



AUSTRALIAN CAPITAL TERRITORY

Building (Amendment) Act 1991

No. 23 of 1991

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AUSTRALIAN CAPITAL TERRITORY

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No. 23 of 1991

An Act to amend the *Building Act 1972*

[Notified in ACT Gazette S 37: 17 May 1991]

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

Short title

1. This Act may be cited as the *Building (Amendment) Act 1991*.

Principal Act

2. In this Act, “Principal Act” means the *Building Act 1972*.¹

Interpretation

3. Section 5 of the Principal Act is amended—
 - (a) by omitting from subsection (1) the definition of “building work” and substituting the following definition:

“ ‘building work’, in relation to a building, means—

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

- (c) work in connection with—
- (i) the installation of a specialised system in the building;
 - (ii) the structural modification or removal of such a system installed in the building; or
 - (iii) the maintenance or cleaning of such a system installed in the building; or
- (d) the performance of any work in relation to the building that is carried out at the site of the building and involves the handling of asbestos or the disturbance of loose asbestos;”;
- (b) by inserting in subsection (1) the following definitions:
- “ ‘applicable standard’ means the initial standard as amended from time to time by instrument under section 42N;
- ‘hazardous substance’ means—
- (a) loose asbestos; or
 - (b) a substance containing unacceptable *Legionella* levels;
- ‘initial standard’ means Australian Standard 3666-1989;
- ‘mechanical ventilation system’ includes—
- (a) an air-handling system;
 - (b) a condenser; or
 - (c) a cooling tower;
- ‘specialised system’ means—
- (a) a warm water system; or
 - (b) a mechanical ventilation system;
- ‘system licence’ means a licence to operate a specialised system issued under section 42D;
- ‘unacceptable *Legionella* levels’ means *Legionella* bacteria at a concentration that is, or is likely to be, a source of Legionnaires’ disease;
- ‘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;”;

(c) by adding at the end the following subsection:

“(6) In this Act—

- (a) ‘air-handling system’, ‘condenser’ and ‘cooling tower’ have the same respective meanings as in the applicable standard; and
- (b) ‘Medical Officer of Health’ has the same meaning as in the *Public Health Act 1928*.”.

Insertion

4. After section 6 of the Principal Act the following section is inserted in Part I:

Binding the Crown

“6A. The following provisions bind the Crown:

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

Inspection of building work

5. Section 9 of the Principal Act is amended—

- (a) by omitting from subsection (5) “has been, or is being,” and substituting “has been, is being or should have been”; and
- (b) by omitting from subsection (8) all the words after “offence” and substituting the following:
 - “punishable, on conviction—
 - (a) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months, or both; or
 - (b) if the offender is a body corporate—by a fine not exceeding \$25,000.”.

Inspection of premises for hazardous substances**6.** Section 9A of the Principal Act is amended—

- (a) by omitting from subsection (1) “loose asbestos” and substituting “a hazardous substance”;
- (b) by omitting from paragraph (2) (c) “loose asbestos” and substituting “a hazardous substance”;
- (c) by omitting from paragraph (2) (d) “loose asbestos; or” and substituting “a hazardous substance;”;
- (d) by omitting from paragraph (2) (e) “loose asbestos.” and substituting “a hazardous substance; or”;
- (e) by adding at the end of subsection (2) the following paragraph:
 - “(f) for the purpose of an inspection in connection with a substance containing *Legionella* bacteria—
 - (i) examine, take copies of or remove for the purpose of copying records (if any) relating to the maintenance and cleaning that has been carried out in respect of the specialised systems installed in the building; or
 - (ii) require the owner of the building to provide such information in relation to the systems as the building inspector thinks necessary and reasonable.”;
- (f) by omitting from subsection (3) “under this section” and substituting “to determine whether it contains loose asbestos”;
- (g) by inserting after subsection (3) the following subsection:
 - “(3A) A building inspector shall not inspect a building under this section unless the building inspector carries an identity card which bears a photograph of the building inspector.”;
- (h) by omitting subsection (9) and substituting the following subsection:
 - “(9) A building inspector who gains access to a roof cavity or other part of a building by lifting or moving roofing or other material shall, as soon as practicable after the completion of his or her inspection, restore the building to the condition in which it was immediately prior to the inspection.”;

- (j) by inserting in paragraphs (13) (a) and (b) “or a substance containing *Legionella* bacteria (as the case may be)” after “loose asbestos”;
- (k) by omitting from paragraph (14) (a) “asbestos” and substituting “a hazardous substance”; and
- (l) by omitting from subsection (17) all the words after “punishable,” and substituting the following:
 - “on conviction—
 - (a) if the offender is a natural person—by a fine not exceeding \$5,000 or imprisonment for a period not exceeding 6 months, or both; or
 - (b) if the offender is a body corporate—by a fine not exceeding \$25,000.”.

