respect of that building work is made under this Act within 14 days of the giving of the notice; and
- (b) the application is granted;

the notice shall be deemed to have been revoked.

44. Further notices relating to stop notices

(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 7 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 approval was issued will be carried out in accordance with the approved plans and the provisions of this Act, 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 approval 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.

(5) Where building work has been carried out in the circumstances referred to in paragraph 43 (1) (f), the Building Controller shall not give a notice under this section to carry out the demolition of a building except on the recommendation of the Territory Planning Authority.

45. Service of notice

A notice under section 43 or 44 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;

Building Act 1972

- (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 2 or more of the persons to whom the notice may be given in the appropriate case under paragraph (a), (b) or (c).

45A. Notice to produce survey plan

Where building work for which a building approval has been issued has been carried out in contravention of subsection 38A (2), 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 paragraph 38A (2) (a).

46.³ Notice to carry out building work

(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 the Commonwealth, contrary to a provision, covenant or condition of the lease;

Building Act 1972

- (da) building work forming part of a development requiring approval under Division 2 of Part VI of the Land Act has been carried out without that approval;
- (e) building work forming part of a development approved under Division 2 of Part VI of the Land Act has been carried out contrary to that approval, or a condition of that approval;
- (ea) building work of a kind referred to in section 6AA has been carried out resulting in encroachment on an easement;
- (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

Building Act 1972

erected, as the case may be, a notice directing him or her 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.

(2A) Where building work has been carried out in the circumstances referred to in paragraph (1) (e), the Building Controller shall not give a notice under this section to carry out the demolition of a building except on the recommendation of the Territory Planning Authority.

(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 or she shall pay to the Building Controller those fees that would have been payable if he or she 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.

(5) Paragraphs (1) (a) and (b), subsection (1), insofar as that subsection empowers the Building Controller to direct the owner of a parcel of land to submit plans for approval and to require a person carrying out building work to obtain the grant of a building permit, and subsection (4), do not apply to building work of a kind referred to in section 6AA.

(6) Paragraph (1) (ea) does not apply to building work of a kind referred to in section 6AA for which approval was obtained before the commencement of that section, if the building work has been carried out in accordance with—

- (a) the approved plans for that building work; and
- (b) the conditions subject to which a building permit for the building work was granted.

51. Compliance with notices

(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.

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

PART IVA—REMOVAL OF HAZARDOUS SUBSTANCES³

Division 1—Loose asbestos³

51A. Treatment and removal of loose asbestos by Territory

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.

51B. Additional powers of the Territory

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;

Building Act 1972

- (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.

51C. Notice to occupier that work is to be performed

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;

Building Act 1972

- (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.

51D. Service of notices

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.

51E. Notice to owner that work is to be performed

(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.

51F. Entry to building with force

(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

Building Act 1972

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.

51G. Liability of the Territory

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.

51H. Obstruction of the Territory

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: 50 penalty units or imprisonment for 6 months, or both.

Division 2—Legionella bacteria³

51J.³ Duty to maintain and clean specialised systems

(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:

Building Act 1972

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

(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.

51K.³ Duty to notify Building Controller

(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—50 penalty units; or
- (b) if the offender is a body corporate—250 penalty units.

51L.³ Shutdown notices

(1) If—

- (a) on inspection under section 9A, 9B or 9C, a building is found to contain unacceptable *Legionella* levels; and
- (b) the Chief Health Officer, 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

Building Act 1972

- (b) if the Chief Health Officer 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.

51M.³ Clearance certificates

(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 Chief Health Officer, 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 Chief Health Officer, persons entering the building are not unduly at risk of contracting Legionnaires' disease.

51N.³ Compliance with directions

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

Penalty:

- (a) if the offender is a natural person—50 penalty units;
- (b) if the offender is a body corporate—250 penalty units.

51P.³ Liability of the Territory

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

52. Effect of certificates under this Part

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.

53. Certificate of occupancy

(1) In this section—

“prescribed requirements”, in relation to building work, means—

- (a) the requirements of this Act, the regulations or the Building Code; or
- (b) the approved plans.

(2) 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.

(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.

(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

Building Act 1972

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 of occupancy has been issued under subsection (6) 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 of occupancy for the whole of the building;

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

(9) For the purposes of this section—

- (b) a certificate under the *Canberra Sewerage and Water Supply Regulations*, 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; and
- (c) a certificate signed by a person authorised 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.

(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.

(12) For the purposes of determining, for the purposes of this section, whether building work has been completed in accordance with the prescribed requirements, the Building Controller may have regard to the certificates and other documents given to him or her by the certifier under section 40.

