



Australian Capital Territory

## **Building Act 1972    No 26**

**Republication No 13**

**Effective: 9 June 2003**

Republication date: 9 June 2003 – 30 June 2003

Last amendment made by A2003-19

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* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 June 2003. It also includes any amendment, repeal or expiry affecting the republished law to 9 June 2003.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### 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](http://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 Act 2001*, part 11.3 authorises 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 Act 2001*, s 115 and s 117). 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.

This republication does not include amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

# Building Act 1972

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Australian Capital Territory

# Building Act 1972

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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Building Act 1972*.

### **U** 5 Interpretation for Act

(1) In this Act:

*Note* A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

***applicable standard*** means Australian Standard 3666-1989, as amended for this Act under section 6B and section 42N (before its repeal).

***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;
- (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* (Cwlth).

**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 2.3.

**building** includes—

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

**building approval** means a building approval under part 3.

**building code**—see section 24.

**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; or
- (b) work in connection with repairs of a structural nature to the building; or
- (c) work in connection with—
  - (i) the installation of a specialised system in the building; or

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

***certificate of occupancy*** means a certificate under section 53.

***certificate of regularisation*** means a certificate under section 53AB.

***certifier***—

- (a) for building work—means a person who is appointed to act as certifier under section 31 (Appointment of certifiers), or as government certifier under section 31A (Appointment of government certifiers), for the work;
- (b) for division 3.2 (Certifiers and government certifiers)—see section 29A (Meaning of *certifier*, *eligible person* and *government certifier* for div 3.2).

***class 1***, in relation to a building—see the building code.

***class 2***, in relation to a building—see the building code.

***class 10a***, in relation to a building—see the building code.

***designated area***—see the *Australian Capital Territory (Planning and Land Management) Act 1988* (Cwlth).

***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.

***fidelity certificate***—see section 59 (Definitions for pt 6).

***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.

***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 attached to the building.

**mechanical ventilation system** includes—

- (a) an air-handling system within the meaning of the applicable standard; and
- (b) a condenser within the meaning of the applicable standard; and
- (c) a cooling tower within the meaning of the applicable standard.

**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; or
- (b) if the land is held in fee simple—the person in whom the fee simple is vested; or
- (c) if the land is subdivided into units and common property by the registration of a units plan under the *Unit Titles Act 2001*—
  - (i) if building work has been, is being or is to be carried out on the land for the owners corporation—the owners corporation; or
  - (ii) if 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 owners corporation; or
- (d) if the land is occupied under a tenancy from the Territory or the Commonwealth—the occupier; or
- (e) if the Territory carries out or proposes to carry out building work on the land—the Territory; or
- (f) if the Commonwealth carries out or proposes to carry out building work on the land—the Commonwealth.

***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***, of a unit, means the owner of the unit within the meaning of the *Unit Titles Act 2001*.

***repealed laws*** means the laws repealed by this Act.

***residential building insurance policy*** means an insurance policy that complies with section 64.

***specialised system*** means—

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

***specialist building work*** means any prescribed building work.

***statutory warranty*** means a warranty specified in section 62.

***stop notice*** means a notice under section 43 prohibiting the carrying out of building work.

***storey***—see 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.

***Territory planning authority*** means the Australian Capital Territory Planning Authority.

***the commencing date*** means the date fixed under section 2.



**training fund board** means the Building and Construction Industry Training Fund Board under the *Building and Construction Industry Training Levy Act 1999*.

**training levy** means the training levy under the *Building and Construction Industry Training Levy Act 1999*.

**unit** has the same meaning as in the *Unit Titles Act 2001*.

**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 that involves the demolition or alteration of a building, means information that includes—

- (a) the extent of work to be undertaken; and
  - (b) the nature and amount of waste that will be generated; and
  - (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 under 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.
- (3) In this Act:
- (a) a reference to the **erection** of a building includes a reference to the removal of a building and its re-erection, with or without alteration, after its removal from another location; and
  - (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; and
  - (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.
- (4) A reference in this Act to the **handling** of asbestos includes a reference to—
- (a) the preparation and processing of asbestos; and
  - (b) the mixing of asbestos with another substance; and
  - (c) the installation, repair, modification or removal of—
    - (i) thermal or acoustic insulation; or
    - (ii) fireproofing material; or
    - (iii) building material;that is asbestos; and
  - (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 Application of Act generally**

- (1) This Act does not affect the operation of any other law in force in the ACT 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.
- (2) This Act does not apply to or in relation to a temporary building (other than 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.
- (3) The provisions of this Act are in addition to, and do not derogate from, the provisions of the *Scaffolding and Lifts Act 1912*.

**6AA Application—prescribed buildings**

- (1) Parts 3 and 6 do not apply to building work begun or carried out after the commencement of this section in relation to a prescribed building.
- (2) Part 5 does not apply to a prescribed building.
- (3) Part 3 does not apply to building work carried out before the commencement of this section in relation to a building if, had that building work been carried out after that commencement, it would have been building work carried out in relation to a prescribed building.
- (4) Part 5 does not apply to a building erected or altered before the commencement of this section (being a building, the building work in relation to 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 Application of Act to Territory**

- (1) This Act, other than section 40A (Compliance with building code), does not bind the Territory in relation to building work if the Minister certifies that a contract in relation to the work was entered into before 1 July 2001.
- (2) Subsection (1) has effect despite the *Legislation Act 2001*, section 121 (Binding effect of Acts).
- (3) This section expires on 1 July 2004.

**6B Applicable standard—amendment**

- (1) The Minister may, in writing, amend the applicable standard.
- (2) An amendment is a disallowable instrument.

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

## **Part 2 Administration**

### **Division 2.1 Building controller and inspectors**

#### **7 Building controller**

- (1) There may be a building controller.
- (2) In addition to exercising his or her functions under this Act, the building controller may exercise any of the functions of a building inspector.

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

- (3) The building controller may act as agent for the training fund board in connection with payments of training levy.
- (4) In acting under subsection (3) the building controller must act as directed by the training fund board.
- (5) The chief executive shall create and maintain an office in the public service the duties of which include exercising the functions of the building controller.
- (6) The building controller shall be the public servant for the time being exercising the duties of the public service office referred to in subsection (5).

#### **7A Deputy building controllers**

- (1) There may be 1 or more deputy building controllers.
- (2) A deputy building controller may exercise 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 public service the duties of which include exercising the functions of a deputy building controller.
- (4) A deputy building controller shall be any public servant for the time being exercising the duties of a public 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.
- (3) On 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.

Maximum penalty: 1 penalty unit.

**8 Appointment of building inspectors**

- (1) The building controller may, in writing, appoint the persons that he or she considers necessary to be building inspectors for this Act.
- (2) The building controller shall issue 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, on 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) commits an offence.

Maximum penalty (subsection (4)): 1 penalty unit.

**U 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.

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

- (2) If 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 relation to 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 4; or
  - (b) a completed building has deteriorated to such an extent—
    - (i) for a building in relation to the erection or alteration of which plans or plans and specifications 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, in the plans or plans and specifications so approved in relation to the most recent building work that has been carried out in relation to that building; or
    - (ii) in any other case—as to be unfit for any type of use; or

- (c) a building or part of a building is no longer structurally sound;  
or
- (d) because 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; or
- (e) for a building in relation to the erection or alteration of which plans or plans and specifications 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, in the plans or plans and specifications so approved in relation to 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 because of fire hazard or unfit for use because of a danger to health;

the building controller may, 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 grounds, those costs shall be borne by the Territory.



- (5) If the requirements of a notice under part 4 have not been complied with in accordance with that notice, the Minister may, in writing, authorise a building inspector, with the assistance the building inspector considers necessary, to enter on the land where 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 this section, a building inspector may enter on any land or premises where a building has been erected or building work is being or has been carried out.
- (7) A building inspector who enters on land or premises under 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 written certificate signed by the building controller that he or she is authorised so to enter.
- (8) A person who, without reasonable excuse, obstructs a building inspector acting under this section commits an offence.

Maximum penalty (subsection (8)): 50 penalty units, imprisonment for 6 months or both.

### **9A Inspection of premises for hazardous substances**

- (1) The building controller may, in writing, authorise a building inspector to inspect a building to determine whether it contains loose asbestos.
- (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 on the land where 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 loose asbestos; or
  - (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 loose asbestos; or
  - (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 loose asbestos.
- (3) A building inspector shall not inspect a building to determine whether it contains loose asbestos unless—
- (a) the building controller has given the occupier of the building written notice not less than 7 days before the day when the inspection is to take place that states—
    - (i) the purpose of the inspection; and
    - (ii) the period within which the inspection is to take place; and
    - (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 that 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; and
    - (ii) advise the occupier of the purpose of the inspection; and

- (iii) show the occupier his or her identity card.
- (4) A building inspector shall not inspect a building under this section unless the building inspector carries an identity card that bears a photograph of the building inspector.
- (5) A notice under subsection (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.
- (6) If a building inspector requires access to the interior of a building for the purpose of performing an inspection under this section (other than access that may be gained to a roof cavity of the building by lifting or moving roofing material), the building inspector shall make reasonable endeavours to contact the occupier of the building and make arrangements convenient to the occupier and the building inspector for the occupier to give the building inspector the access he or she requires.
- (7) If a building inspector has contacted the occupier of a building under subsection (6) 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.
- (8) If—
- (a) a building inspector has, under subsection (6), 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, under subsection (6) 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, in writing, 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.

- (9) A building inspector who is authorised to enter a building under subsection (8) may enter the building at any reasonable time of the day with the assistance and with the force that is necessary and reasonable for the purpose of performing an inspection under this section.
- (10) 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 before the inspection.
- (11) A building inspector who gains access to the interior of a building in accordance with arrangements made under subsection (6) shall—
- (a) cause as little damage as is practicable to the building in the exercise of his or her powers under this section; and
  - (b) behave courteously to any person he or she encounters in the building; and
  - (c) respect the rights of privacy of any person using the building; and
  - (d) if the building inspector has, in his or her arrangements with the occupier of the building under subsection (6), undertaken to close the building at the completion of the inspection—close the building securely in accordance with those arrangements.

- (12) A building inspector who enters a building by force under subsection (9) 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; and
  - (b) behave courteously to any person he or she encounters in the building; and
  - (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.
- (13) If 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 where 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.
- (14) 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 that he or she believes may be loose asbestos; or
  - (b) states that the building inspector has found a substance in or about the building that he or she believes may be loose asbestos, 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.

- (15) If a building inspector removes a sample of a substance from a building for testing under subsection (2) (e)—
- (a) the building inspector shall promptly arrange for the sample to be tested to determine whether it is loose asbestos; 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.
- (16) A report under subsection (15) (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.
- (17) 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.
- (18) A person who, without reasonable excuse, obstructs or hinders a building inspector acting under this section commits an offence.

Maximum penalty (subsection (18)): 50 penalty units, imprisonment for 6 months or both.

## **Division 2.2 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.
- (2) In conducting an inquiry, the building controller is not bound by rules of evidence but may inform himself or herself in the way the building controller considers appropriate.

## **12 Legal representation**

- (1) At an inquiry a person may be represented by a lawyer who may examine witnesses and address the building controller on behalf of the person for whom he or she appears.
- (2) If an inquiry is to be held under this Act, the building controller may appoint a lawyer to examine witnesses and advise the building controller on any matter relating to the inquiry.

## **Division 2.3 Builder's licences**

### **14 Classes of builder's licences**

- (1) For this Act, there shall be 4 classes of builder's licences, namely—
  - (a) builder's licences class A; and
  - (b) builder's licences class B; and
  - (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 6m; or
    - (ii) reinforced concrete beams the maximum of any of the spans of which exceeds 6m; or
    - (iii) suspended reinforced concrete in slabs the maximum of any of the spans of which exceeds 6m; or
  - (b) specialist building work.
- (5) A builder's licence class D authorises the person to whom it is granted to carry out the specialist building work 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.
- (7) 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 the specialist building work specified in the endorsement.



- (8) The building controller may grant a builder's licence subject to the conditions or restrictions the building controller considers appropriate in relation to—
- (a) the kinds of building work that may be carried out; and
  - (b) standards to be observed and procedures to be followed in carrying out building work; and
  - (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.
- (9) 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.

Maximum penalty: 50 penalty units.

- (10) 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.

Maximum penalty: 50 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.

*Note* A fee may be determined under s 108 (Determination of fees) for this section.

- (2) An applicant for a builder's licence—
- (a) for a builder's licence class D—shall; or
  - (b) for 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 section 14 (5) or (7).

- (3) An application for a builder's licence lodged by a company shall be accompanied by a written certificate 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.
- (4) For 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.
- (5) For 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.

## **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 relation to 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 in writing; and
    - (ii) has at least 12 months experience in building work gained during or after undergoing that course; or
  - (b) he or she holds a certificate issued by a tertiary institution outside the ACT certifying that he or she—
    - (i) has successfully completed a course at that institution approved by the Minister in writing; 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—
    - (i) has successfully completed a course at the Canberra Institute of Technology approved by the Minister in writing; and
    - (ii) has at least 12 months experience in building work gained during or after undergoing that course; or
  - (b) he or she holds a certificate issued by a tertiary institution outside the ACT certifying that he or she—
    - (i) has successfully completed a course at that institution approved by the Minister in writing; 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 (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 3 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 in writing, in architecture, civil engineering, structural engineering or building; or

- (b) he or she holds an overseas tertiary qualification in architecture, civil engineering, structural engineering or building the standard required for attaining that 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 3 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 approval by the Minister under this section is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.
- (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 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 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) If 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 is a fit and proper person to hold the relevant licence.

- (8) If 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 give him or her—
- (a) information in writing; and
  - (b) documents;
- relating to the eligibility of that person for the grant of a licence.
- (10) If 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 under subsection (10) shall be taken to be eligible for the grant of a builder's licence in relation to 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
    - (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 subsection (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; and
  - (b) he or she has, within 30 days after the receipt of the application, given to the applicant written notice specifying the grounds on 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.
- (3) 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.
- (4) If the building controller requests further particulars, the period referred to in subsection (2) (b) ceases to run on the day the notice is—
- (a) delivered to the applicant personally; or
  - (b) posted (under prepaid postage) as a letter addressed to the applicant at his or her last-known place of residence or business;

and resumes on the day those particulars are received by the building controller.

- (5) If the building controller grants a builder's licence to an applicant referred to in section 16 (11), the licence may be granted subject to the conditions or restrictions that, having regard to the results of the examination undertaken under section 16 (10), the building controller considers appropriate.
- (6) If the building controller has approved the grant of a licence, the building controller must issue the licence to the person to whom it is to be granted.

*Note* A fee may be determined under s 108 (Determination of fees) for this section.