Insertion

7. After section 9A of the Principal Act the following sections are inserted in Division 1 of Part II:

Inspection for *Legionella* bacteria with consent of occupier

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

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

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

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

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

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

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

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

Inspection during outbreak of Legionnaires’ disease

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

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

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

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

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

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

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

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

“(6) The building inspector shall enter the building as soon as it is practicable to do so after receiving authorisation with such assistance and with such force as is necessary and reasonable for the purpose of performing the inspection.

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

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

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

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

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

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

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

Building Standards Committee

8. Section 24 of the Principal Act is amended—

- (a) by omitting from paragraph (6) (d) “paragraph (c), (d) or (e) of sub-section (2) of this section” and substituting “paragraph (2) (c), (d) or (e)”; and

- (b) by omitting paragraph (6) (e) and substituting the following paragraph:

“(e) in the case of a member referred to in paragraph (2) (b), if the member ceases to be a public servant.”.

Building Manual

9. Section 25 of the Principal Act is amended—

- (a) by omitting subparagraph (2) (b) (v) and substituting the following subparagraphs:

“(iva) warm water systems;

(v) ventilation (including mechanical ventilation);”;

- (b) by omitting from paragraph (2) (d) “and”; and

- (c) by adding at the end of subsection (2) the following word and paragraph:

“; and (f) specify procedures for the maintenance and cleaning of specialised systems.”.

Carrying out building work

10. Section 30 of the Principal Act is amended—

- (a) by inserting in subsection (1) “(other than maintenance or cleaning of a specialised system)” after “Building work”;

- (b) by omitting from paragraph (1) (b) “sub-section (3) of section 4 of this Act” and substituting “subsection 4 (3)”;

- (c) by omitting from subsection (3) “The last preceding sub-section” and substituting “Subsection (2)”;

- (d) by omitting from subsection (3) “of this Act”; and

- (e) by omitting from subsection (4) “sub-section (1) or (2) of this section” and substituting “subsection (1) or (2)”.

Approval of plans to erect or alter buildings

11. Section 33 of the Principal Act is amended by omitting subparagraph (2) (b) (iv) and substituting the following subparagraphs:

“(iia) warm water systems;

(iv) light (artificial and natural) and ventilation (including mechanical ventilation); and”.

Stages of building work for inspection purposes

12. Section 36 is amended—

- (a) by omitting from subsection (3) “Subject to the next succeeding sub-section, the holder” and substituting “The holder”; and
- (b) by omitting from subsection (4) “the last preceding sub-section” and substituting “subsection (3)”.

Insertion

13. After Part III of the Principal Act the following Part is inserted:

“PART IIIA—SPECIALISED SYSTEMS

“Division 1—General

Interpretation

“42. In this Part—

‘licensee’ means the holder of a system licence;

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

Application of Part

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

- (a) those which are, or are proposed to be, installed in buildings referred to in Class I or X of the classifications of buildings in Part 6.1 of the Building Manual; or
- (b) those which are exempt under Division 5.

“Division 2—Licensing

Operation in accordance with a licence

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

Penalty:

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

Application

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

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

“(2) An application shall—

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

- (ii) the maintenance and cleaning procedures for;
the system or proposed system comply or would comply with the applicable standard; and
- (d) be accompanied by the determined fee.

Issue

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

- (a) on receipt of an application in accordance with section 42C; and
- (b) if satisfied that the design, installation and operation of, and the maintenance and cleaning procedures for, the specialised system comply or would comply with the applicable standard;

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

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

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

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

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

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

- (a) the name and address of the licensee;

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

Notification of changes

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

Penalty:

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

Renewal

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

“(2) An application for renewal shall—

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

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

- (a) shall, if satisfied of the matters referred to in paragraph 42D (1) (b), renew the system licence for the period specified in the application; or
- (b) may, if not so satisfied—
 - (i) if the system was installed before the commencement of this Part—renew the system licence for the period specified in the application notwithstanding that he or she is not so satisfied; or
 - (ii) renew the system licence for the period specified in the application subject to a condition of a kind referred to in subparagraph 42D (2) (b) (i) or (ii).

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

Transfer

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

“(2) An application shall—

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

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

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

Statements by engineers

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

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

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

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

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

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

“(2) A notice shall—

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

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

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

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

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

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

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

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

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

Preliminary suspension

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

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

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

Effect of suspension

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

Notification of suspension

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

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

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

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

“Division 4—Applicable standard

Amending the standard

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

Disallowable instrument

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

“Division 5—Exempt systems

Entitlement to apply

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

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

Exemption

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

Stop notices

14. Section 43 of the Principal Act is amended by omitting from paragraph (3) (a) “sub-section (1) of this section” and substituting “subsection (1)”.