53AA. Certificates of occupancy and use for owner-builders

Where the Building Controller issues a certificate for building work carried out by a person who holds an owner-builder's licence, the certificate shall include a statement to the effect that Part VA ("Residential Building—Statutory Warranties and Insurance") does not apply in relation to that building work.

53AB Government buildings

- (1) This section applies to a building if—
 - (a) the building was erected, before or after the commencement of this section, on land that, when the building was erected, was held—
 - (i) by the Commonwealth; or
 - (ii) by the Territory; or
 - (iii) by another person under a lease from the Commonwealth for a term of years; and
 - (b) a certificate of occupancy or regularisation has not been issued for the building.
- (2) Application for a certificate that a building to which this section applies is fit for occupation may be made by a person eligible to make the application under subsection (3) or (4).
- (3) If, when the application is made, the building is on land held under a lease from the Commonwealth for a term of years, the application may be made by the lessee.
- (4) If, when the application is made, the building is not on land held under a lease from the Commonwealth for a term of years, the application may be made—
 - (a) if the land is held by a person, including the Territory, under a tenancy from the Commonwealth, whether or not the occupier is the tenant or a subtenant—by the Commonwealth or the tenant; or
 - (b) if the land is held under a tenancy from the Territory, whether or not the occupier is the tenant or a subtenant—by the tenant; or
 - (c) in the case of National Land—by the Commonwealth; or
 - (d) in the case of Territory Land—by the Territory.
- (5) The application must—
 - (a) be in writing and signed by or on behalf of the applicant; and

Building Act 1972

- (b) provide sufficient information to enable the building to be identified; and
 - (c) be accompanied by a copy of the plans and specifications relating to—
 - (i) the erection of the building and any alteration to it; or
 - (ii) the building when the application is made; and
 - (d) state the purpose for which the building or each part of the building is being used; and
 - (e) if it is intended that any part of the building be used for a purpose other than the purpose for which it is being used when the application is made—state the intended purpose; and
 - (f) be accompanied by the determined fee.
- (6)** The building controller must—
- (a) grant the application if satisfied that—
 - (i) the application complies with subsection (5); and
 - (ii) the building complies with subsection (7); or
 - (b) refuse the application if not so satisfied.
- (7)** The building complies with this subsection if—
- (a) it is structurally sound and can withstand the loadings likely to arise from its expected use; and
 - (b) contains reasonable provision for—
 - (i) the safety of persons likely to be in the building if there is a fire, including the provision of adequate facilities for leaving the building; and
 - (ii) the prevention and suppression of fire; and
 - (iii) the prevention of the spread of fire.
- (8)** To decide whether the building complies with subsection (7), the building controller—
- (a) may require the applicant to provide a written statement by a qualified registered construction practitioner that deals with the matters mentioned in paragraphs (7) (a) and (b), or such of the matters as the building controller specifies; and
 - (b) may have regard to such a statement.

Building Act 1972

(9) If the building controller grants the application, the building controller must issue to the applicant a certificate that the building is fit for occupation if each part of the building is used only for the purpose stated in the certificate.

(10) In this section—

“qualified registered construction practitioner” means a person who—

- (a) is registered under the *Construction Practitioners Registration Act 1998*; and
- (b) in the building controller’s opinion, has sufficient expertise to provide a statement under subsection (8) that would assist the building controller to decide whether the building complies with subsection (7).

54 Occupation and use of buildings

(1) A person must not occupy or use, or permit someone else to occupy or use, a building or part of a building unless—

- (a) the building controller has issued a certificate of occupancy for the building or part of the building; or
- (b) for a building erected or altered before the commencing date or to which the repealed laws continue to apply—a certificate in accordance with regulation 69A of the *Canberra Building Regulations* has been issued for the building or part of the building.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(2) If the building controller has issued a certificate of occupancy for only a part of a building (the “approved part”), a person must not use, or permit someone else to use, any other part of the building for which no certificate of occupancy has been issued, except for a purpose incidental to the use of the approved part.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

(3) In this section—

“building” does not include a building for which a certificate of regularisation has been issued.

54A. Use of buildings restricted

(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 or her approval in writing to such occupation and use.

Penalty:

- (a) in the case of a natural person—50 penalty units; or
- (b) in the case of a body corporate—250 penalty units.

(2) The Building Controller shall, for the purposes of subsection (1), upon written application being made to him or her, give his or her 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 or she 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 or she 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, authorise 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.

(4) In this section—

“building” does not include a building for which a certificate of regularisation has been issued.

54B Occupation and use of ex-government buildings

(1) This section applies to a building for which a certificate of regularisation has been issued and that—

- (a) is on land held by a person other than the Territory from the Commonwealth under a lease for a term of years or a tenancy; or
- (b) is on land held by a person under a lease or a tenancy from the Territory.