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

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

- (1) The building controller may serve a written notice 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 given 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, 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 in relation 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 under, this Act;
- (e) that the holder or, for 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, for 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 who holds a builder's licence included in the same class as that held by the company or partnership;
- (g) that, for a licence granted to a company or partnership, the company or partnership has not, within 7 days after a person nominated by it has ceased to be responsible for the adequate direction and supervision of building work undertaken by it, notified the building controller of that fact;
- (h) that the holder or, for 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 ended.
- (5) On 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 serve a copy of a notice under subsection (1) on the owner of any land where building work is being carried out by the licensee on whom the notice has been served.
- (7) The owner of land where 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 about 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

- (b) in any other case—before the time fixed under subsection (8) (a) for an inquiry.
- (8) After the end 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 written notice 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; or
  - (b) remove any suspension imposed under section 18A and make a decision not to suspend, vary or cancel the licence; or
  - (c) if 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 subsection (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) If 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 the time and on the terms 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) If the building controller considers it necessary to do so, having regard to the circumstances leading to the service of a notice under section 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 section 18 (7).
- (2) If 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 subsection (2), section 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 ACT.
- (2) For subsection (1), the prescribed particulars are—
  - (a) the name of the holder of the licence that is varied, suspended or cancelled; and
  - (b) any other name under which the holder was or is carrying on business; and
  - (c) the address or addresses where the holder was or is carrying on business; and
  - (d) the nature of the decision; and
  - (e) the date the variation, suspension or cancellation took effect; and
  - (f) the ground or grounds referred to in section 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 ended; or
  - (b) if 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 ended; 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—
- (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 section 18 (1) or any extension of that time granted under section 18 (5), as to why his or her licence should not be varied, suspended or cancelled.
- (3) A decision becomes final for subsection (2) if the requirements of section 19 (3) (a) or (b) have been satisfied in relation to that decision.

- (4) A person may inspect the register of builder's licences at the office of the building controller during the hours when that office is open for business.

*Note* A fee may be determined under s 108 (Determination of fees) for this section.

## **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 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 written notice 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.
- (2) Two or more persons who carry on business in partnership and are the holders of a builder's licence may, by written notice 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.
- (3) 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) If the address of the holder of a builder's licence is changed, the holder shall, within 7 days after the change, give to the building controller written notice 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 2.3A Owner-builders' licences**

### **23A Grants of licences**

- (1) An individual 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; and
  - (b) particulars of the applicant's skills and experience in relation to the proposed building work; and
  - (c) any other information and documents prescribed under the regulations.

*Note* A fee may be determined under s 108 (Determination of fees) for this section.

- (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 relation to which the application has been made.
- (5) The building controller may, by written notice, request an applicant for an owner-builder's licence to provide the further information or documents the building controller may reasonably require to make a decision under subsection (3).
- (6) If a request under subsection (5) is not complied with within 14 days of the date of the notice or any longer period 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 relation to 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 before 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 section 40 (1) (g) in relation to the work; or
- (b) the relevant building approval lapses otherwise than under section 35A;

whichever sooner happens.

## **Division 2.4 The building code**

### **24 Building code**

- (1) For this Act, the *building code* is the Building Code of Australia prepared and published by the Australian Building Codes Board, as amended from time to time by—
- (a) the Australian Building Codes Board; and
- (b) the Australian Capital Territory Appendix to the Building Code of Australia.

- (2) The Minister may, in writing, make an Australian Capital Territory Appendix to the Building Code of Australia.

*Note* Power given under an Act to make a statutory instrument (including the Australian Capital Territory Appendix to the Building Code of Australia) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (3) The Australian Capital Territory Appendix to the Building Code of Australia is a disallowable instrument.

*Note 1* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

*Note 2* An amendment or repeal of the Australian Capital Territory Appendix to the Building Code of Australia is also a disallowable instrument (see *Legislation Act 2001*, s 46 (2)).

## **U 25 Publication of building code etc in newspaper**

- (1) The Minister must publish, in a daily newspaper published and circulating in the ACT, notice of the publication of each edition of the Building Code of Australia and each amendment of it by the Australian Building Codes Board.

- (2) A notice is a notifiable instrument.

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

## **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, on request, at any time the building controller's office is open for business, inspect the building code kept by the building controller.

## **27 Exemptions**

- (1) The Minister may, in writing, exempt, either generally or in a particular case, a person, from the application of all or any of the provisions of the building code.
- (2) An exemption is a disallowable instrument.

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

## **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 3 Building work

### Division 3.1 Preliminary

#### 29 Meaning of *stage* in pt 3

In this part:

*stage*, in relation to building work, means a stage prescribed under section 38A (1).

### Division 3.2 Certifiers and government certifiers

#### 29A Meaning of *certifier*, *eligible person* and *government certifier* for div 3.2

In this division:

*certifier* does not include government certifier.

*eligible person*, for building work—see section 30 (1).

*government certifier*, for building work, means a person who is appointed under section 31A (4) for the work.

#### 30 Eligibility for appointment—certifiers and government certifiers

- (1) A registered construction practitioner (an *eligible person*) is eligible to be appointed certifier or government certifier for building work if the construction practitioner—
  - (a) is entitled under the *Construction Practitioners Registration Act 1998* to perform services as certifier for the work; and
  - (b) is qualified under the regulations to be appointed for the work.
- (2) In this section:

*registered construction practitioner* means a person registered under the *Construction Practitioners Registration Act 1998*.

### 31 Appointment of certifiers

- (1) The owner of land where it is proposed to carry out building work may, in writing, appoint an eligible person (the *certifier*) as certifier for the work.
- (2) The appointment ends if—
  - (a) the certifier stops being an eligible person; or
  - (b) the owner of the land revokes the appointment by written notice given to the certifier; or
  - (c) the certifier resigns the appointment.
- (3) The certifier may resign the appointment only—
  - (a) with the written approval of the building controller; and
  - (b) by written notice given to the owner of the land.
- (4) The building controller may approve the resignation of the certifier only if satisfied that—
  - (a) the certifier cannot exercise his or her functions in relation to the building work because of mental or physical incapacity; or
  - (b) the certifier has arranged for another certifier to take over the certifier's functions in relation to the building work; or
  - (c) it is otherwise appropriate to approve the resignation.

### 31A Appointment of government certifiers

- (1) This section applies to building work if the last certifier appointed for the work is no longer the certifier for the work.
- (2) A certifier is *no longer the certifier* for building work if—

- (a) the certifier's registration is suspended for longer than 3 months; or
  - (b) the certifier's registration has been cancelled; or
  - (c) the certifier has resigned the appointment under section 31; or
  - (d) the certifier is dead; or
  - (e) the certifier is not covered by insurance for the *Construction Practitioners Registration Act 1998*.
- (3) The owner of the land where the building work is being carried out (or proposed to be carried out) may apply to the building controller for the appointment of a government certifier for the work.

*Note* If a form is approved under s 109 (Approved forms) for an application, the form must be used.

- (4) The building controller may appoint a government certifier for the building work if satisfied that the criteria prescribed under the regulations are satisfied.
- (5) The regulations may prescribe what must accompany the application.

### **31B Power to require building documents**

- (1) A government certifier appointed for building work may, by written notice, require the person who was the certifier (or last certifier) for the building work to give the government certifier any building document the person has in relation to the work within the period (of not less than 2 weeks after the day the notice is given) stated in the notice.
- (2) A person commits an offence if the person fails to comply with a notice given to the person under section (1).

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

(4) In this section:

*building document* means a document mentioned in section 40 (1) (c) to (j).

### **31C Protection of government certifiers from liability**

- (1) A government certifier does not incur civil or criminal liability for an act or omission done honestly as a government certifier.
- (2) A civil liability that would, apart from this section, attach to the government certifier attaches instead to the Territory.

### **32 Notice of certifier's appointment or end of appointment**

- (1) This section applies if—
  - (a) a building approval has been issued for building work; and
  - (b) either—
    - (i) a person is appointed certifier for the work; or
    - (ii) a person's appointment as certifier for the work ends.
- (2) The person must, within 7 days after the day the person is appointed or the appointment ends, give the building controller written notice of the appointment or end.

Maximum penalty: 1 penalty unit.

*Note* If a form is approved under s 109 (Approved forms) for a notification, the form must be used.

- (3) An offence against subsection (2) is a strict liability offence.

### **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 3.3 Grant of building approvals

### 33A Application for building approval

- (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.
- (3) An application under subsection (1)—
  - (a) shall be in writing; and
  - (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 2002*) of the parcel of land; and
  - (c) shall be accompanied by the prescribed number of copies of the plans relating to the proposed work; and
  - (d) 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
  - (e) 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 section 33A (3); and



- (b) if 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; and
- (c) the plans that accompany the application comply with the prescribed requirements; and
- (d) the prescribed requirements relating to consultation with, or obtaining the consent or approval of, any person, body or authority, have been satisfied; and
- (e) subject to subsection (2), if the plans are for the erection of a building—the building as erected will comply with this Act; and

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

- (f) subject to subsection (2), if the plans are for the substantial alteration of a building—the building as altered will comply with the building code; and
- (g) if the application relates to residential building work—
  - (i) a residential building insurance policy has been issued in relation to the work; or
  - (ii) an approved insurer has issued a certificate that the insurer has insured the work under a residential building insurance policy; or
  - (iii) the trustees of a scheme approved under division 6.4 (Approved fidelity fund schemes) have issued a fidelity certificate for the work; and
- (h) if a waste management plan is required to accompany the application—the plan is adequate; and
- (i) the building as proposed to be erected or altered will be structurally sufficient, safe and stable; and

- (j) the training levy has been paid.
- (2) Subsection (1) (e) does not require compliance with the building code and subsection (1) (f) does not apply so far as the plans contain matter the acceptable requirements for which are not dealt with in the building code.
- (3) For subsection (1) (f), plans are for the substantial alteration of a building if the aggregate volume (measured in accordance with subsection (5)) of the proposed alteration and any other alteration made to the building during the period of 3 years immediately before the making of the application for the building approval is more than 50% of the volume of the original building.
- (4) For subsection (1) (h), a waste management plan is adequate if—
  - (a) if—
    - (i) a facility exists in the ACT; or
    - (ii) the Minister has, in writing, specified a facility outside the ACT 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, if practicable, at such a facility; and
  - (b) the plan satisfies any other prescribed requirements.
- (5) For subsection (3), the volume of a building shall be measured by reference to roof and outer walls.
- (6) A building approval must be—
  - (a) marked on; or
  - (b) attached to; or

(c) partly marked on and partly attached to;  
the plans in relation to which it has been issued.

*Note* If a form is approved under s 109 (Approved forms) for a building approval, the form must be used.

- (7) If 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, is in a separate document.
- (8) 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; and
    - (ii) a copy of the relevant plans; and
    - (iii) if notification of his or her appointment as certifier has not previously been given to the building controller—notification of the appointment; and
    - (iv) the fee determined under section 108 (Determination of fees) in relation to the issue of the building approval.

*Note* If a form is approved under s 109 (Approved forms) for a notification of appointment, the form must be used.

(9) 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 66.

***residential building work***—see section 59.

### **34A External design and siting considerations**

- (1) An application for a building approval shall not be granted if the certifier is satisfied that, because 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 if the building work forms part of a development that is not required to be approved under the Land Act, division 6.2.

### **35 Amendment of approved plans**

- (1) This section applies if, 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) If 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.
- (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 section 34 (1) and the regulations, so far as they apply to plans, are satisfied in relation to the plans as amended; and

- (ii) if the application were an application for a building approval—it would not be refused because 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 section 34 (6), (7) and (8) (other than subsection (8) (b) (iv)) in relation to 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**

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

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

The issue of a building approval in relation to 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 end of—
  - (a) the period of 3 years beginning on the day of its issue; or

- (b) the development period applicable to the building work;  
whichever sooner occurs.
- (2) If 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 the extended development period ends.
- (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 the approval was issued.
- (4) In this section:

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

## **Division 3.4 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 way;
- (d) the building work shall be carried out in accordance with the approved plans;
- (e) if 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;

- (f) if 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.

Maximum penalty: 20 penalty units.

- (2) If—
  - (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 where 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.

Maximum penalty: 20 penalty units.

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

Maximum 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 in writing 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.

*Note* If a form is approved under s 109 (Approved forms) for a notification, the form must be used.

- (2) If a certifier receives a notification under section 37A about building work to which part 6 applies, the certifier must, within 7 days after the day the certifier receives the notice—
- (a) tell the building controller in writing whether or not, in the certifier's opinion—
    - (i) the work is insured under a residential building insurance policy; or
    - (ii) a fidelity certificate has been issued for the work by the trustees of a scheme approved under division 6.4 (Approved fidelity fund schemes); and
  - (b) if the certifier is of the opinion that the work is insured or a fidelity certificate has been issued—give to the building controller particulars of the policy or certificate.



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

Maximum penalty: 5 penalty units.

### **38A Stages of building work**

- (1) There shall be the stages of building work prescribed under the regulations.
- (2) A licensee in charge of building work shall not proceed with any building work above dampcourse level unless—
- (a) the certifier has received a plan signed by a registered surveyor specifying the position of the building in relation to the boundaries of the parcel of land where 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
  - (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.

Maximum penalty: 50 penalty units.

- (3) In subsection (2) (b) (ii):

*compulsory consent* means a consent or approval required to be obtained under section 34 (1) (d) or any other Territory law.

- (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.

Maximum penalty: 50 penalty units.

- (5) A certifier who has received a notice under subsection (4) (a) shall inspect the building work to which the notice refers as soon as practicable.
- (6) If, 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 the written directions that 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).

Maximum penalty: 10 penalty units.

- (9) A licensee in charge of building work shall keep records of—
- (a) test borings, test loadings or other investigations made for the purpose of determining the permissible loadings on piles used in the building work, pile-driving operations, calculations of allowable loadings and details of the location of the piles; and
  - (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 written notice, 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, the tests 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) If—
- (a) building work in relation to 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 the safety precautions the inspector specifies and are reasonable in the circumstances be taken in relation to 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) if 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 3.5 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 where the building work is being, or has been, carried out, to give the certifier the certificates by professional engineers that 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) If 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 section 34 (1) (d); and
  - (d) a copy of the plan referred to in section 38A (2) (a); and
  - (e) a copy of all certificates issued under section 38A (7) in relation to the building work; and

- (f) if the regulations require that, on 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; and
- (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; and
- (h) any certificate obtained under section 39A or, if no certificate under that section has been obtained, a written statement to the effect that—
  - (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; and
- (i) if, 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 relation to 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 subsection (1) (j) in relation to 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 subsection (1) (j) if—
- (a) he or she has already given to the building controller, under 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 3.6 Offences**

### **40A Compliance with building code**

A person shall not, without reasonable excuse, carry out building work except in accordance with the building code.

Maximum penalty: 50 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 that has come to the certifier's attention.

Maximum penalty: 5 penalty units.

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

- (2) For subsection (1), if 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 section 38A (6) has been given in relation to the matter that constitutes the contravention.

## **41A Carrying out building work in breach of s 37**

- (1) Building work (other than maintenance or cleaning of a specialised system) shall not be begun or carried out except in compliance with section 37.
- (2) If building work is begun or carried out in contravention of subsection (1), the owner of the parcel of land where the building work is carried out and a person who carries out the building work each commit an offence.

Maximum penalty: 50 penalty units.

- (3) If building work that involves the handling of asbestos is begun or carried out in contravention of subsection (1), the owner of the parcel of land where the building work is carried out and a person who carries out the building work each commit an offence.