Notice to carry out building work

15. Section 46 of the Principal Act is amended—

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

“(g) a building inspector finds, on inspection, that—

- (i) a specialised system to which Part IIIA applies is not operating, or is not being maintained or cleaned, in accordance with the applicable standard; or
- (ii) a building contains a hazardous substance;”;

- (b) by omitting from subsection (1) “with respect to that building work” and substituting “with respect to building work other than maintenance or cleaning of a specialised system”; and
- (c) by omitting paragraph (4) (a) and substituting the following paragraph:
 - “(a) is directed by a notice under subsection (1) to carry out, or cause to be carried out, building work (other than demolition, or maintenance or cleaning of a specialised system); and”.

Substitution

16. The heading to Part IVA of the Principal Act is omitted and the following headings are substituted:

“PART IVA—REMOVAL OF HAZARDOUS SUBSTANCES

“Division 1—Loose asbestos”.

Insertion

17. After section 51H of the Principal Act the following Division is inserted in Part IVA:

“Division 2—Legionella bacteria

Duty to maintain and clean specialised systems

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

Penalty:

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

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

Duty to notify Building Controller

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

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

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

Shutdown notices

“51L. (1) If—

- (a) on inspection under section 9A, 9B or 9C, a building is found to contain unacceptable *Legionella* levels; and
- (b) the Medical Officer of Health, having considered the results of the inspection, advises the Building Controller—
 - (i) to shut down all specialised systems installed in the building; or
 - (ii) to evacuate the building;

the Building Controller shall give—

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

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

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

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

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

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

in respect of the building.

Clearance certificates

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

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

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

Compliance with directions

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

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

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

Liability of the Territory

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

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

False or misleading statements

18. Section 59A of the Principal Act is amended by omitting all the words after “punishable,” and substituting the following:

“on conviction—

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

Review by Tribunal

19. Section 60 of the Principal Act is amended—

- (a) by omitting paragraph (1) (f);
- (b) by inserting after paragraph (1) (p) the following paragraphs:
 - “(pa) refusing to issue a system licence under section 42D;
 - (pb) issuing a system licence subject to conditions under paragraph 42D (2) (b);
 - (pc) refusing to renew a system licence under subsection 42F (3);
 - (pd) renewing a system licence subject to conditions under subparagraph 42F (3) (b) (ii);
 - (pe) suspending a system licence under paragraph 42J (5) (c) or subsection 42J (6);
 - (pf) refusing to exempt a specialised system under section 42R;”;
- (c) by inserting after paragraph (1) (r) the following paragraphs:
 - “(ra) refusing to issue a full clearance certificate under subsection 51M (1);

- (rb) refusing to issue a partial clearance certificate under subsection 51M (2);”;
- (d) by adding at the end of paragraph (1) (s) “or”;
- (e) by omitting from subsection (2) “Administrative Appeals”;
- (f) by omitting from subsection (3) all the words from and including “shall, within 14 days” to and including “to be given:” and substituting the following:
 - “shall—
 - (aa) in the case of a decision referred to in paragraph (1) (ra) or (rb)—as soon as practicable; or
 - (ab) in any other case—within 28 days;
 after the date of the decision give notice in writing of the decision—”;
- (g) by inserting after paragraph (3) (k) the following paragraphs:
 - “(ka) in the case of a decision referred to in paragraph (1) (pa) or (pb)—to the applicant for the system licence;
 - (kb) in the case of a decision referred to in paragraph (1) (pc), (pd) or (pe)—to the holder of the system licence;
 - (kc) in the case of a decision referred to in paragraph (1) (pf)—to the applicant for the exemption;”;
- (h) by inserting after paragraph (3) (m) the following paragraph:
 - “(ma) in the case of a decision referred to in paragraph (1) (ra) or (rb)—to the applicant for the certificate;”;
- (j) by adding at the end of paragraph (3) (n) “or”; and
- (k) by inserting after subsection (3) the following subsection:
 - “(3A) For the purposes of paragraphs (3) (ka), (kb), (kc) and (ma), it shall be sufficient if notice is given to the agent of the applicant or of the holder.”.

Evidence

20. Section 63 of the Principal Act is amended by omitting from paragraph (5) (b) “Secretary to the Department of the Interior” and substituting “administrative head”.

Application

21. Section 42B of the Principal Act as amended by this Act applies to a person who operates a specialised system after the expiration of 6 months from the date on which this Act commences.

NOTE

1. Ordinance No. 26, 1972 as amended by Nos. 7 and 38, 1974; Nos. 45 and 61, 1976; No. 46, 1978; No. 30, 1979; Nos. 69, 70 and 71, 1982; Nos. 20 and 66, 1983; No. 68, 1984; Nos. 20 and 47, 1987; Nos. 31, 73 and 80, 1988; No. 86, 1988 (as amended by No. 38, 1989); Nos. 87 and 88, 1988; Nos. 21, 38 and 50, 1989; Act No. 60, 1990.

[Presentation speech made in Assembly on 18 April 1991]

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