(2) A person must not occupy or use, or permit anyone else to occupy or use, a building to which this section applies, or a part of such a building, for a purpose other than the purpose that is stated in the certificate of regularisation.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

55. Action by building controller on unauthorised use of premises

(1) Where, after being convicted for an offence against section 54, 54A or 54B, 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 or she 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 or 54B—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—

Building Act 1972

- (a) in the case of a natural person—50 penalty units; or
- (b) in the case of a body corporate—250 penalty units.

56. Copies of certificates of occupancy and regularisation

(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 or her office, the Building Controller shall replace the earlier certificate with a copy of the later certificate of occupancy.

57. Safe live load plates

(1) Where a certificate is issued under this Part on the completion of a Class 5, Class 6, Class 7, Class 8 or Class 9 building 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.

(5) In this section—

“Class 5”, “Class 6”, “Class 7”, “Class 8” and “Class 9”, for a building, have the same respective meanings as they have in the Building Code.

Penalty:

- (a) in the case of a natural person—5 penalty units; or
- (b) in the case of a body corporate—25 penalty units.

58. Exceeding safe live load

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—50 penalty units; or
- (b) in the case of a body corporate—250 penalty units.

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

58A. Interpretation

In this Part—

- “builder”, in relation to residential building work or a residential building, means the person whose name is notified to the relevant certifier under section 37A;
- “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 building work, means the cost of the work as ascertained under section 58AA;
- “ground storey” has the same meaning as in the Building Code;
- “habitable room” has the same meaning as in the Building Code;
- “residential building” means a building intended primarily for private residential use, or a part of such a building, where—
 - (a) if the ground floor is habitable—the building has no more than 3 storeys at any point (including the ground storey);

Building Act 1972

- (b) if the ground floor is not habitable—the building has no more than 4 storeys at any point (including the ground storey); or
- (c) in the case of a part of a building—the part provides structural support, or constitutes a structurally integral adjunct to the building;

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

58AA. Cost of building work

- (1) For the purposes of this Part, the cost of building work is—
 - (a) where a contract has been entered into for the carrying out of the building work—the cost of the work as fixed by the contract; or
 - (b) in any other case—
 - (i) an amount agreed between the Building Controller and the builder; or
 - (ii) failing such agreement—an amount determined by the Building Controller.
- (2) For the purposes of subsection (1), the cost of building work—
 - (a) includes the cost of any engineering service in relation to the land on which the building work is to be carried out; and
 - (b) does not include the cost of the land on which the building work is to be carried out.

58B. Application

- (1) 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, a Territory authority or an authority established under a Commonwealth Act;
 - (b) in relation to which an owner-builder’s licence has been granted;
 - (c) if the cost of the work is less than the prescribed amount; or
 - (d) in respect of a building or dwelling other than a Class 1 or Class 2 building.
- (2) Paragraph (1) (d) is not to be taken to prevent this Part from applying in relation to residential building work carried out in respect of a garage which provides structural support for, or constitutes a structurally integral adjunct to, a Class 1 or Class 2 building.

58C. Statutory warranties

(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 prescribed period after the date on which a certificate of occupancy is issued for 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.

58D. Builder's liability

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.

58E. Residential building work insurance

(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 the prescribed amount, 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 the certifier in relation to the work receives a notification under subsection 37A (1) or (2) in relation to the builder and ending the prescribed period after the date on which a certificate of occupancy is issued for 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 the prescribed period after the date on which a certificate of occupancy is issued for 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 the prescribed period (or some specified longer period) after the claimant becomes aware of the existence of grounds for the claim; and

Building Act 1972

(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 amount equal to the prescribed amount (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) the prescribed amount less the cost of any work done;

whichever is less.

Building Act 1972

(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.

58F. Recovery from builder

(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.

58G. Duties of insurers

(1) Where—

Building Act 1972

- (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.

Penalty: 50 penalty units.

(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: 250 penalty units.

(3) On or before 31 July in each year, an authorised insurer shall give a written statement to the Building Controller in relation to claims on residential building insurance policies dealt with by the company in the financial year ending on the previous 30 June specifying—

- (a) the number of claims;
- (b) the amount of each claim;
- (c) the number of claims that were paid;
- (d) the amount paid on each claim; and
- (e) where a claim was rejected—the reason for its rejection.

Penalty: 100 penalty units.

PART VI—MISCELLANEOUS

59. Service of notices etc.

(1) A notice or other document under this Act addressed to 1 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 or her 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 subsection (1), on each of those persons.

59A. False or misleading statements

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 50 penalty units 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 250 penalty units.