Maximum penalty: 50 penalty units.

- (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 begun 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 under 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 4 Stop and demolition notices

### 42S Meaning of *easement*

A reference in sections 43 (1) (g) and 46 (1) (g) to an *easement* includes 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 2002*; in relation to that land.

### 43 Stop notices

- (1) If building work is being carried out—
  - (a) without a building approval having been issued in relation to the work; or
  - (b) otherwise than in accordance with the approved plans for that building work; or
  - (c) contrary to a provision of this Act relating to that building work; or
  - (d) if 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; or
  - (e) for building work forming part of a development requiring approval under the Land Act, division 6.2—without that approval; or
  - (f) for building work forming part of a development approved under the Land Act, division 6.2—contrary to that approval, or a condition of that approval; or

(g) 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

(h) on a building that contains loose asbestos;

the building controller or a building inspector may, by written notice, prohibit the carrying out of any further building work or of the building work specified in the notice.

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

(3) Subsection (1) (g) 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.

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

(a) if the building controller, by written notice signed by him or her revokes the notice given under subsection (1); or

(b) except for a notice given on the ground specified in subsection (1) (a) or a notice of a kind referred to in paragraph (c)—at the end of 7 days after the service of the notice unless the building controller, before the end of that period, gives a further notice under section 44; or

(c) for a notice given on the ground specified in subsection (1) (c) in connection with the carrying out of building work in contravention of section 38A (2)—when the certifier notifies the building controller that the certifier has received the plan referred to in section 38A (2) (a); or

(d) if it is deemed to have been revoked under subsection (5); or

- (e) if a further notice is given under section 44—when the work specified in that further notice is carried out.
- (5) Where, if a stop notice in relation to building work is given on the ground specified in subsection (1) (a)—
  - (a) an application for a building approval in relation to 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.

**U 44 Further notices relating to stop notices**

- (1) If a stop notice has been given on a ground other than that specified in section 43 (1) (a), the building controller may, within 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 the period specified in that further notice.
- (2) If—
  - (a) an application for a building approval is not made as provided by section 43 (5); or
  - (b) the building controller rejects an application under that subsection;

the building controller, if the stop notice has not ceased to be in force, may, by written notice, require the owner of the parcel of land where the building work was being carried out before the giving of the stop notice to carry out the building work (including demolition) specified in the notice within the period specified in the notice.

- (3) 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.
- (4) If building work has been carried out in the circumstances referred to in section 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 where the building work referred to in the notice is being carried out; or
- (b) on the person by whom the building work referred to in the notice is being carried out; or
- (c) for 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**

If building work for which a building approval has been issued has been carried out in contravention of section 38A (2), the building controller may serve on—

- (a) the owner of the parcel of land where 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 the period specified in the notice, not less

than 7 days after the date of service of the notice, the plan referred to in section 38A (2) (a).

**U 46 Notice to carry out building work**

- (1) If—
- (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; or
  - (b) building work for which a building permit has been granted under this Act has been carried out in contravention of section 36 (5), or otherwise than in accordance with the conditions referred to in section 40; or
  - (c) building work, in relation to which a notice has been served under this part, has been carried out otherwise than in accordance with that notice; or
  - (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; or
  - (e) building work forming part of a development requiring approval under the Land Act, division 6.2 has been carried out without that approval; or
  - (f) building work forming part of a development approved under the Land Act, division 6.2 has been carried out contrary to that approval, or a condition of that approval; or
  - (g) building work of a kind referred to in section 6AA has been carried out resulting in encroachment on an easement; or

- (h) the building controller finds, on inspection, that—
- (i) a completed building has deteriorated to such an extent—
    - (A) for a building in relation to the erection or alteration of which plans or plans and specifications 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 in the plans or plans and specifications so approved in relation to 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; or
  - (ii) building work has not been completed when the building permit in relation to the building work lapsed; or
  - (iii) a building or part of a building is not structurally sound; or
  - (iv) the maximum safe live load or the load that a building was designed to carry has been exceeded; or
  - (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 because of fire hazard or unfit for use because of a danger to health; or
- (i) a building inspector finds, on inspection, that a building contains loose asbestos;

the building controller may serve on the owner of the parcel of land where the building work has been carried out or where the building has been erected a notice directing him or her to carry out, or cause to be carried out, the building work (including demolition) on that parcel of land specified in the notice within the period specified in

the notice and may in the notice 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) If building work has been carried out in the circumstances mentioned in subsection (1) (a), a notice given by the building controller under subsection (1) shall be deemed to have been revoked if the building controller, on application by or on behalf of the owner of the parcel of land made under this Act within 14 days after the service of the notice, grants a building permit for that building work.
- (3) If building work has been carried out in the circumstances referred to in subsection (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.
- (4) A notice served on the owner of a parcel of land by the building controller under 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.
- (5) If 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); 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 relation to that building work.

- (6) Subsection (1), so far 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 (5), do not apply to building work of a kind referred to in section 6AA.
- (7) Subsection (1) (g) 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**

A person shall not, without reasonable excuse, fail to comply with the requirements of a notice served on him or her under this part.

Maximum penalty: 50 penalty units.



## Part 4A                      Removal of loose asbestos

### 51A Treatment and removal of loose asbestos by Territory

If 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; or
- (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; or
- (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 Territory

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

- (a) enter the land where the building is situated; and
- (b) on or over that land—
  - (i) construct, build or place any plant, machinery, equipment or goods; and
  - (ii) deposit materials or things; and
  - (iii) erect sheds or other structures; and
  - (iv) manufacture or work materials of any kind; and

- (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); and
- (d) enter the building where loose asbestos has been found at any reasonable time of the day with the assistance and by the force that is necessary and reasonable; and
- (e) in, on or over the building—
  - (i) construct, build or place any machinery, equipment, materials, goods or things; and
  - (ii) erect structures; and
  - (iii) place coverings; and
  - (iv) manufacture or work materials of any kind; and
- (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 given the occupier of the building, not less than 28 days before the day the work is to begin, a written notice that—

- (a) describes the work to be performed; and
- (b) briefly describes how it is proposed that the work should be carried out; and

- (c) specifies the powers under which the work is to be performed; and
- (d) specifies the day it is expected that the work will begin; and
- (e) specifies the day it is expected that the work will be completed; and
- (f) if 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; and
  - (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 about 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) If 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 giving the notice to the occupier, send a copy of the notice by post to the owner at the address of the owner last known to the building controller.
- (2) The building controller shall, before giving a notice under section 51C to the occupier of a building, make reasonable inquiries 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 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; and
  - (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 Territory**

If 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 relation to—

- (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; or
- (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 where the building is situated, because of the building having had loose asbestos in it.

**51H Obstruction of 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.

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

## Part 5 Occupancy of buildings

### 52 Effect of certificates under pt 5

The issue, under this part, of a certificate in relation to a building or part of a building does not affect the liability of a person to comply with the provisions of a Territory law (including this Act) relating to the building or part 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; or
- (b) the approved plans.

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

(2) If 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 where 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) If 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 where the building work has been carried out, issue a certificate that the building as erected or as altered, is fit for occupation and use as a building of the class specified in the approved plans for that building work.
- (4) If part of a building has been erected in accordance with the prescribed requirements so far as they relate to that part of the building, the building controller may, on an application made by the owner of a parcel of land where 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 relation to the building work.
- (5) If—
- (a) a certificate of occupancy has been issued under subsection (4) in relation to a part 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 part of the building.
- (6) For this section—
- (a) a certificate under a relevant law, 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

- (b) a certificate signed by an inspector under the *Electricity Safety Act 1971* certifying that the electricity wiring work, as defined by the *Electricity Safety 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.
- (7) If 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 where the building work was carried out, issue a certificate to that effect.
- (8) If building work involving the erection of a structure on 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 where the building work was carried out, issue a certificate to that effect.
- (9) For the purposes of determining, for 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.
- (10) In this section:
- relevant law** means—
- (a) the *Water and Sewerage Act 2000*; or
  - (b) the *Water and Sewerage Regulations 2001*; or
  - (c) the *Canberra Sewerage and Water Supply Regulations* in force immediately before the repeal of the *Energy and Water Act 1988*.



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

If 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 6 (Residential building—statutory warranties, insurance and fidelity certificates) does not apply in relation to that building work.

**U 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) for national land—by the Commonwealth; or
  - (d) for Territory land—by the Territory.
- (5) The application must—
- (a) be in writing and signed by or on behalf of the applicant; and
  - (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.

*Note* A fee may be determined under s 108 (Determination of fees) for this section.

- (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 subsection (7) (a) and (b), or such of the matters as the building controller specifies; and
  - (b) may have regard to the statement.
- (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 the *Canberra Building Regulations*, regulation 69A has been issued for the building or part of the building.

Maximum penalty: 50 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.

Maximum penalty: 50 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 part of a building—
  - (a) for a building in relation to the erection or alteration of which plans have been approved under this Act—as a building or part of a building of a class other than the class specified in the plans so approved in relation to the most recent building work that has been carried out in relation to that building; or

- (b) for 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 relation to the most recent building work that has been carried out in relation to that building,

unless the building controller has given his or her written approval to the occupation and use.

Maximum penalty: 50 penalty units.

- (2) The building controller shall, for subsection (1), on written application being made to him or her, give his or her written approval to the occupation and use of a building or part of a building as a building or a part of a building of a class specified in the application if 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, under section 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 under subsection (2) does not, in relation to the parcel of land where 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.

**U 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 the building, for a purpose other than the purpose that is stated in the certificate of regularisation.

Maximum penalty: 50 penalty units.

**55 Action by building controller on unauthorised use of premises**

- (1) If, 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 part 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 written notice to the occupier or to the person permitting the occupation, or to both—
  - (a) for a conviction for an offence against section 54—require the building to be vacated within a period specified in the notice; and
  - (b) for a conviction for an offence against section 54A or 54B—require the occupation or use of the building or the part 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) commits an offence, in relation to each day he or she contravenes that subsection (including any day when the person is convicted of an offence).

Maximum penalty: 50 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 the office is open for business.
- (2) If the building controller issues a certificate under section 53 (2) or (4) in relation to a building or part of a building and a copy of a certificate of occupancy in relation to that building or part 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) If 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 attach, in a conspicuous place on the walls of each storey of the building, in an approved way, metal plates of approved size and form showing the maximum live load for which the floor on that storey has been designed.

Maximum penalty: 5 penalty units.

- (2) If—
- (a) a later certificate is issued under this part in relation to 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 relation to that floor on the metal plates attached to the walls under subsection (1);

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

Maximum penalty: 5 penalty units.

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

Maximum penalty: 5 penalty units.

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

Maximum penalty: 5 penalty units.

- (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.

## **58 Exceeding safe live load**

The owner and occupier of a building in relation to 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.

Maximum penalty: 50 penalty units.



## **Part 6**                      **Residential building— statutory warranties, insurance and fidelity certificates**

### **Division 6.1**              **General**

#### **59**      **Definitions for pt 6**

In this part:

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

*approval criteria* means the requirements determined under section 70 (Approval criteria of fidelity fund schemes).

*approved scheme* means a fidelity fund scheme approved under section 70 (Approval criteria of fidelity fund schemes).

*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 60.

*ground storey*—see the building code.

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

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

***habitable room***—see the building code.

***prudential standards*** means the standards determined under section 74 (Prudential standards).

***residential building*** means a building intended primarily for private residential use, or a part of such a building, if—

- (a) if the ground floor is habitable—the building has no more than 3 storeys at any point (including the ground storey); or
- (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) for 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.

***special actuary***—see section 93 (Investigation of liabilities by special actuary).

## **60 Cost of building work**

- (1) For this part, the cost of building work is—
  - (a) if 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 subsection (1), the cost of building work—
- (a) includes the cost of any engineering service in relation to the land where the building work is to be carried out; but
  - (b) does not include the cost of the land where the building work is to be carried out.

## **Division 6.2                      Statutory warranties**

### **61      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; or
  - (b) in relation to which an owner-builder's licence has been granted; or
  - (c) if the cost of the work is less than the prescribed amount; or
  - (d) in relation to a building or dwelling other than a class 1 or class 2 building.
- (2) Subsection (1) (d) is not to be taken to prevent this part from applying in relation to residential building work carried out in relation to a garage that provides structural support for, or constitutes a structurally integral adjunct to, a class 1 or class 2 building.

### **62      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; and
  - (b) that the work has been or will be carried out in a proper and workmanlike way and in accordance with the plans approved for the work by the building controller; and
  - (c) that good and proper materials for the work have been or will be used in carrying out the work; and
  - (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 where 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 relation to the statutory warranties.
- (3) The warranties end at the end of the prescribed period after the date when a certificate of occupancy is issued for the building or the building work.
- (4) In subsection (2):
- owner* means—
- (a) for a contract referred to in subsection (1) for the sale of a residential building—the person to whom title in the land

where the building was built is transferred under the contract;  
or

- (b) for a contract referred to in subsection (1) to carry out residential building work—the owner of the land where the work is to be carried out under the contract.

### **63 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.

## **Division 6.3 Residential building insurance**

### **64 Residential building work insurance**

- (1) An insurance policy issued in relation to residential building work complies with this section if—
  - (a) it is issued by an authorised insurer; and
  - (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 relation to each dwelling that forms part of the work; and
  - (c) if the builder is not the owner of the land where 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 when the certifier in relation to the work receives a notification under section 37A (1) or (2) in relation to the builder and ending the prescribed period after the date when a certificate of occupancy is issued for the work; and
  - (d) if the builder is the owner of the land where the work is to be carried out—it insures the builder's successors in title for the period beginning on the date when the title in the land is transferred to another person and ending the prescribed period

- after the date when a certificate of occupancy is issued for the work; and
- (e) the whole of the premium payable in relation to the respective period has been paid; and
  - (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 under which the work has been, is being or is to be carried out because of the insolvency, disappearance or death of the builder; and
  - (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; and
  - (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; and
  - (i) 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
  - (j) 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 relation to 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) that 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 nondisclosure by the builder.
- (7) If—
- (a) a builder is not the owner of the land where the builder is carrying out residential building work; and
  - (b) as a result of becoming insolvent, the builder fails to complete the work; and
  - (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, if 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.

- (8) For 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 beginning of the work.

## **65 Recovery from builder**

- (1) If—
- (a) a court gives judgment in favour of a person in relation to a matter for which the person is insured under a residential building insurance policy; and
  - (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 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 relation to whose work a residential building insurance policy was issued so much of—
- (a) any judgment entered or obtained against the insurer; and
  - (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.

## **66 Duties of insurers**

- (1) If—
- (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* (Cwlth);

the insurer shall notify the building controller of the cessation or cancellation within 7 days of its occurrence.

Maximum 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 64.

Maximum 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; and

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

Maximum penalty: 100 penalty units.

## **Division 6.4**                      **Approved fidelity fund schemes**

### **U 67**      **Approval of fidelity fund schemes**

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

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

### **U 68**      **Additional information etc**

- (1) This section applies if the trustees of a fidelity fund scheme apply to the Minister for approval of the scheme.
- (2) The Minister may, by written notice given to the trustees, require the trustees to give the Minister—

- (a) stated additional information or documents that the Minister reasonably needs to decide the application; or
  - (b) a stated statutory declaration in relation to information or documents provided in relation to the application.
- (3) The Minister is not required to decide the application until the trustees comply with the requirement.