60.³ Review by Administrative Appeals Tribunal

(1) Application may be made to the Administrative Appeals 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 to grant an owner-builder's licence under subsection 23A (3);
- (i) refusing to extend or further extend a period under subsection 36A (2);
- (pa) refusing to issue a system licence under section 42D;
- (pb) issuing a system licence subject to conditions under paragraph 42D (2) (b);

Building Act 1972

- (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 of occupancy under subsection 53 (2), (3), (6), (10) or (11);
 - (sa) refusing to issue a certificate of regularisation to a person other than the Territory or the Commonwealth under paragraph 53AB (6) (b);
 - (t) refusing to grant an approval under section 54A or paragraph 58E (1) (h); or
 - (u) determining the cost of building work under subparagraph 58AA (1) (b) (ii).
- (2)** The Administrative Appeals Tribunal shall not in respect of a proposed building, or a building as proposed to be altered, forming part of a development within the meaning of Division 2 of Part VI of the Land Act—
- (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 of the development under that Division; 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 the development has been approved under that Division.
- (3)** Where the Building Controller makes a decision referred to in subsection (1), he or she shall 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;

Building Act 1972

- (c) in the case of a decision referred to in paragraph (1) (g)—to the applicant for the owner-builder's licence;
- (d) in the case of a decision referred to in paragraph (1) (i)—to the applicant for the extension;
- (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 paragraphs (1) (s) and (sa)—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 be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

62. Recovery of costs of work carried out by an inspector

The costs incurred in the carrying out of the requirements of a notice under Part IV or a decision of the Building Controller by a building inspector or his or her assistants under section 9 is recoverable as a debt due to the Commonwealth from the person who was, by the notice or order, required to carry them out.

63. Evidence

(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 authorised in writing by him or her shall be received in evidence and shall be deemed without further proof to be a true copy of the notice.

Building Act 1972

(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 or approval 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 approval, 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 or approval 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 or approval.

(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 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 of occupancy had not been issued for 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.

(6) In this section—

“building permit” means a building permit granted under this Act before the commencement of section 11 of the *Building (Amendment) Act (No. 2) 1998*.

63A. Legal liability for acts of Building Controller etc.

(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 or her 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.

63B. Conduct of directors, servants and agents

(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

Building Act 1972

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.

64. Fees

(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.

65. Power of Minister to determine fees

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

67. Regulations

The Executive may make regulations for the purposes of this Act prescribing matters including the following:

- (a) the exemption of prescribed buildings from the operation of all or part of the Act;
- (b) the approval of building work on prescribed buildings in accordance with prescribed requirements;
- (c) any other matters in relation to the approval of building work on prescribed buildings;
- (d) penalties for offences against the regulations not exceeding—
 - (a) in the case of a natural person—10 penalty units; or
 - (b) in the case of a body corporate—50 penalty units.

Building Act 1972

NOTES

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.

2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

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	—

Building Act 1972

NOTES—continued

Table of Ordinances—continued

Ordinance	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<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
<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	—

Building Act 1972

NOTE—continued

Self-Government day 11 May 1989

Table 2
Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	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 <i>Gazette</i> 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 <i>Gazette</i> 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 <i>Gazette</i> 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	—
<i>Building (Amendment) Act 1992</i>	48, 1992	1 Sept 1992	Ss. 1 and 2: 1 Sept 1992 Remainder: 9 Dec 1992 (see <i>Gazette</i> 1992, No. S230, p. 2)	—
<i>Statute Law Revision (Miscellaneous Provisions) Act 1993</i>	1, 1993	1 Mar 1993	1 Mar 1993	—
<i>Acts Revision (Position of Crown) Act 1993</i>	44, 1993	27 Aug 1993	27 Aug 1993 (see s. 2)	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p.2)	Ss. 3, 5-12, 15 and 19

Building Act 1972

NOTES—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—
<i>Statute Law Revision (Penalties) Act 1994</i>	81, 1994	29 Nov 1994	Ss. 1 and 2: 29 Nov 1994 Remainder: 29 Nov 1994 (see <i>Gazette</i> 1994, No. S269, p. 2)	—
<i>Statutory Offices (Miscellaneous Provisions) Act 1994</i>	97, 1994	15 Dec 1994	Ss. 1 and 2: 15 Dec 1994 Remainder: 15 Dec 1994 (see <i>Gazette</i> 1994, No. S293)	Part III (ss. 4-9)
(Reprinted as at 31 January 1995)				
<i>Building (Amendment) Act 1995</i>	28, 1995	5 Sept 1995	Ss. 14-16: 1 Jan 1996 (see <i>Gazette</i> 1995, No. S319) Remainder: 5 Sept 1995	Ss. 6 (2) and 19 (2)
<i>Land (Planning and Environment) (Amendment) Act (No. 3) 1996</i>	85, 1996	24 Dec 1996	Part I (ss. 1 and 2): 24 Dec 1996 Remainder: 24 June 1997	Ss. 92 (2), 93 (2), 94 (2), 95 (2) and 96 (2)
<i>Building (Amendment) Act 1997</i>	62, 1997	9 Oct 1997	9 Oct 1997	—
<i>Public Health (Miscellaneous Provisions) Act 1997</i>	70, 1997	9 Oct 1997	Ss. 1-3: 9 Oct 1997 Part III (ss. 20-24), Part VII (ss. 40-42) and s. 43: 13 Aug 1998 (see <i>Gazette</i> 1998, No. S185) Remainder (ss. 4-19, 25-39 and 44): (see Note 3)	Div. 1 of Part II (s. 4) Div. 3 of Part II (ss. 17-19)
<i>Legal Practitioners (Consequential Amendments) Act 1997</i>	96, 1997	1 Dec 1997	Ss. 1 and 2: 1 Dec 1997 Remainder: 1 June 1998 (see s. 2 (2))	—
<i>Building (Amendment) Act 1998</i>	48, 1998	16 Nov 1998	16 Nov 1998	—

Building Act 1972

NOTES—continued

Table of Acts—continued

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Building (Amendment) Act (No. 2) 1998</i>	52, 1998	16 Nov 1998	Ss. 1-3: 16 Nov 1998 Remainder: 4 Jan 1999 (see <i>Gazette</i> 1999, No. S1)	S. 24
<i>Building (Amendment) Act 1999</i>	1999 No 48	17 Sept 1999	17 Sept 1999	—

- (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.”

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; Act No. 1, 1993 om 1999 No 48 s 4
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; No. 1, 1993; Nos. 38, 60 and 97, 1994; No. 28, 1995; No. 85, 1996; No. 70, 1997; Nos. 48 and 52, 1998; 1999 No 48 s 5
S. 6	am. No. 7, 1974; No. 20, 1987; Nos. 73 and 88, 1988; No. 38, 1989; Act No. 43, 1991; No. 48, 1992; No. 1, 1993; No. 85, 1996; No. 52, 1998
S. 6AA.....	ad. Act No. 48, 1992
S. 6A	ad. Act No. 23, 1991 am. No. 43, 1991 rs. No. 44, 1993 am. No. 52, 1998
S. 7	am. No. 30, 1979; No. 70, 1982; No. 66, 1983; No. 86, 1988; Act No. 43, 1991; No. 48, 1992 rs. No. 97, 1994
S. 7A.....	ad. Act No. 97, 1994
S. 7B.....	ad. Act No. 97, 1994 am. No. 28, 1995
S. 8	am. No. 80, 1988; Act No. 48, 1992; No. 81, 1994

Building Act 1972

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
S. 9	am. No. 38, 1974; No. 30, 1979; No. 68, 1984; Nos. 80 and 86, 1988; Acts Nos. 23, and 53, 1991; Nos. 23 and 48, 1992; No. 1, 1993; No. 81, 1994; No. 52, 1998
S. 9A	ad. No. 80, 1988 am. Act No. 23, 1991; No. 81, 1994
S. 9B	ad. Act No. 23, 1991
S. 9C	ad. Act No. 23, 1991 am. No. 81, 1994; No. 70, 1997
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 am. Act No. 96, 1997
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; Act No. 48, 1992; No. 1, 1993; No. 81, 1994; No. 28, 1995; No. 52, 1998
S. 15	am. No. 30, 1979; No. 68, 1984; No. 47, 1987; Act No. 43, 1991; No. 48, 1992; No. 1, 1993
S. 16	am. No. 30, 1979; No. 68, 1984; Acts Nos. 22 and 48, 1992; No. 1, 1993; No. 28, 1995
S. 17	am. No. 20, 1983; No. 68, 1984; No. 86, 1988; Act No. 48, 1992; No. 1, 1993
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; No. 52, 1998
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. 21	am. Act No. 48, 1992
S. 22	am. No. 30, 1979; Act No. 43, 1991
S. 23	am. Act No. 1, 1993
Div. 3A of Part II (ss. 23A, 23B)	ad. Act No. 52, 1998
Ss. 23A, 23B	ad. Act No. 52, 1998
Div. 4 of Part II (ss. 24, 24A, 25, 26, 26A, 27-	rep. Act No. 43, 1991