**U 69 Minister may require changes to scheme**

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

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

**70 Approval criteria for fidelity fund schemes**

- (1) The Minister may, in writing, determine requirements (the *approval criteria*) for this Act with which a fidelity fund scheme must comply to be an approved scheme.
- (2) The approval criteria must include requirements in relation to—
  - (a) the management of the fidelity fund scheme in accordance with the trust deed; and
  - (b) qualifications or suitability for appointment as a trustee of the scheme; and
  - (c) the powers and duties of the trustees; and
  - (d) the financial management of the scheme; and
  - (e) the building work for which a fidelity certificate may be issued or must not be issued under the scheme; and
  - (f) the people who can or cannot make claims under a fidelity certificate; and

- (g) applications for claims under fidelity certificates issued under the scheme; and
  - (h) dealing with claims under the scheme; and
  - (i) compliance with the prudential standards.
- (3) The approval criteria may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

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

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

- (4) A determination is a disallowable instrument.

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

## **71 Approval of scheme may be conditional**

- (1) The approval of a fidelity fund scheme may be given subject to conditions.
- (2) A condition may be expressed to have effect despite anything in the prudential standards.
- (3) The trustees of an approved scheme each commit an offence if the trustees fail to ensure that the scheme complies with the conditions of the scheme's approval.

Maximum penalty: 60 penalty units.

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

**U 72 Application for changes to approved scheme**

- (1) The trustees of an approved scheme may apply in writing to the Minister to change the scheme.
- (2) The application must—
  - (a) be signed by all the trustees of the scheme; and
  - (b) set out the proposed change to the scheme and the reasons for the change.
- (3) This section does not apply to a change to the scheme declared under the prudential standards to be a change to which this section does not apply.

**U 73 Approval of changes to approved scheme**

- (1) The Minister may, in writing, approve or refuse to approve a change to an approved scheme.
- (2) The Minister must refuse to approve a change to the scheme if not satisfied that the scheme as proposed to be changed would continue to meet the approval criteria and the prudential standards.
- (3) This section does not apply to a change to the scheme declared under the prudential standards to be a change to which this section does not apply.
- (4) An approval or refusal to approve is a notifiable instrument.

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

**U 74 Prudential standards**

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

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

- (2) The prudential standards may—
- (a) require the Minister’s approval of the trustees of the approved scheme; and
  - (b) make provision in relation to—
    - (i) the capital adequacy of the scheme; and
    - (ii) the valuation of liabilities; and
    - (iii) the effectiveness of risk management strategies and techniques; and
    - (iv) requiring the giving of information to the commissioner for fair trading, or any other entity prescribed under the prudential standards, about decisions by the trustees to pay or refuse to pay claims.

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

- (3) The prudential standards may—
- (a) provide for the exercise of discretions under the standards, including discretions to approve, impose, adjust or exclude particular prudential requirements in relation of an approved scheme; and
  - (b) apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

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

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

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

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

- (5) In this section:

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

- (a) in a way that keeps the scheme's affairs in a sound financial position; and  
(b) with integrity, prudence and professional skill.

## **75 Compliance with prudential standards by trustees**

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

Maximum penalty: 60 penalty units.

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

## **U 76 Notice to trustees to comply with prudential standards**

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

- (a) is contravening a provision of the prudential standards; or  
(b) is likely to contravene a provision of the prudential standards in a way that is likely to give rise to prudential risk.

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

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

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

Maximum penalty: 60 penalty units.

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

**U 77 Notice to trustees requiring information**

- (1) The Minister may, by written notice given to the trustees of an approved scheme, require the trustees to give the Minister stated information about anything relevant to the scheme's ability to meet its liabilities and potential liabilities at a particular date or time or at particular intervals, including, for example, information about—
- (a) the scheme's liabilities and potential liabilities; and
  - (b) contributions to the scheme; and
  - (c) administrative or other costs of the scheme
  - (d) claims received by the scheme.
- (2) The notice must state a reasonable period for complying with the notice.
- (3) Without limiting subsection (1) (d), the notice may require information about—
- (a) the number of claims received by the scheme; and
  - (b) the amount of each claim; and
  - (c) the number of claims that have been paid; and
  - (d) the amount paid on each claim; and
  - (e) if a claim was rejected—the reason for its rejection.



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

Maximum penalty: 60 penalty units.

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

**U 78 Suspension or cancellation of approval of approved scheme**

- (1) The Minister may take action under this section in relation to an approved scheme on any of following grounds:

- (a) the trustees of the scheme have contravened this Act or another Territory law in relation to the scheme;

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

- (b) the scheme is insolvent and is unlikely to return to solvency within a reasonable time;
- (c) the scheme has inadequate capital and is unlikely to have adequate capital within a reasonable time;
- (d) the scheme is, or is likely to become, unable to meet its liabilities;
- (e) there is, or there may be, a risk to the security of the scheme's assets;
- (f) there is, or there may be, a sudden deterioration in the scheme's financial condition;
- (g) the scheme has ceased to issue fidelity certificates in the ACT;
- (h) a ground prescribed under the prudential standards exists for the suspension or cancellation of the approval of the scheme.

- (2) If the Minister proposes to suspend or cancel the approval of the scheme, the Minister must give the trustees of the scheme a written notice—
  - (a) stating the grounds on which the Minister proposes to suspend or cancel the approval; and
  - (b) stating the facts that, in the Minister’s opinion, establish the grounds; and
  - (c) telling the trustees that the trustees may, within a stated reasonable time, give a written response to the Minister about the matters in the notice.
- (3) If, after considering any response given to the Minister in accordance with subsection (2) (c), the Minister is satisfied that the grounds for suspending or cancelling the approval have been established, the Minister may, in writing, suspend or cancel the approval.
- (4) If the Minister suspends or cancels the approval, the Minister must give written notice of the suspension or cancellation to the trustees.
- (5) Suspension or cancellation of an approval takes effect on the day when notice of the suspension or cancellation is given to the trustees or, if the notice states a later date of effect, that date.
- (6) A suspension or cancellation under this section is a notifiable instrument.

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

## **U** 79 **Cancellation of approval on application**

- (1) The Minister may, in writing, cancel the approval of an approved scheme if the trustees of the scheme ask the Minister, in writing, to do so.
- (2) If the Minister cancels the approval, the Minister must give written notice of the cancellation to the trustees.

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

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

**U 80 Orders consequential on etc suspension or cancellation**

- (1) If the Minister suspends or cancels the approval of a fidelity fund scheme under this division, the Minister may apply to the Supreme Court for orders to give effect to, or consequential on, the suspension or cancellation.
- (2) On application under subsection (1), the Supreme Court may make the orders it considers just, including—
- (a) orders for the winding-up of the scheme; and
  - (b) orders in relation to the assets and liabilities of the scheme.

**U 81 Address for service for trustees**

- (1) The trustees of an approved scheme must, at all times, have an address for service in the ACT for this Act.
- (2) An address becomes the address for service for the trustees when written notice of the address is given by the trustees to the Minister.
- (3) The address continues to be the address for service until the Minister is given written notice by the trustees of another address for service for the trustees.

**Division 6.5 Auditors and actuaries of approved schemes**

**U 82 Appointment of auditor and actuary for approved scheme**

- (1) The trustees of an approved scheme must appoint—
- (a) an auditor for the scheme; and

(b) an actuary for the scheme.

*Note* For the making of appointments (including acting appointments), see *Legislation Act 2001*, div 19.3.

- (2) Within 6 weeks after a person stops being the auditor or actuary for an approved scheme, the trustees must appoint another person to be auditor or actuary.
- (3) A person may only hold an appointment as auditor or actuary for an approved scheme if—
  - (a) the Minister has approved the appointment and its terms; and
  - (b) the approval has not been revoked.
- (4) An appointment of a person as auditor or actuary for an approved scheme cannot take effect while an appointment of another person in that position is current.

**U 83 Approval of appointment of auditor or actuary**

- (1) The trustees of an approved scheme may, in writing, ask the Minister to approve—
  - (a) the appointment of a person as auditor for the scheme; or
  - (b) the appointment of a person as actuary for the scheme.
- (2) The Minister may approve the appointment only if satisfied that the person meets the eligibility criteria for the appointment prescribed under the prudential standards.
- (3) The Minister must give the trustees notice of the Minister's decision to approve or refuse to approve the appointment.
- (4) If the Minister refuses to approve the decision, the notice must include the reasons for the refusal.

**U 84 Revocation of approval of appointment of auditor or actuary**

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

**85 When person stops holding appointment as auditor or actuary**

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

- (a) the approval of the person's appointment is revoked under section 84 (Revocation of approval of appointment of auditor or actuary); or
- (b) the person resigns the appointment by giving written notice to the trustees of the approved scheme; or
- (c) the trustees end the appointment by giving written notice to the person.

**U 86 Notification of appointment or ending of appointment of auditor or actuary**

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

**87 Compliance with prudential standards by auditors and actuaries**

- (1) The auditor or actuary for an approved scheme commits an offence if the auditor or actuary contravenes the prudential standards in relation to the exercise of his or her functions as auditor or actuary for the scheme.

Maximum penalty: 60 penalty units.

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

**U 88 Auditor and actuary to tell Minister if scheme insolvent etc**

- (1) This section applies if the auditor or actuary for an approved scheme has reasonable grounds for believing that—
  - (a) the scheme is insolvent, or there is a significant risk that it will become insolvent; or

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

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

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

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

**U 89 Giving of information to Minister by auditor or actuary etc**

- (1) This section applies to a person who is, or has been, an auditor or actuary for an approved scheme.
- (2) The person may give information to the Minister about the approved scheme if the person considers that giving information will assist the Minister to exercise the Minister's functions under this part.
- (3) If this section applies to a person, the Minister may, by written notice given to the person, require the person to give stated information about the approved scheme to the Minister within a stated reasonable time.

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

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

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

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

## **90 Auditor's role**

- (1) The auditor for an approved scheme must, in accordance with the prudential standards—
  - (a) exercise the functions of auditor for the scheme prescribed under the prudential standards; and
  - (b) find out and report on whether the trustees of the scheme are complying with the prudential standards; and
  - (c) prepare, and give to the trustees of the scheme, any reports required under the prudential standards to be prepared by the auditor; and
  - (d) give the trustees any certificates relating to the scheme's accounts that are required under the prudential standards to be prepared by the auditor.
- (2) A report under subsection (1) (c) must deal with all of the matters required under the prudential standards to be dealt with in the report.
- (3) A certificate under subsection (1) (d) must contain statements of the auditor's opinion on the matters required under the prudential standards to be dealt with in the certificate.

## **91 Actuary's role**

- (1) The actuary for an approved scheme must, in accordance with the prudential standards—
  - (a) exercise the functions of actuary for the scheme prescribed under the prudential standards; and
  - (b) prepare, and give to the trustees of the scheme, the reports (if any) required under the prudential standards to be prepared by the actuary.
- (2) A report under subsection (1) (b) must deal with all of the matters required under the prudential standards to be dealt with in the report.



**U 92 Certificates and reports required to be given to Minister**

- (1) The trustees of an approved scheme must, in accordance with the prudential standards, give to the Minister—
  - (a) a copy of each certificate given to the trustees under section 90 (Auditor’s role); and
  - (b) the reports mentioned in that section and section 91 (Actuary’s role).

Maximum penalty: 60 penalty units.

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

**U 93 Investigation of liabilities by special actuary**

- (1) The Minister may, by written notice given to the trustees of an approved scheme, require the trustees to appoint, at the scheme’s expense, an additional actuary (the *special actuary*) to—
  - (a) investigate completely or partially the scheme’s liabilities as at a particular time; and
  - (b) give the Minister a written report within a stated period.

- (2) The special actuary must not be—
  - (a) the actuary appointed under section 82 (Appointment of auditor and actuary for approved scheme); or
  - (b) a trustee or officer of the scheme.

*Note* For who can be appointed a special actuary, see section 95 (Who can be appointed as a special actuary).

- (3) Within 7 days after the trustees are given the notice, the trustees must appoint the special actuary and give the Minister written notice of the actuary’s name.
- (4) Within 7 days after being notified of the special actuary’s name, the Minister may give written notice to the trustees that the actuary is not acceptable to the Minister.

- (5) If the trustees are given a notice under subsection (4), the trustees must within 7 days—
- (a) appoint a different special actuary; and
  - (b) give the Minister written notice of the name of that actuary.
- (6) Subsection (4) applies whether the notification of the special actuary's name is under subsection (3) or subsection (5) (b).
- (7) The trustees must ensure that the special actuary's report is given to the Minister—
- (a) within 30 days after the Minister gave the notice under subsection (1); or
  - (b) within any additional further time the Minister allows in writing.
- (8) The report must be signed by the special actuary.
- (9) Also, the report must contain a statement of the special actuary's opinion about each of the following:
- (a) the adequacy of the whole or part of the amount stated in the scheme's accounts in relation to its liabilities, and the amount that the actuary considers would be adequate in the circumstances;
  - (b) the accuracy of any relevant valuations made by the actuary;
  - (c) the assumptions used by the actuary in making the valuations;
  - (d) the relevance, appropriateness and accuracy of the information on which those valuations were based;
  - (e) any other matter in relation to which the prudential standards require a statement of the actuary's opinion to be included in the report.

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**U 94 Offences in relation to appointment of special actuary**

- (1) The trustees of an approved scheme commit an offence if—
  - (a) the Minister requires the trustees to appoint a special actuary under section 93 (Investigation of liabilities by special actuary); and
  - (b) the trustees—
    - (i) fail to do so within the time required by section 93 (3); or
    - (ii) if the trustees are required under section 93 (5) to appoint a different actuary—fail to appoint that actuary within the time required by that subsection.

Maximum penalty: 100 penalty units.

- (2) The trustees of the approved scheme also commit an offence if the trustees do not comply with section 93 (7).

Maximum penalty: 100 penalty units.

**U 95 Who can be appointed as special actuary**

- (1) A person can only be appointed as a special actuary for section 93 (Investigation of liabilities by special actuary) if the person—
  - (a) is a Fellow of The Institute of Actuaries of Australia; or
  - (b) the Minister has, in writing, approved the person as an actuary for that section.
- (2) The Minister may approve a person only if satisfied that the person has actuarial qualifications and experience that make the person an appropriate person to exercise the functions of a special actuary for section 93.

**96 Obligations of trustees to auditors and actuaries**

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

Maximum penalty: 60 penalty units.

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

**97 Protection of auditor and actuary from liability**

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

## Part 7                      Miscellaneous

### 101    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; or
  - (b) by sending the notice by posting (under prepaid postage) the notice as a letter addressed to the person at his or her last-known place of residence or business; or
  - (c) by attaching the notice in a prominent position on the building or, for an alteration to a building, on the part of the building being altered, to which the notice relates.
- (2) If a notice under this Act is addressed jointly to 2 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 1 of those copies shall be served, in any of the ways specified in subsection (1), on each of those persons.