Building Act 1972

NOTES—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 am. No. 48, 1992; No. 28, 1995
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 am. No. 60, 1994
S. 29	rep. Act No. 43, 1991
Heading to Part III	am. No. 30, 1979
Part III (ss. 29-33, 33A, 34-36, 36A, 37-41, 41A)	rep. Act No. 52, 1998
Part III (ss. 29-33, 33A, 34, 34A, 35, 35A, 36, 36A, 37, 37A, 38, 38A, 39, 39A, 40, 40A, 41, 41A)	ad. Act No. 52, 1998
S. 29	rs. Act No. 43, 1991 am. No. 44, 1993; No. 81, 1994 rs. No. 52, 1998
S. 30	am. Nos. 80 and 87, 1988; Act No. 23, 1991; No. 48, 1992; No. 81, 1994 rs. No. 52, 1998
S. 31	am. No. 30, 1979; No. 47, 1987; No. 88, 1988; Act No. 60, 1990; Nos. 43 and 118, 1991; No. 48, 1992; No. 85, 1996 rs. No. 52, 1998
S. 31A	ad. No. 88, 1988 am. No. 38, 1989; Act No. 60, 1990 rep. No. 118, 1991

Building Act 1972

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
S. 32	am. No. 30, 1979; Act No. 43, 1991; Nos. 23 and 48, 1992; No. 1, 1993; No. 96, 1997; No. 48, 1998 rs. No. 52, 1998
S. 33	am. No. 30, 1979; No. 71, 1982; No. 86, 1988; Acts Nos. 23 and 43, 1991; Nos. 23 and 48, 1992; No. 1, 1993; No. 48, 1998 rs. No. 52, 1998
S. 33A	ad. No. 30, 1979 am. No. 47, 1987; No. 86, 1988; Act No. 48, 1992 rs. No. 52, 1998 am 1999 No 48 s 6
S. 34	am. No. 30, 1979; Acts Nos. 23 and 48, 1992; No. 48, 1998 rs. No. 52, 1998 am 1999 No 48 s 7
S. 34A	ad. Act No. 52, 1998
S. 35	am. No. 30, 1979; No. 47, 1987; No. 73, 1988; Act No. 43, 1991; No. 48, 1992 rs. No. 52, 1998
S. 35A	ad. Act No. 52, 1998
S. 36	am. No. 30, 1979; No. 68, 1984; No. 20, 1987; Nos. 80 and 86, 1988; Act No. 23, 1991; Nos. 23 and 48, 1992; No. 1, 1993; No. 81, 1994; No. 28, 1995 rs. No. 52, 1998
S. 36A	ad. No. 30, 1979 rs. Act No. 52, 1998
S. 37	rs. No. 30, 1979; Act No. 52, 1998
S. 37A	ad. Act No. 52, 1998
S. 38	am. Act No. 85, 1996 rs. No. 52, 1998
S. 38A	ad. Act No. 52, 1998 am 1999 No 48 s 16 sch
S. 39	rs. No. 30, 1979 am. No. 20, 1983; No. 68, 1984; No. 86, 1988; Act No. 43, 1991; No. 48, 1992 rs. No. 52, 1998
S. 39A	ad. Act No. 52, 1998
S. 40	am. No. 30, 1979; No. 20, 1987; Act No. 43, 1991; No. 48, 1992; No. 1, 1993; No. 28, 1995; 1999 No 48 s 16 sch rs. No. 52, 1998
S. 40A	ad. Act No. 52, 1998
S. 41	am. No. 30, 1979; No. 47, 1987 rs. Act No. 52, 1998
S. 41A	ad. No. 86, 1988 rs. Act No. 52, 1998
S. 42	am. No. 30, 1979; No. 68, 1984 rep. No. 86, 1988
Part IIIA (ss. 42, 42A-42R)	ad. Act No. 23, 1991

Building Act 1972

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
S. 42	ad. Act No. 23, 1991
S. 42A	ad. Act No. 23, 1991 am. No. 43, 1991
S. 42B	ad. Act No. 23, 1991 am. No. 81, 1994
Ss. 42C	ad. Act No. 23, 1991 am 1999 No 48 s 16 sch
S. 42D	ad. Act No. 23, 1991
S. 42E	ad. Act No. 23, 1991 am. No. 81, 1994
Ss. 42F-42R	ad. Act No. 23, 1991
S. 42S	ad. Act No. 48, 1992
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; Nos. 23 and 48, 1992; No. 1, 1993; No. 85, 1996; No. 52, 1998
S. 44	am. No. 38, 1974; No. 30, 1979; No. 20, 1987; Act No. 48, 1992; No. 1, 1993; No. 52, 1998
S. 45	am. Act No. 1, 1993
S. 45A	ad. No. 69, 1982 am. Act No. 52, 1998
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; Nos. 23 and 48, 1992; No. 1, 1993; No. 85, 1996
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 am. Act No. 81, 1994
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
S. 51F	ad. No. 80, 1988 am. No. 38, 1989
S. 51H	ad. No. 80, 1988 am. No. 38, 1989; Act No. 81, 1994

Building Act 1972

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
Div. 2 of Part IVA (ss. 51J-51P)	ad. Act No. 23, 1991
Ss. 51J, 51K	ad. Act No. 23, 1991 am. No. 81, 1994
Ss. 51L, 51M.....	ad. Act No. 23, 1991 am. No. 70, 1997
S. 51N.....	ad. Act No. 23, 1991 am. No. 81, 1994
S. 51P.....	ad. Act No. 23, 1991
S. 52	am. No. 30, 1979; 1999 No 48 s 8
S. 53	am. No. 30, 1979; No. 68, 1984; No. 20, 1987; Nos. 31 and 87, 1988; Act No. 43, 1991; Nos. 23 and 48, 1992; No. 1, 1993; No. 81, 1994; No. 52, 1998; 1999 No 48 s 16 sch
S. 53AA.....	ad. Act No. 28, 1995 am 1999 No 48 s 16 sch
s 53AB	ins 1999 No 48 s 9
S. 53A.....	ad. No. 20, 1987 am. No. 80, 1988; Act No. 81, 1994 rep. No. 52, 1998
Ss. 53B, 53C.....	ad. No. 20, 1987 rep. No. 73, 1988
S. 54	am. Nos. 73 and 80, 1988; Act No. 81, 1994 sub 1999 No 48 s 10
S. 54A.....	ad. No. 30, 1979 am. Nos. 80 and 86, 1988; Act No. 48, 1992; No. 81, 1994; 1999 No 48 s 11
s 54B.....	ins 1999 No 48 s 12
S. 55	am. No. 30, 1979; No. 87, 1988; Act No. 48, 1992; No. 81, 1994; 1999 No 48 s 13
S. 56	am. Acts Nos. 23 and 48, 1992
s 57	sub 1979 No 30 am. No. 80, 1988; Act No. 81, 1994; 1999 No 48 s 14
s 58.....	rs. No. 30, 1979 am. No. 80, 1988; Act No. 81, 1994
Part VA (ss. 58A-58G)	ad. No. 73, 1988
S. 58A.....	ad. No. 73, 1988 am. Act No. 43, 1991; No. 28, 1995; Nos. 48 and 52, 1998
S. 58AA.....	ad. Act No. 28, 1995
S. 58B.....	ad. No. 73, 1988 am. No. 38, 1989; Act No. 43, 1991; No. 38, 1994; No. 28, 1995; No. 52, 1998
S. 58C.....	ad. No. 73, 1988 am. Act No. 28, 1995; 1999 No 48 s 16 sch
S. 58D.....	ad. No. 73, 1988
S. 58E.....	ad. No. 73, 1988 am. Act No. 28, 1995; No. 52, 1998; 1999 No 48 s 16 sch

Building Act 1972

NOTES—continued

Table of Amendments—continued

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

Provision	How affected
S. 58F	ad. No. 73, 1988
S. 58G	ad. No. 73, 1988
	am. Act No. 81, 1994; No. 28, 1995
S. 59	am. Act No. 48, 1992
S. 59A	ad. No. 73, 1988
	am. Act No. 23, 1991; No. 81, 1994
S. 60	am. No. 70, 1982
	rs. No. 86, 1988 (as am. by No. 38, 1989)
	am. Act No. 23, 1991; No. 60, 1994; No. 28, 1995; No. 85, 1996; No. 52, 1998; 1999 No 48 s 15 and s 16 sch
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; Acts Nos. 23 and 48, 1992; No. 1, 1993; No. 52, 1998
S. 63	am. No. 38, 1974; No. 30, 1979; No. 86, 1988; Acts Nos. 23 and 43, 1991; No. 48, 1992; No. 52, 1998; 1999 No 48 s 16 sch
S. 63A	ad. No. 66, 1983
	am. No. 38, 1989; Act No. 48, 1992
S. 63B	ad. No. 73, 1988
S. 64	am. No. 20, 1983; Act No. 62, 1997
S. 65	rep. No. 30, 1979
	ad. No. 20, 1983
S. 66	rep. No. 30, 1979
S. 67	am. No. 38, 1989
	rs. Act No. 28, 1995
The Schedule.....	rep. Act No. 52, 1998

Building Act 1972

NOTES—continued

3. Sections 5, 6A, 6B, 9A-9C and 30, Part IIIA (sections 42, 42A-42R), section 46, the heading to Part IVA, the heading to Div. 1, Div. 2 of Part IVA and section 60 of the *Building Act 1972* are amended by Div. 2 of Part II (sections 5-16) of the *Public Health (Miscellaneous Provisions) Act 1997*, subsection 2 (2) of which provides as follows:

“(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.”