### 102    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;

commits an offence.

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

**103 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 section 14 (8); or
  - (b) refusing under section 17 (1) (b) (i) or (ii) to grant a builder's licence; or
  - (c) granting of a builder's licence subject to conditions or restrictions under section 17 (5); or
  - (d) granting a builder's licence for a period of time specified under section 17 (7); or
  - (e) varying, suspending or cancelling a builder's licence under section 18; or
  - (f) refusing to grant an owner-builder's licence under section 23A (3); or
  - (g) refusing to approve a certifier's resignation under section 31 (3) (a); or
  - (h) refusing an application to appoint a government certifier for building work; or
  - (i) refusing to extend or further extend a period under section 36A (2); or
  - (j) issuing a stop notice under section 43; or
  - (k) issuing a notice under section 44 (1) or (2) or 46 (1); or
  - (l) refusing to issue a certificate of occupancy under section 53 (2), (3), (4), (7) or (8); or
  - (m) refusing to issue a certificate of regularisation to a person other than the Territory or the Commonwealth under section 53AB (6) (b); or

- (n) refusing to grant an approval under section 54A or 64 (1) (j); or
  - (o) determining the cost of building work under section 60 (1) (b) (ii).
- (2) The administrative appeals tribunal shall not in relation to a proposed building, or a building as proposed to be altered, forming part of a development within the meaning of the Land Act, division 6.2—
- (a) vary a decision issuing a stop notice under section 43 or a notice under section 44 (1) or (2) or 46 (1), or substitute a decision for such a decision it has set aside, in a way that would be contrary to an approval of the development under that division; or
  - (b) vary a decision issuing a notice under section 44 (2), or substitute a decision for such a decision it has set aside, unless the development has been approved under that division.
- (3) If the building controller makes a decision referred to in subsection (1), he or she shall give written notice of the decision—
- (a) for a decision referred to in subsection (1) (a), (b), (c) or (d)—to the applicant for the builder's licence; or
  - (b) for a decision referred to in subsection (1) (e)—to the holder of the builder's licence; or
  - (c) for a decision referred to in subsection (1) (f)—to the applicant for the owner-builder's licence; or
  - (d) for a decision referred to in subsection (1) (g)—to the certifier; or
  - (e) for a decision referred to in subsection (1) (h)—to the applicant for the appointment of a government certifier; or
  - (f) for a decision referred to in subsection (1) (i)—to the applicant for the extension; or

- (g) for a decision referred to in subsection (1) (j)—to the person carrying out the building work; or
  - (h) for a decision referred to in subsection (1) (k)—to the person required to carry out the specified building work; or
  - (i) for a decision referred to in subsection (1) (l) or (m)—to the applicant for the certificate; or
  - (j) for a decision referred to in subsection (1) (n)—to the applicant for approval.
- (4) A notice under subsection (3) shall be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

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

The costs incurred in the carrying out of the requirements of a notice under part 4 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.

#### **105 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.
- (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.

- (4) 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.
- (5) 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.
- (6) 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 part of a building specified in the firstmentioned certificate; or
  - (b) a certificate in accordance with the *Canberra Building Regulations*, regulation 69A had not been issued in relation to the building or part of a building specified in the firstmentioned 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.

- (7) In any proceedings before a court, unless the contrary is proved 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.

(8) In this section:

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

### **106 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 relation to any act done or omitted to be done in good faith by him or her in the exercise of powers under this Act.
- (2) Nothing in subsection (1) shall be taken to affect any liability that the Territory would, apart from that subsection, have in relation to an act or omission referred to in that subsection.

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

- (1) If, 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.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see *Legislation Act 2001*, s 104).

*Note 2* A reference to an offence against a Territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act 2001*, s 189).

- (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) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority shall be taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the firstmentioned person unless the firstmentioned person establishes that the firstmentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If—
- (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 is 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 includes a reference to failing or refusing to engage in conduct.

### 108 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

*Note* The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A fee for section 34 (8) (b) (iv) may only be determined by reference to the value of building work for which a building approval has been issued.

- (3) A determination is a disallowable instrument.

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

### 109 Approved forms

- (1) The building controller may, in writing, approve forms for this Act.
- (2) If the building controller approves a form for a particular purpose, the approved form must be used for that purpose.

*Note* For other provisions about forms, see *Legislation Act 2001*, s 255.

- (3) An approved form is a notifiable instrument.

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

**110 Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note* Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (2) The regulations may make provision in relation to—
- (a) the exemption of prescribed buildings from the operation of provisions of this Act; and
  - (b) the approval of building work on prescribed buildings in accordance with prescribed requirements; and
  - (c) any other matters in relation to the approval of building work on prescribed buildings.
- (3) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

## Endnotes

1 About the endnotes

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## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	RI = reissue
LRA = Legislation (Republication) Act 1996	s = section/subsection
mod = modified / modification	sch = schedule
No = number	sdiv = subdivision
num = numbered	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

### 3 Legislation history

This Act was originally a Commonwealth ordinance—the *Building Ordinance 1972* No 26 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

After 11 May 1989 and before 10 November 1999, Acts commenced on their notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth) s 25).

#### Legislation before becoming Territory enactment

##### **Building Act 1972 No 26**

notified 4 August 1972

commenced 1 September 1972 (s 2 and Cwlth Gaz 1972 No 79)

as amended by

##### **Building Ordinance 1974 No 7**

notified 28 March 1974

commenced 28 March 1974

##### **Building Ordinance (No 2) 1974 No 38**

notified 3 October 1974

commenced 3 October 1974

##### **Building (Amendment) Ordinance 1976 No 45**

notified 13 September 1976

commenced 13 September 1976

##### **Ordinances Revision (Remuneration) Ordinance 1976 No 61 s 4**

notified 16 November 1976

commenced 16 November 1976

## Endnotes

3 Legislation history

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**Ordinances Revision Ordinance 1978 No 46 sch 2**

notified 28 December 1978  
commenced 28 December 1978

**Building (Amendment) Ordinance 1979 No 30**

notified 18 September 1979  
commenced 26 September 1979 (s 3 and Cwlth Gaz 1979 No S188)

**Building (Amendment) Ordinance 1982 No 69**

notified 27 August 1982  
commenced 27 August 1982

**Building (Amendment) Ordinance (No 2) 1982 No 70**

notified 27 August 1982  
commenced 27 August 1982

**Building (Amendment) Ordinance (No 3) 1982 No 71**

notified 27 August 1982  
commenced 27 August 1982

**Building (Amendment) Ordinance 1983 No 20**

notified 24 August 1983  
commenced 24 August 1983

**Building (Amendment) Ordinance (No 2) 1983 No 66**

notified 30 December 1983  
taken to have commenced 27 August 1982 (s 2)

**Building (Amendment) Ordinance 1984 No 68**

notified 5 December 1984  
commenced 5 December 1984

**Building (Amendment) Ordinance 1987 No 20**

notified 3 June 1987  
commenced 3 June 1987

**Building (Amendment) Ordinance (No 2) 1987 No 47**

notified 16 September 1987  
commenced 16 September 1987



**Electricity and Water (Consequential Amendments) Ordinance 1988 No 31 sch**

notified 30 June 1988  
commenced 1 July 1988 (s 2)

**Building (Amendment) Ordinance 1988 No 73**

notified 30 September 1988  
commenced 1 October 1988 (s 2 and Cwlth Gaz 1988 No S300)

**Building (Amendment) Ordinance (No 2) 1988 No 80**

notified 9 December 1988  
commenced 9 December 1988

**Building (Amendment) Ordinance (No 3) 1988 No 86 (as am by 1989 No 38 pt 2 div 4)**

notified 21 December 1988  
commenced 11 May 1989 (s 2 and Cwlth Gaz 1989 No S161)

**Building (Amendment) Ordinance (No 4) 1988 No 87**

notified 21 December 1988  
commenced 21 December 1988

**Interim Territory Planning Ordinance 1988 No 88 sch**

notified 21 December 1988  
s 1, s 2 commenced 21 December 1988 (s 2 (1))  
sch commenced 31 January 1989 (s 2 (2) and Cwlth Gaz 1989 No S38)

**Self-Government (Consequential Amendments) Ordinance 1989 No 38 pt 2 div 3, sch 1**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
s 1, s 2 commenced 10 May 1989 (s 2 (1))  
pt 2 div 3, sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

**Remuneration (Miscellaneous Amendments) Ordinance 1989 No 50 sch**

notified 10 May 1989 (Cwlth Gaz 1989 No S160)  
commenced 10 May 1989

## Endnotes

3 Legislation history

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### **Legislation after becoming Territory enactment**

#### **Interim Planning (Consequential Amendments) Act 1990 No 60 sch**

notified 24 December 1990 (Gaz 1990 No S98)  
s 1, s 2 commenced 24 December 1990 (s 2 (1))  
sch commenced 12 March 1991 (s 2 (2) and see Cwith Gaz 1991  
No S62)

#### **Building (Amendment) Act 1991 No 23**

notified 17 May 1991 (Gaz 1990 No S37)  
commenced 17 May 1991

#### **Building (Amendment) Act (No 2) 1991 No 43**

notified 20 September 1991 (Gaz 1991 No S95)  
s 1, s 2 commenced 20 September 1991 (s 2 (1))  
remainder commenced 1 October 1991 (s 2 (2) and Gaz 1991  
No S105)

#### **Self-Government (Consequential Amendments) Act 1991 No 53 pt 2 div 2**

notified 2 October 1991 (Gaz 1991 No S98)  
commenced 2 October 1991

#### **Land (Planning and Environment) (Consequential Provisions) Act 1991 No 118 pt 2 div 2**

notified 15 January 1992 (Gaz 1992 No S3)  
s 1, s 2 commenced 15 January 1992 (s 2 (1))  
pt 2 div 2 commenced 15 July 1992 (s 2 (3))

#### **Statute Law Revision (Miscellaneous Provisions) Act 1992 No 23 sch 1**

notified 4 June 1992 (Gaz 1992 No S71)  
commenced 4 June 1992

#### **Building (Amendment) Act 1992 No 48**

notified 1 September 1992 (Gaz 1992 No S148)  
s 1, s 2 commenced 1 September 1992 (s 2 (1))  
remainder commenced 9 December 1992 (s 2 (2) and Gaz 1992  
No S230)

**Statute Law Revision (Miscellaneous Provisions) Act 1993 No 1 sch 1**

notified 1 March 1993 (Gaz 1993 No S23)  
commenced 1 March 1993

**Acts Revision (Position of Crown) Act 1993 No 44 sch 1**

notified 27 August 1993 (Gaz 1993 No S165)  
commenced 27 August 1993 (s 2)

**Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 9**

notified 30 June 1994 (Gaz 1994 No S121)  
s 1, s 2 commenced 30 June 1994 (s 2 (1))  
sch 1 pt 9 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

**Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1**

notified 11 October 1994 (Gaz 1994 No S197)  
s 1, s 2 commenced 11 October 1994 (s 2 (1))  
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

**Statute Law Revision (Penalties) Act 1994 No 81 sch**

notified 29 November 1994 (Gaz 1994 No S253)  
s 1, s 2 commenced 29 November 1994 (s 2 (1))  
sch commenced 29 November 1994 (s 2 (2) and Gaz 1994 No S269)

**Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1**

notified 15 December 1994 (Gaz 1994 No S280)  
s 1, s 2 commenced 15 December 1994 (s 2 (1))  
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

**Building (Amendment) Act 1995 No 28**

notified 5 September 1995 (Gaz 1995 No S212)  
ss 14-16 commenced 1 January 1996 (s 2 (2) and Gaz 1995 No S319)  
remainder commenced 5 September 1995 (s 2 (1))

**Land (Planning and Environment) (Amendment) Act (No 3) 1996 No 85 pt 3 div 3**

notified 24 December 1996 (Gaz 1996 No S345)  
s 1, s 2 commenced 24 December 1996 (s 2 (1))  
pt 3 div 3 commenced 24 June 1997 (s 2 (3))

## Endnotes

3 Legislation history

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**Building (Amendment) Act 1997 No 62**

notified 9 October 1997 (Gaz 1997 No S300)  
commenced 9 October 1997 (s 2)

**Public Health (Miscellaneous Provisions) Act 1997 No 70 pt 2 and sch 1 (as am by 2000 No 36 pt 3)**

notified 9 October 1997 (Gaz 1997 No S300)  
ss 1-3 commenced 9 October 1997 (s 2 (1))  
pt 2 commenced 28 August 2000 (s 2 (2) and Gaz 2000 No 33)  
sch 1 commenced 13 August 1998 (s 2 (2) and Gaz 1998 No S185)

**Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1**

notified 1 December 1997 (Gaz 1997 No S380)  
s 1, s 2 commenced 1 December 1997 (s 2 (1))  
sch 1 commenced 1 June 1998 (s 2 (2))

**Building (Amendment) Act 1998 No 48**

notified 16 November 1998 (Gaz 1998 No S205)  
commenced 16 November 1998 (s 2)

**Building (Amendment) Act (No 2) 1998 No 52**

notified 16 November 1998 (Gaz 1998 No S205)  
ss 1-3 commenced 16 November 1998 (s 2 (1))  
remainder commenced 4 January 1999 (s 2 (2) and Gaz 1999 No S1)

**Building (Amendment) Act 1999 No 48**

notified 17 September 1999 (Gaz 1999 No S54)  
commenced 17 September 1999 (s 2)

**Building (Amendment) Act (No 2) 1999 No 69**

notified 3 December 1999 (Gaz 1999 No S62)  
ss 1-3 commenced 3 December 1999 (s 2 (1))  
remainder commenced 21 November 1999 (s 2 (2))

**Public Health Amendment Act 2000 No 36 pt 3**

notified 20 July 2000 (Gaz 2000 No 29)  
commenced 20 July 2000 (s 2)

*Note* This Act only amends the Public Health (Miscellaneous Provisions) Act 1997 No 70

**Utilities (Consequential Provisions) Act 2000 No 66 sch 1 pt 1**

notified 20 December 2000 (Gaz 2000 No S68)  
s 1, s 2 commenced 20 December 2000 (IA s 10B)  
sch 1 pt 1 commenced 1 January 2001 (s 2 (1) and Gaz 2000 No S69)

**Electricity Amendment Act 2000 No 69 s 31**

notified 20 December 2000 (Gaz 2000 No S68)  
commenced 20 December 2000 (s 2)

**Surveyors (Consequential Amendments) Act 2001 No 3 sch 1**

notified 8 March 2001 (Gaz 2001 No 10)  
s 1, s 2 commenced 8 March 2001 (IA s 10B)  
sch 1 commenced 26 July 2001 (s 2 and see Gaz 2001 No 30)

**Statute Law Amendment Act 2001 No 11 sch 3**

notified 29 March 2001 (Gaz 2001 No 13)  
commenced 29 March 2001 (s 2)

**Unit Titles Consequential Amendments Act 2001 No 17 sch 2**

notified 5 April 2001 (Gaz 2001 No 14)  
s 1, s 2 commenced 5 April 2001 (IA s 10B)  
sch 2 commenced 5 October 2001 (s 2)

**Building Amendment Act 2001 No 30**

notified 24 May 2001 (Gaz 2001 No 21)  
s 1, s 2 commenced 24 May 2001 (IA s 10B)  
remainder commenced 1 July 2001 (s 2)

**Legislation (Consequential Amendments) Act 2001 No 44 pt 43**

notified 26 July 2001 (Gaz 2001 No 30)  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 43 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

**Legislation Amendment Act 2002 No 11 pt 2.4**

notified LR 27 May 2002  
s 1, s 2 commenced 27 May 2002 (LA s 75)  
pt 2.4 commenced 28 May 2002 (s 2 (1))

**Building Amendment Act 2002 No 15**

notified LR 17 May 2002  
s 1, s 2 commenced 17 May 2002 (LA s 75)  
remainder commenced 18 May 2002 (s 2)

## Endnotes

### 4 Amendment history

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#### **Districts Act 2002 No 39 pt 1.1**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

pt 1.1 commenced 11 October 2002 (s 2)

#### **Civil Law (Wrongs) Act 2002 No 40 sch 3 div 3.2.2**

notified LR 10 October 2002

s 1, s 2 commenced 10 October 2002 (LA s 75 (1))

sch 3 div 3.2.2 commenced 1 November 2002 (s 2 (2) and CN2002-13)

#### **Criminal Code 2002 No 51 pt 1.2**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

pt 1.2 commenced 1 January 2002 (s 2 (1))

#### **Planning and Land (Consequential Amendments) Act 2002 No 56 pt 3.1**

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

pt 3.1 commences 1 July 2003 (s 2 and see Planning and Land Act  
2002 s 5

#### **Construction Practitioners Legislation Amendment Act 2003 A2003-19 pt 2**

notified LR 19 May 2003

s 1, s 2 commenced 19 May 2003 (LA s 75 (1))

pt 2 commenced 9 June 2003 (s 2 and CN2003-5)

## 4 Amendment history

### **Commencement**

s 2 om R4 LRA

### **Parts**

s 3 om 1976 No 45 s 3

### **Repeal and saving**

s 4 am 1974 No 38 s 2; 1988 No 86 sch; 1993 No 1 sch 1  
om 1999 No 48 s 4

**Interpretation**

s 5

- am 1983 No 20 s 3; 1987 No 47 s 3; 1988 No 80 s 3; 1991 No 23 s 3; 1997 No 70 s 5, sch 1; 1998 No 52 s 4; ss renum R7 LA
- def **applicable standard** ins 1991 No 23 s 3  
sub 1997 No 70 s 5
- def **approved plans** ins 1998 No 52 s 4
- def **asbestos** ins 1988 No 80 s 3
- def **authorised insurer** ins 1988 No 73 s 4
- def **building approval** ins 1998 No 52 s 4
- def **building code** ins 1991 No 43 s 4  
sub 2001 No 44 amdt 1.432
- def **building inspector** am 1993 No 1 sch 1
- def **building permit** om 1998 No 52 s 4
- def **building work** am 1979 No 30 s 4  
sub 1988 No 80 s 3; 1991 No 23 s 3  
am 1997 No 70 s 5; 1998 No 48 s 4
- def **certificate of occupancy** ins 1999 No 48 s 5
- def **certificate of regularisation** ins 1999 No 48 s 5
- def **certifier** ins 1998 No 52 s 4  
sub A2003-19 s 4
- def **class 1** ins 1995 No 28 s 4
- def **class 2** ins 1995 No 28 s 4
- def **class 10A** ins 1995 No 28 s 4
- def **designated area** ins 1988 No 88 sch
- def **determined fee** ins 1987 No 47 s 3  
om 2001 No 44 amdt 1.433
- def **dwelling** ins 1998 No 48 s 4
- def **fidelity certificate** ins 2002 No 15 s 4
- def **government agency** ins 1991 No 43 s 4  
am 1994 No 38 sch 1 pt 9
- def **hazardous substance** ins 1991 No 23 s 3  
om 1997 No 70 s 5
- def **House of Assembly** ins 1979 No 30 s 4  
om 1988 No 73 s 4
- def **initial standard** ins 1991 No 23 s 3  
om 1997 No 70 s 5
- def **interim authority** ins 1988 No 88 sch  
om 1990 No 60 sch
- def **Land Act** ins 1996 No 85 s 90
- def **lease** ins 2002 No 56 amdt 1.3
- def **loose asbestos** ins 1988 No 80 s 3
- def **mechanical ventilation system** ins 1991 No 23 s 3  
sub 1997 No 70 s 5
- def **national land** ins 1999 No 48 s 5  
om R5 LA

## Endnotes

### 4 Amendment history

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- def **owner** sub 1988 No 73 s 4  
am 1989 No 38 sch 1; 2001 No 17 amdts 2.2-2.4; 2001  
No 30 s 4, s 5
- def **owner-builder's licence** ins 1998 No 52 s 4
- def **plans** ins 1998 No 52 s 4  
sub 1999 No 48 s 5
- def **prescribed** ins 1995 No 28 s 4
- def **proprietor** ins 1988 No 73 s 4  
am 2001 No 17 amdt 2.5
- def **repealed laws** ins 1999 No 48 s 5
- def **residential building insurance policy** ins 1988 No 73 s 4
- def **specialised system** ins 1991 No 23 s 3
- def **specialist building work** ins 1984 No 68 s 3
- def **statutory warranty** ins 1988 No 73 s 4
- def **stop notice** am 1993 No 1 sch 1
- def **storey** ins 1995 No 28 s 4  
am 1996 No 85 s 90
- def **system licence** ins 1991 No 23 s 3  
om 1997 No 70 s 5
- def **Territory land** ins 1999 No 48 s 5  
om R5 LA
- def **territory planning authority** ins 1990 No 60 sch  
om 2002 No 56 amdt 3.2
- def **The advisory council** om 1979 No 30 s 4
- def **the building controller** am 1993 No 1 sch 1  
sub 1994 No 97 sch pt 1
- def **the building manual** om 1991 No 43 s 4
- def **the commencing date** am 1993 No 1 sch 1
- def **the commission** om 1988 No 88 sch
- def **the repealed laws** am 1993 No 1 sch 1  
om 1999 No 48 s 5
- def **the review committee** om 1988 No 86 sch
- def **the standards committee** om 1991 No 43 s 4
- def **training fund board** ins 1999 No 69 s 4
- def **training levy** ins 1999 No 69 s 4
- def **tribunal** ins 1989 No 38 sch 1  
om 1994 No 60 sch 1
- def **unacceptable Legionella levels** ins 1991 No 23 s 3  
om 1997 No 70 s 5
- def **unit** ins 1988 No 73 s 4  
am 2001 No 17 amdt 2.6
- def **warm water system** ins 1991 No 23 s 3
- def **waste management plan** ins 1998 No 48 s 4  
am 1999 No 48 s 5

#### Application of Act generally

- s 6 am 1974 No 7 sch; 1987 No 20 s 3; 1988 No 73 s 5; 1988  
No 88 sch; 1989 No 38 sch 1; 1991 No 43 s 5; 1992 No 48



s 4; 1993 No 1 sch 1; 1996 No 85 s 91; 1998 No 52 s 5; 2001 No 11 amdt 3.1; ss renum R7 LA

**Application—prescribed buildings**

s 6AA ins 1992 No 48 s 5

**Application of Act to Territory**

s 6A hdg sub 1997 No 70 s 6 (as am 2000 No 36 s 12)

s 6A ins 1991 No 23 s 4

am 1991 No 43 s 6

sub 1993 No 44 sch 1

am 1997 No 70 s 6 (as am 2000 No 36 s 12); 1998 No 52 s 6

sub 2001 No 30 s 6

am 2002 No 11 amdt 2.7

exp 1 July 2004 (s 6A (2))

**Applicable standard—amendment**

s 6B ins 1997 No 70 s 7

sub 2001 No 44 amdt 1.434

**Building controller and inspectors**

div 2.1 hdg (prev pt 2 div 1 hdg) renum R5 LA

**Building controller**

s 7 am 1979 No 30 s 5; 1982 No 70 s 3; 1983 No 66 s 4; 1988 No 86 sch; 1991 No 43 sch; 1992 No 48 sch

sub 1994 No 97 sch pt 1

am 1999 No 69 s 5; 2001 No 44 amdt 1.435, amdt 1.436;

ss renum R7 LA

**Deputy building controllers**

s 7A ins 1994 No 97 sch pt 1

**Building controller and deputy building controllers—identity cards**

s 7B ins 1994 No 97 sch pt 1

am 1995 No 28 s 5

**Appointment of building inspectors**

s 8 am 1988 No 80 s 4; 1992 No 48 sch; 1994 No 81 sch

**Inspection**

s 9 am 1974 No 38 s 3; 1979 No 30 s 6, sch; 1984 No 68 s 4; 1988 No 80 s 5; 1988 No 86 sch; 1991 No 23 s 5; 1991 No 53 pt 2 div 2; 1992 No 23 sch 1; 1992 No 48 sch; 1993 No 1 sch 1; 1994 No 81 sch; 1998 No 52 s 7; 2001 No 44 amdt 1.437, amdt 1.438; 2002 No 56 amdt 3.3

**Inspection of premises for hazardous substances**

s 9A ins 1988 No 80 s 6

am 1991 No 23 s 6; 1994 No 81 sch; 1997 No 70 s 8; ss renum R7 LA

## Endnotes

### 4 Amendment history

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

s 9B ins 1991 No 23 s 7  
om 1997 No 70 s 9

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

s 9C ins 1991 No 23 s 7  
am 1994 No 81 sch; 1997 No 70 sch 1  
om 1997 No 70 s 9

#### **Conduct of inquiries**

div 2.2 hdg (prev pt 2 div 2 hdg) sub 1988 No 86 s 4  
renum R5 LA

#### **Procedure**

s 10 am 1978 No 46 sch 2; 1979 No 30 s 7, sch; 1988 No 73 s 6  
sub 1988 No 86 s 4

#### **Evidence**

s 11 am 1978 No 46 sch 2; 1979 No 30 s 8; 1988 No 73 s 7  
sub 1988 No 86 s 4

#### **Legal representation**

s 12 sub 1988 No 86 s 4  
am 1997 No 96 sch 1

#### **Fees and allowances to members of review committee**

s 13 sub 1976 No 61 s 4  
om 1988 No 86 s 4; 1989 No 50 sch

#### **Annual report of review committee**

s 13A ins 1976 No 45 s 4  
om 1988 No 86 s 4

#### **Builder's licences**

div 2.3 hdg (prev pt 2 div 3 hdg) renum R5 LA

#### **Classes of builder's licences**

s 14 am 1974 No 7 sch; 1984 No 68 s 5; 1988 No 80 s 7; 1988  
No 86 sch; 1988 No 87 s 3; 1992 No 48 sch; 1993 No 1 sch  
1; 1994 No 81 sch; 1995 No 28 s 6; 1998 No 52 s 8;  
ss renum R7 LA

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

s 15 am 1979 No 30 s 9; 1984 No 68 s 6; 1987 No 47 s 4; 1991  
No 43 sch; 1992 No 48 sch; 1993 No 1 sch 1; 2001 No 44  
amdt 1.439, amdt 1.440; ss renum R7 LA

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

s 16 am 1979 No 30 s 10; 1984 No 68 s 7; 1992 No 23 sch 1; 1992  
No 48 sch; 1993 No 1 sch 1; 1995 No 28 s 7; 2001 No 44  
amdt 1.441, amdt 1.442

**Grant of licence**

s 17 am 1983 No 20 s 4; 1984 No 68 s 8; 1988 No 86 s 5, sch; 1992 No 48 sch; 1993 No 1 sch 1; 2001 No 44 amdt 1.443; ss renum R7 LA

**Notice of decision and of right of appeal**

s 17A ins 1984 No 68 s 9  
om 1988 No 86 sch

**Review Committee**

s 17B ins 1984 No 68 s 9  
om 1988 No 86 sch

**Variation, suspension or cancellation of licences**

s 18 am 1984 No 68 s10  
sub 1988 No 86 s 6  
am 1991 No 43 sch; 1998 No 52 s 9

**Preliminary suspension of builder's licence**

s 18A ins 1982 No 70 s 4  
sub 1988 No 86 s 6

**Notification of decision to suspend or cancel**

s 19 am 1984 No 68 s 11  
sub 1988 No 86 s 6

**Register of builder's licences**

s 20 am 1987 No 47 s 5; 1988 No 86 s 7; 2001 No 44 amdt 1.444, amdt 1.445; ss renum R7 LA

**Loss etc of licence**

s 21 am 1992 No 48 sch

**Change of nominee**

s 22 am 1979 No 30 s 11; 1991 No 43 sch; ss renum R7 LA

**Notice of change of address**

s 23 am 1993 No 1 sch 1

**Owner-builders' licences**

div 2.3A hdg (prev pt 2 div 3A hdg) ins 1998 No 52 s 10  
renum R5 LA

**Grants of licences**

s 23A ins 1998 No 52 s 10  
am 2001 No 44 amdt 1.446

**Period for which owner-builder's licence is in effect**

s 23B ins 1998 No 52 s 10

**The building code**

div 2.4 hdg (prev pt 2 div 4 hdg) sub 1991 No 43 s 7  
renum R5 LA

## Endnotes

### 4 Amendment history

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#### **Building code**

s 24 am 1976 No 61 s 4; 1988 No 73 s 8; 1989 No 38 sch 1; 1989 No 50 sch; 1991 No 23 s 8  
sub 1991 No 43 s 7  
am 1992 No 48 s 6; 1995 No 28 s 8  
sub 2001 No 44 amdt 1.447

#### **Remuneration and allowances**

s 24A ins 1989 No 50 sch  
om 1991 No 43 s 7

#### **Publication of building code etc in newspaper**

s 25 am 1974 No 38 s 4; 1979 No 30 sch; 1991 No 23 s 9  
sub 1991 No 43 s 7; 2001 No 44 amdt 1.447  
am 2002 No 56 amdt 3.14

#### **Inspection**

s 26 am 1979 No 30 sch  
sub 1991 No 43 s 7

#### **Annual report of standards committee**

s 26A ins 1976 No 45 s 5  
om 1991 No 43 s 7

#### **Exemptions**

s 27 am 1988 No 86 sch  
sub 1991 No 43 s 7  
am 2001 No 30 s 7; 2001 No 44 amdt 1.448, amdt 1.449

#### **Certified copies**

s 28 sub 1991 No 43 s 7  
am 1994 No 60 sch 1

#### **Building work**

pt 3 hdg am 1979 No 30 s 12  
sub 1998 No 52 s 11

#### **Preliminary**

div 3.1 hdg (prev pt 3 div 1 hdg) renum R5 LA

#### **Meaning of *stage* in pt 3**

s 29 sub 1991 No 43 s 8  
am 1993 No 44 sch 1; 1994 No 81 sch  
sub 1998 No 52 s 11