As at 17 September 1999 no date had been fixed for the commencement of Div. 2 of Part II (sections 5-16) and the amendments are not incorporated in this reprint. They are set out below under the heading “EXTRACT FROM PUBLIC HEALTH (MISCELLANEOUS PROVISIONS) ACT 1997”.

EXTRACT FROM PUBLIC HEALTH (MISCELLANEOUS PROVISIONS) ACT 1997

Division 2—Amendments of Building Act 1972

Interpretation

5. Section 5 of the Building Act is amended—

- (a) by adding at the end of subparagraph (c) (i) of the definition of “building work” in subsection (1) “or”;
- (b) by omitting subparagraph (c) (iii) of the definition of “building work” in subsection (1);
- (c) by omitting from subsection (1) the definitions of “applicable standard” and “mechanical ventilation system” and substituting respectively the following definitions:

“ ‘applicable standard’ means Australian Standard 3666-1989, as amended for the purposes of this Act under section 6B and section 42N (before its repeal);

‘mechanical ventilation system’ includes—

- (a) an air-handling system within the meaning of the applicable standard;
 - (b) a condenser within the meaning of the applicable standard; and
 - (c) a cooling tower within the meaning of the applicable standard;”
- (d) by omitting from subsection (1) the following definitions:
 - “hazardous substance”;
 - “initial standard”;
 - “system licence”;
 - “unacceptable *Legionella* levels”; and
 - (e) by omitting subsection (6).

Position of Crown

6. Section 6A of the Building Act is amended by omitting subsection (2) and substituting the following subsection:

“(2) The Territory Crown is bound by this Act in the application of—

- (a) section 26; and

Building Act 1972

NOTES—continued

EXTRACT FROM PUBLIC HEALTH (MISCELLANEOUS PROVISIONS) ACT 1997—continued

- (b) section 43 as it relates to specialised systems.”.

Insertion

7. After section 6A of the Building Act the following section is inserted in Part I:

Applicable standard—amendment

“6B. (1) The Minister may, by instrument, amend the applicable standard.

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

Inspection of premises for loose asbestos

8. Section 9A of the Building Act is amended—

- (a) by omitting from subsection (1) “a hazardous substance” and substituting “loose asbestos”;
- (b) by omitting from paragraph (2) (c) “a hazardous substance” and substituting “loose asbestos”;
- (c) by omitting from paragraph (2) (d) “a hazardous substance;” and substituting “loose asbestos; or”;
- (d) by omitting from paragraph (2) (e) “a hazardous substance; or” and substituting “loose asbestos;”;
- (e) by omitting paragraph (2) (f);
- (f) by omitting from paragraphs (13) (a) and (b) “or a substance containing *Legionella* bacteria (as the case may be)”;
- (g) by omitting from paragraph (14) (a) “a hazardous substance” and substituting “loose asbestos”.

Repeal

9. Sections 9B and 9C of the Building Act are repealed.

Carrying out building work

10. Section 30 of the Building Act is amended by omitting from subsection (1) “(other than maintenance or cleaning of a specialised system)”.

Repeal

11. Part IIIA of the Building Act is repealed.

Notice to carry out building work

12. Section 46 of the Building Act is amended—

- (a) by omitting paragraph (1) (g) and substituting the following paragraph:

“(g) a building inspector finds, on inspection, that a building contains loose asbestos;”;

Building Act 1972

NOTES—continued

EXTRACT FROM PUBLIC HEALTH (MISCELLANEOUS PROVISIONS) ACT 1997—continued

- (b) by omitting from subsection (1) “, with respect to building work other than maintenance or cleaning of a specialised system,”; and
- (c) by omitting from paragraph (4) (a) “, or maintenance or cleaning of a specialised system”.

Heading to Part IVA

13. The heading to Part IVA of the Building Act is amended by omitting “**HAZARDOUS SUBSTANCES**” and substituting “**LOOSE ASBESTOS**”.

Heading to Part IVA, Division 1

14. The heading to Division 1 of Part IVA of the Building Act is omitted.

Repeal

15. Division 2 of Part IVA of the Building Act is repealed.

Review by Administrative Appeals Tribunal

16. Section 60 of the Building Act is amended—

- (a) by omitting paragraphs (1) (pa) to (pf) (inclusive) and (ra) and (rb);
- (b) by omitting paragraphs (3) (ka), (kb), (kc) and (ma); and
- (c) by omitting subsection (3A).

© Australian Capital Territory 2014