#### **Certifiers and government certifiers**

div 3.2 hdg (prev pt 3 div 2 hdg) renum R5 LA  
sub A2003-19 s 5

#### **Meaning of *certifier, eligible person and government certifier* for div 3.2**

s 29A ins A2003-19 s 5

**Eligibility for appointment—certifiers and government certifiers**

s 30 am 1988 No 80 s 8; 1988 No 87 s 4; 1991 No 23 s 10; 1992 No 48 sch; 1994 No 81 sch; 1997 No 70 s 10  
sub 1998 No 52 s 11; A2003-19 s 5

**Appointment of certifiers**

s 31 am 1979 No 30 sch; 1987 No 47 s 6; 1988 No 88 sch; 1990 No 60 sch; 1991 No 43 sch; 1991 No 118 s 10; 1992 No 48 sch; 1996 No 85 s 92  
sub 1998 No 52 s 11; A2003-19 s 5

**Appointment of government certifiers**

s 31A hdg sub 1990 No 60 notes  
s 31A ins 1988 No 88 sch  
am 1989 No 38 sch 1; 1990 No 60 sch  
om 1991 No 118 s 11  
ins A2003-19 s 5

**Power to require building documents**

s 31B ins A2003-19 s 5

**Protection of government certifiers from liability**

s 31C ins A2003-19 s 5

**Notice of certifier's appointment or end of appointment**

s 32 am 1979 No 30 sch; 1991 No 43 sch; 1992 No 23 sch 1; 1992 No 48 sch; 1993 No 1 sch 1; 1997 No 96 sch 1; 1998 No 48 s 5  
sub 1998 No 52 s 11  
am 2001 No 44 amdt 1.450, amdt 1.451  
sub A2003-19 s 5

**Prohibition against contracting out**

s 33 am 1979 No 30 sch; 1982 No 71 s 3; 1988 No 86 sch; 1991 No 23 s 11; 1991 No 43 sch; 1992 No 23 sch 1; 1992 No 48 sch; 1993 No 1 sch 1; 1998 No 48 s 6  
sub 1998 No 52 s 11; A2003-19 s 5

**Grant of building approvals**

div 3.3 hdg (prev pt 3 div 3 hdg) renum R5 LA

**Application for building approval**

s 33A ins 1979 No 30 s 13  
am 1987 No 47 s 7; 1988 No 86 s 8; 1992 No 48 sch  
sub 1998 No 52 s 11  
am 1999 No 48 s 6; pars renum R7 LA; 2002 No 39 amdt 1.1

## Endnotes

### 4 Amendment history

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#### **Issue of building approvals**

s 34 am 1979 No 30 sch; 1992 No 23 sch 1; 1992 No 48 sch; 1998 No 48 s 7  
sub 1998 No 52 s 11  
am 1999 No 48 s 7; 1999 No 69 s 6; 2001 No 44 amdts 1.452-1.456; 2002 No 15 s 5; ss and pars renum R7 LA (see 2002 No 15 s 6)

#### **External design and siting considerations**

s 34A ins 1998 No 52 s 11

#### **Amendment of approved plans**

s 35 am 1979 No 30 s 14, sch; 1987 No 47 s 8; 1988 No 73 s 9; 1991 No 43 sch; 1992 No 48 sch  
sub 1998 No 52 s 11

#### **Effect of issue of further building approval**

s 35A ins 1998 No 52 s 11

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

s 36 am 1979 No 30 s 15, sch; 1984 No 68 s 12; 1987 No 20 s 4; 1988 No 80 s 9; 1988 No 86 sch; 1991 No 23 s 12; 1992 No 23 sch 1; 1992 No 48 sch; 1993 No 1 sch 1; 1994 No 81 sch; 1995 No 28 s 9  
sub 1998 No 52 s 11

#### **Period for which approvals are in force**

s 36A ins 1979 No 30 s 16  
sub 1998 No 52 s 11

#### **Carrying out building work**

div 3.4 hdg (prev pt 3 div 4 hdg) renum R5 LA

#### **Requirements for carrying out building work**

s 37 sub 1979 No 30 s 17; 1998 No 52 s 11

#### **Notifications by owner of land in relation to building work**

s 37A ins 1998 No 52 s 11

#### **Notifications by certifier in relation to building work**

s 38 am 1996 No 85 s 93  
sub 1998 No 52 s 11  
am 2001 No 44 amdts 1.457-1.459; 2002 No 15 s 7

#### **Stages of building work**

s 38A ins 1998 No 52 s 11  
am 1999 No 48 sch; 2001 No 3 sch 1

**Building inspector may specify safety precautions**

s 39 sub 1979 No 30 s 18  
am 1983 No 20 s 5; 1984 No 68 s 13; 1988 No 86 s 9; 1991  
No 43 sch; 1992 No 48 sch  
sub 1998 No 52 s 11

**Completion of building work**

div 3.5 hdg (prev pt 3 div 5 hdg) renum R5 LA

**Structural engineer's certificate**

s 39A ins 1998 No 52 s 11

**Completion of building work**

s 40 am 1979 No 30 s 19, sch; 1987 No 20 s 5; 1991 No 43 sch;  
1992 No 48 sch; 1993 No 1 sch 1; 1995 No 28 s 10; 1999  
No 48 sch  
sub 1998 No 52 s 11

**Offences**

div 3.6 hdg (prev pt 3 div 6 hdg) renum R5 LA

**Compliance with building code**

s 40A ins 1998 No 52 s 11

**Notification of breaches**

s 41 am 1979 No 30 s 20; 1987 No 47 s 9  
sub 1998 No 52 s 11  
am 2001 No 44 amdt 1.460, amdt 1.461

**Carrying out building work in breach of s 37**

s 41A ins 1988 No 86 s 10  
am 1992 No 48 sch  
sub 1998 No 52 s 11

**Specialised systems**

pt 3A hdg ins 1991 No 23 s 13  
om 1997 No 70 s 11

**General**

pt 3A div 1 hdg ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Interpretation**

s 42 am 1979 No 30 s 21, sch; 1984 No 68 s 14  
om 1988 No 86 sch  
ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Application of part**

s 42A ins 1991 No 23 s 13  
am 1991 No 43 sch  
om 1997 No 70 s 11

## Endnotes

### 4 Amendment history

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#### **Licensing**

pt 3A div 2 hdg ins 1991 No 23 s 13  
om 1997 No 70 s 11

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

s 42B ins 1991 No 23 s 13  
am 1994 No 81 sch  
om 1997 No 70 s 11

#### **Application**

s 42C ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Issue**

s 42D ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Notification of changes**

s 42E ins 1991 No 23 s 13  
am 1994 No 81 sch  
om 1997 No 70 s 11

#### **Renewal**

s 42F ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Transfer**

s 42G ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Statements by engineers**

s 42H ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Suspension of licences**

pt 3A div 3 hdg ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Suspension**

s 42J ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Preliminary suspension**

s 42K ins 1991 No 23 s 13  
om 1997 No 70 s 11

#### **Effect of suspension**

s 42L ins 1991 No 23 s 13  
om 1997 No 70 s 11



**Notification of suspension**

s 42M ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Applicable standards**

pt 3A div 4 hdg ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Amending the standard**

s 42N ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Disallowable instrument**

s 42P ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Exempt systems**

pt 3A div 5 hdg ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Entitlement to apply**

s 42Q ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Exemption**

s 42R ins 1991 No 23 s 13  
om 1997 No 70 s 11

**Meaning of *easement***

s 42S ins 1992 No 48 s 7  
am 2002 No 39 amdt 1.1

**Stop notices**

s 43 am 1974 No 38 s 5; 1979 No 30 s 22, sch; 1982 No 69 s 3;  
1988 No 80 s 10; 1988 No 86 sch; 1988 No 88 sch; 1990  
No 60 sch; 1991 No 23 s 14; 1992 No 23 sch 1; 1992 No 48  
s 8 and sch; 1993 No 1 sch 1; 1996 No 85 s 94; 1998 No 52  
s 12; ss and paragraphs renum R7 LA

**Further notices relating to stop notices**

s 44 am 1974 No 38 s 6; 1979 No 30 sch; 1987 No 20 s 6; 1992  
No 48 s 9; 1993 No 1 sch 1; 1998 No 52 s 13; ss renum  
R7 LA; 2002 No 56 amdt 3.4

**Service of notice**

s 45 am 1993 No 1 sch 1

**Notice to produce survey plan**

s 45A ins 1982 No 69 s 4  
am 1998 No 52 s 14

## Endnotes

### 4 Amendment history

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

s 46 sub 1974 No 38 s 7  
am 1979 No 30 s 23; 1982 No 69 s 5; 1984 No 68 s 15; 1987  
No 20 s 7; 1988 No 80 s 11; 1988 No 86 sch; 1988 No 88  
sch; 1990 No 60 sch; 1991 No 23 s 15; 1992 No 23 sch 1;  
1992 No 48 s 10 and sch; 1993 No 1 sch 1; 1996 No 85 s 95;  
1997 No 70 s 12; ss and paragraphs renum R7 LA; 2002  
No 56 amdt 3.5

#### **Objection**

s 47 am 1984 No 68 s 16; 1988 No 88 sch  
om 1988 No 86 sch

#### **Appeal to Supreme Court**

s 48 om 1988 No 86 sch

#### **Failure to comply with order of review committee or Supreme Court**

s 49 om 1988 No 86 sch

#### **Time not to run pending objection or appeal**

s 50 om 1988 No 86 sch

#### **Compliance with notices**

s 51 am 1982 No 69 s 6  
sub 1988 No 87 s 5  
am 1994 No 81 sch

#### **Removal of loose asbestos**

pt 4A hdg ins 1988 No 80 s 12  
sub 1991 No 23 s 16  
am 1997 No 70 s 13

#### **Loose asbestos**

pt 4A div 1 hdg ins 1991 No 23 s 16  
om 1997 No 70 s 14

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

s 51A ins 1988 No 80 s 12  
am 1989 No 38 s 8

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

s 51B ins 1988 No 80 s 12  
am 1989 No 38 s 9

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

s 51C ins 1988 No 80 s 12  
am 1989 No 38 sch 1

#### **Service of notices**

s 51D ins 1988 No 80 s 12

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

s 51E ins 1988 No 80 s 12

**Entry to building with force**

s 51F ins 1988 No 80 s 12  
am 1989 No 38 sch 1

**Liability of Territory**

s 51G ins 1988 No 80 s 12  
am 1989 No 38 s 10

**Obstruction of Territory**

s 51H ins 1988 No 80 s 12  
am 1989 No 38 s 11; 1994 No 81 sch

**Legionella bacteria**

pt 4A div 2 hdg ins 1991 No 23 s 17  
om 1997 No 70 s 15

**Duty to maintain and clean specialised systems**

s 51J ins 1991 No 23 s 17  
am 1994 No 81 sch  
om 1997 No 70 s 15

**Duty to notify building controller**

s 51K ins 1991 No 23 s 17  
am 1994 No 81 sch  
om 1997 No 70 s 15

**Shutdown notices**

s 51L ins 1991 No 23 s 17  
am 1997 No 70 sch 1  
om 1997 No 70 s 15

**Clearance certificates**

s 51M ins 1991 No 23 s 17  
am 1997 No 70 sch 1  
om 1997 No 70 s 15

**Compliance with directions**

s 51N ins 1991 No 23 s 17  
am 1994 No 81 sch  
om 1997 No 70 s 15

**Liability of the Territory**

s 51P ins 1991 No 23 s 17  
om 1997 No 70 s 15

**Effect of certificates under pt 5**

s 52 am 1979 No 30 s 24; 1999 No 48 s 8

## Endnotes

### 4 Amendment history

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#### **Certificate of occupancy**

s 53 am 1979 No 30 s 25, sch; 1984 No 68 s 17; 1987 No 20 s 8; 1988 No 31 sch; 1988 No 87 s 6; 1991 No 43 sch; 1992 No 23 sch 1; 1992 No 48 sch; 1993 No 1 sch 1; 1994 No 81 sch; 1998 No 52 s 15; 1999 No 48 sch; 2000 No 66 sch 1 pt 1; 2000 No 69 s 31; 2001 No 44 amdt 1.462, amdt 1.463; ss and pars renum R7 LA

#### **Certificates of occupancy and use for owner-builders**

s 53AA ins 1995 No 28 s 11  
am 1999 No 48 sch

#### **Government buildings**

s 53AB ins 1999 No 48 s 9  
am 2001 No 44 amds 1.464-1.466; 2002 No 56 amdt 3.6

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

s 53A ins 1987 No 20 s 9  
am 1988 No 80 s 13; 1994 No 81 sch  
om 1998 No 52 s 16

#### **Notification of decisions**

s 53B ins 1987 No 20 s 9  
om 1988 No 73 s 10

#### **Review of decisions**

s 53C ins 1987 No 20 s 9  
om 1988 No 73 s 10

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

s 54 am 1988 No 73 s 11; 1988 No 80 s 14; 1994 No 81  
sub 1999 No 48 s 10

#### **Use of buildings restricted**

s 54A ins 1979 No 30 s 26  
am 1988 No 80 s 15; 1988 No 86 sch; 1992 No 48 sch; 1994  
No 81 sch; 1999 No 48 s 11

#### **Occupation and use of ex-government buildings**

s 54B ins 1999 No 48 s 12  
am 2002 No 56 amdt 3.7

#### **Action by building controller on unauthorised use of premises**

s 55 am 1979 No 30 s 27; 1988 No 87 s 7; 1992 No 48 sch; 1994  
No 81 sch; 1999 No 48 s 13

#### **Copies of certificates of occupancy and regularisation**

s 56 am 1992 No 23 sch 1; 1992 No 48 sch

#### **Safe live load plates**

s 57 sub 1979 No 30 s 28  
am 1988 No 80 s 16; 1994 No 81 sch; 1999 No 48 s 14

**Exceeding safe live load**

s 58 sub 1979 No 30 s 29  
am 1988 No 80 s 17; 1994 No 81 sch

**Residential building—statutory warranties and insurance**

pt 5A hdg renum as pt 6 hdg

**Definitions for pt 5A**

s 58A renum as s 59

**Cost of building work**

s 58AA renum as s 60

**Application**

s 58B renum as s 61

**Statutory warranties**

s 58C renum as s 62

**Builder's liability**

s 58D renum as s 63

**Residential building work insurance**

s 58E renum as s 64

**Recovery from builder**

s 58F renum as s 65

**Duties of insurers**

s 58G renum as s 66

**Residential building—statutory warranties and fidelity certificates insurance**

pt 6 hdg orig pt 6 hdg renum as pt 7 hdg  
(prev pt 5A hdg) ins 1988 No 73 s 12  
sub 2002 No 15 s 8  
renum R7 LA (see 2002 No 15 s 13)

**General**

div 6.1 (prev div 5A.1 hdg) ins 2002 No 15 s 8  
renum R7 LA (see 2002 No 15 s 13)

**Definitions for pt 6**

s 59 orig s 59 renum as s 101  
(prev s 58A) ins 1998 No 73 s 12  
renum R7 LA (see 2002 No 15 s 13)  
def **actuary** ins 2002 No 15 s 9  
def **approved criteria** ins 2002 No 15 s 9  
def **approved scheme** ins 2002 No 15 s 9  
def **builder** ins 1988 No 73 s 12  
def **building** ins 1988 No 73 s 12  
sub 1998 No 52 s 17

## Endnotes

### 4 Amendment history

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def **building work** ins 1988 No 73 s 12  
def **cost** ins 1988 No 73 s 12  
sub 1995 No 28 s 12  
def **dwelling** ins 1988 No 73 s 12  
om 1998 No 48 s 8  
def **fidelity certificate** ins 2002 No 15 s 9  
def **fidelity fund scheme** ins 2002 No 15 s 9  
def **flat** ins 1988 No 73 s 12  
am 1991 No 43 sch  
om 1998 No 48 s 8  
def **ground storey** ins 1988 No 73 s 12  
am 1991 No 43 sch  
def **habitable room** ins 1988 No 73 s 12  
am 1991 No 43 sch  
def **house** ins 1988 No 73 s 12  
am 1991 No 43 sch  
om 1998 No 48 s 8  
def **mezzanine** ins 1988 No 73 s 12  
am 1991 No 43 sch  
om 1998 No 48 s 8  
def **prudential standards** ins 2002 No 15 s 9  
def **residential building** ins 1988 No 73 s 12  
sub 1995 No 28 s 12  
def **residential building work** ins 1988 No 73 s 12  
def **special actuary** ins 2002 No 15 s 9  
def **storey** ins 1988 No 73 s 12  
am 1991 No 43 sch  
om 1995 No 28 s 12

#### **False or misleading statements**

s 59A renum as s 102

#### **Cost of building work**

s 60 orig s 60 renum as s 103  
(prev s 58AA) ins 1995 No 28 s 13  
renum R7 LA (see 2002 No 15 s 13)

#### **Protection of representatives, witnesses etc**

s 60A ins 1979 No 30 s 30  
om 1988 No 86 s 11

#### **Statutory warranties**

div 6.2 hdg (prev div 5A.2 hdg) ins 2002 No 15 s 10  
renum R7 LA (see 2002 No 15 s 13)

**Application**

s 61 orig s 61 om 1988 No 86 s 11  
(prev s 58B) ins 1988 No 73 s 12  
am 1989 No 38 sch 1; 1991 No 43 sch; 1994 No 38 sch 1 pt 9;  
1995 No 28 s 14; 1998 No 52 s 18  
renum R7 LA (see 2002 No 15 s 13)

**Review of decisions**

s 61A ins 1988 No 73 s 14  
am 1989 No 38 sch 1  
om 1988 No 86 s 11

**Notification of decisions**

s 61B ins 1988 No 73 s 14  
am 1989 No 38 sch 1  
om 1988 No 86 s 11

**Statutory warranties**

s 62 orig s 62 renum as s 104  
(prev s 58C) ins 1988 No 73 s 12  
am 1995 No 28 s 15; 1999 No 48 sch  
renum R7 LA (see 2002 No 15 s 13)

**Residential building insurance**

div 6.3 hdg (prev 5A.3 hdg) ins 2002 No 15 s 11  
renum R7 LA (see 2002 No 15 s 13)

**Builder's liability**

s 63 orig s 63 renum as s 105  
(prev s 58D) ins 1988 No 73 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Legal liability for acts of building controller etc**

s 63A renum as s 106

**Conduct of directors, servants and agents**

s 63B renum as s 107

**Residential building work insurance**

s 64 orig s 64 renum as s 108  
(prev s 58E) ins 1988 No 73 s 12  
am 1995 No 28 s 16; 1998 No 52 s 19; 1999 No 48 sch;  
paragraphs renum R7 LA  
renum R7 LA (see 2002 No 15 s 13)

**Recovery from builder**

s 65 orig s 65 renum as s 109  
(prev s 58F) ins 1988 No 73 s 12  
renum R7 LA (see 2002 No 15 s 13)

## Endnotes

### 4 Amendment history

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#### **Duties of insurers**

s 66 orig s 66 renum as s 110  
(prev s 58G) ins 1988 No 73 s 12  
am 1994 No 81 sch; 1995 No 28 s 17  
renum R7 LA (see 2002 No 15 s 13)

#### **Approved fidelity fund schemes**

div 6.4 hdg (prev div 5A.4 hdg) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

#### **Approval of fidelity fund schemes**

s 67 orig s 67 am 1989 No 38 sch 1  
sub 1995 No 28 s 19  
om 2001 No 44 amdt 1.468  
(prev s 58H) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

#### **Additional information etc**

s 68 (prev s 58I) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14, amdt 3.15

#### **Minister may require changes to scheme**

s 69 (prev s 58J) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

#### **Approval criteria for fidelity fund schemes**

s 70 (prev s 58K) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

#### **Approval of scheme may be conditional**

s 71 (prev s 58L) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

#### **Application for changes to approved scheme**

s 72 (prev s 58M) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

#### **Approval of changes to approved scheme**

s 73 (prev s 58N) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

#### **Prudential standards**

s 74 (prev s 58O) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.8



**Compliance with prudential standards by trustees**

s 75 (prev s 58P) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Notice to trustees to comply with prudential standards**

s 76 (prev s 58Q) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Notice to trustees requiring information**

s 77 (prev s 58R) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14, amdt 3.15

**Suspension or cancellation of approval of approved scheme**

s 78 (prev s 58S) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Cancellation of approval on application**

s 79 (prev s 58T) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.9

**Orders consequential on etc suspension or cancellation**

s 80 (prev s 58U) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.10

**Address for service for trustees**

s 81 (prev s 58V) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Auditors and actuaries of approved schemes**

div 6.5 hdg (prev div 5A.5 hdg) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Appointment of auditor and actuary for approved scheme**

s 82 (prev s 58W) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Approval of appointment of auditor or actuary**

s 83 (prev s 58X) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.11, amdt 3.14

## Endnotes

### 4 Amendment history

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**Revocation of approval of appointment of auditor or actuary**

s 84 (prev s 58Y) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**When person stops holding appointment as auditor or actuary**

s 85 (prev s 58Z) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Notification of appointment or ending of appointment of auditor or actuary**

s 86 (prev s 58ZA) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Compliance with prudential standards by auditors and actuaries**

s 87 (prev s 58ZB) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Auditor and actuary to tell Minister if scheme insolvent etc**

s 88 (prev s 58ZC) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Giving of information to authority by auditor or actuary etc**

s 89 hdg sub 2002 No 56 amdt 3.12  
s 89 (prev s 58ZD) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.13-3.15

**Auditor's role**

s 90 (prev s 58ZE) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Actuary's role**

s 91 (prev s 58ZF) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Certificates and reports required to be given to Minister**

s 92 (prev s 58ZG) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Investigation of liabilities by special actuary**

s 93 (prev s 58ZH) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14, amdt 3.15

**Offences in relation to appointment of special actuary**

s 94 (prev s 58ZI) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Who can be appointed as special actuary**

s 95 (prev s 58ZJ) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 56 amdt 3.14

**Obligations of trustees to auditors and actuaries**

s 96 (prev s 58ZK) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)

**Protection of auditor and actuary from liability**

s 97 (prev s 58ZL) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 40 amdt 3.3

**Transitional provisions**

div 6.6 hdg (prev div 5A.6 hdg) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
exp 18 May 2003 (s 100)

**Transitional regulations**

s 98 (prev s 58ZM) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
exp 18 May 2003 (s 100)

**Modification of operation of div 6.4 and div 6.5**

s 99 (prev s 58ZN) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
exp 18 May 2003 (s 100)

**Expiry of div 6.6**

s 100 (prev s 58ZO) ins 2002 No 15 s 12  
renum R7 LA (see 2002 No 15 s 13)  
exp 18 May 2003 (s 100)

**Miscellaneous**

pt 7 hdg (prev pt 6 hdg) renum R7 LA (see 2002 No 15 s 13)

**Service of notices etc**

s 101 (prev s 59) am 1992 No 48 sch  
renum R7 LA (see 2002 No 15 s 13)

**False or misleading statements**

s 102 (prev s 59A) ins 1988 No 73 s 13  
am 1991 No 23 s 18; 1994 No 81 sch  
renum R7 LA (see 2002 No 15 s 13)

## Endnotes

### 4 Amendment history

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#### **Review by administrative appeals tribunal**

s 103 (prev s 60) am 1982 No 70 s 5  
sub 1988 No 86 s 11 (as am 1989 No 38 s 12)  
am 1991 No 23 s 19; 1994 No 60 sch 1; 1995 No 28 s 18; 1996  
No 85 s 96; 1997 No 70 s 16; 1998 No 52 s 20; 1999 No 48  
s 15, sch; paragraphs renum R7 LA  
renum R7 LA (see 2002 No 15 s 12)  
am A2003-19 s 6, s 7; pars renum R13 LA (see A2003-19 s 8)

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

s 104 (prev s 62) am 1974 No 38 s 8; 1988 No 86 sch; 1992 No 23  
sch 1; 1992 No 48 sch; 1993 No 1 sch 1; 1998 No 52 s 21  
renum R7 LA (see 2002 No 15 s 13)

#### **Evidence**

s 105 (prev s 63) am 1974 No 38 s 9; 1979 No 30 s 31; 1988 No 86  
sch; 1991 No 23 s 20; 1991 No 43 s 9; 1992 No 48 sch; 1998  
No 52 s 22; 1999 No 48 sch; ss renum R7 LA  
renum R7 LA (see 2002 No 15 s 13)

#### **Legal liability for acts of building controller etc**

s 106 (prev s 63A) ins 1983 No 66 s 5  
am 1989 No 38 sch 1; 1992 No 48 sch  
renum R7 LA (see 2002 No 15 s 13)

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

s 107 (prev s 63B) ins 1988 No 73 s 15  
am 2001 No 44 amdt 1.467; 2002 No 11 amdt 2.8, amdt 2.9  
renum R7 LA (see 2002 No 15 s 13)  
am 2002 No 51 amdt 1.3

#### **Determination of fees**

s 108 (prev s 64) am 1983 No 20 s 6; 1997 No 62 s 4  
sub 2001 No 44 amdt 1.468  
renum R7 LA (see 2002 No 15 s 13)

#### **Approved forms**

s 109 (prev s 65) om 1979 No 30 s 32  
ins 1983 No 20 s 7  
am 1999 No 69 s 7  
sub 2001 No 44 amdt 1.468  
renum R7 LA (see 2002 No 15 s 13)

#### **Regulation-making power**

s 110 (prev s 66) om 1979 No 30 s 32  
ins 2001 No 44 amdt 1.468  
renum R7 LA (see 2002 No 15 s 13)

#### **Inspection stages**

sch om 1998 No 52 s 23

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 53	2 October 1991
2	Act 1993 No 1	30 April 1993
3	Act 1994 No 97	31 January 1995
4	Act 2000 No 36	30 September 2000
5	Act 2001 No 44	31 August 2001
6*	Act 2001 No 44	12 October 2001
7	Act 2002 No 15	21 May 2002
8	Act 2002 No 15	29 May 2002
9	Act 2002 No 39	11 October 2002
10	Act 2002 No 40	1 November 2002
11*	<u>Act 2002 No 56</u>	1 January 2003
12	<u>A2003-19</u>	19 May 2003

## 6 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

**Planning and Land (Consequential Amendments) Act  
2002 No 56 pt 3.1**

## Part 3.1 Building Act 1972

### [3.1] Section 5 (1), new definition of *lease*

*substitute*

## Endnotes

6 Uncommenced amendments

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*lease*—see Land Act, section 159.

### **[3.2] Section 5 (1), definition of *Territory planning authority***

*omit*

### **[3.3] Section 9 (5)**

*omit*

Minister

*substitute*

planning and land authority

### **[3.4] Section 44 (4)**

*omit*

Territory planning authority

*substitute*

planning and land authority

### **[3.5] Section 46 (3)**

*omit*

Territory planning authority

*substitute*

planning and land authority

### **[3.6] Section 53AB (1) (a) (iii), (3) and (4)**

*omit*

for a term of years

### **[3.7] Section 54B (1) (a) and (b)**

*substitute*

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

**[3.8] Section 74 (2), (3) and (4)**

*omit everything before paragraph (a), substitute*

- (2) If the planning and land authority proposes to suspend or cancel the approval of the scheme, the authority must give the trustees of the scheme a written notice—
  - (a) stating the grounds on which the authority proposes to suspend or cancel the approval; and
  - (b) stating the facts that, in the authority's opinion, establish the grounds; and
  - (c) telling the trustees that the trustees may, within in stated reasonable time, give a written response to the authority about the matters in the notice.
- (3) If, after considering any response given to the planning and land authority under subsection (2) (c), the authority is satisfied that the grounds for suspending or cancelling the approval have been established, the authority may, in writing, suspend or cancel the approval.
- (4) If the planning and land authority suspends or cancels an approval, the authority must give written notice of the suspension or cancellation to the trustees.

**[3.9] Section 79 (1) and (2)**

*substitute*

- (1) The planning and land authority may, in writing, cancel the approval of an approved scheme if the trustees of the scheme ask the authority, in writing, to do so.

## Endnotes

6 Uncommenced amendments

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- (2) If the planning and land authority cancels the approval, the authority must give written notice of the cancellation to the trustees.

### **[3.10] Section 80 (1)**

*substitute*

- (1) If the planning and land authority suspends or cancels the approval of a fidelity fund scheme under this division, the authority may apply to the Supreme Court for orders to give effect to, or consequential on, the suspension or cancellation.

### **[3.11] Section 83 (3) and (4)**

*substitute*

- (3) The planning and land authority must give the trustees notice of the authority's decision to approve or refuse to approve the appointment.
- (4) If the planning and land authority refuses to approve an appointment, the notice must include the reasons for the refusal.

### **[3.12] Section 89 heading**

*substitute*

## **89 Giving of information to authority by auditor or actuary etc**

### **[3.13] Section 89 (2)**

*substitute*

- (2) The person may give information to the planning and land authority about the approved scheme if the person considers that giving information will assist the authority to exercise the authority's functions under this part.

### **[3.14] Further amendments, mentions of *Minister***

*omit*



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Minister

*substitute*

planning and land authority

*in the following provisions:*

- section 25 (1)
- section 67
- section 68 (1)
- section 68 (2) (1st mention)
- section 68 (3)
- section 69
- section 72 (1)
- section 73
- section 76
- section 77 (1) (1st mention)
- section 78 (1)
- section 81
- section 82 (3) (a)
- section 83 (1) and (2)
- section 84
- section 88
- section 86
- section 89 (3) (1st mention)
- section 89 (5)
- section 92

## Endnotes

6 Uncommenced amendments

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- section 93 (1) (1st mention)
- section 93 (3)
- section 93 (4) (1st mention)
- section 93 (5) (b)
- section 93 (7) (1st mention)
- section 94 (1) (a)
- section 95

### **[3.15] Further amendments, mentions of *Minister***

*omit*

Minister

*substitute*

authority

*in the following provisions:*

- section 68 (2) (2nd mention)
- section 68 (2) (a)
- section 77 (1) (2nd mention)
- section 89 (3) (2nd mention)
- section 93 (1) (b)
- section 93 (4) (2nd mention)
- section 93 (7) (a) and (b)

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