



Australian Capital Territory

# **Building Act 2004**

**A2004-11**

**Republication No 8**

**Effective: 1 September 2006 – 1 September 2006**

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Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Building Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 September 2006. It also includes any amendment, repeal or expiry affecting the republished law to 1 September 2006.

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 2004

## Contents

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	Page	
<b>Part 1</b>	<b>Preliminary</b>	
1	Name of Act	2
3	Dictionary	2
4	Notes	2
5	Offences against Act—application of Criminal Code etc	3
<b>Part 2</b>	<b>Important concepts</b>	
6	Meaning of <i>building work</i>	4
7	Meaning of <i>building</i>	4
8	Meaning of <i>structure</i>	6
9	Meaning of <i>specialist building work</i>	6
10	Meaning of <i>basic building work</i>	6
10A	Meaning of <i>minor maintenance work</i>	8
10B	Meaning of <i>disturbs friable asbestos</i>	8

---

R8  
01/09/06

Building Act 2004  
Effective: 01/09/06-01/09/06

contents 1

## Contents

---

	Page
11 Act does not affect other ACT laws	9
12 Exempt buildings	9
13 Application of Act to buildings and building work	9
14 Temporary exemptions for buildings	10
<b>Part 3 Building work</b>	
<b>Division 3.1 Preliminary</b>	
15 Application of pt 3 to building work	11
16 Meaning of <i>stage</i> in pt 3	11
<b>Division 3.2 Certifiers and government certifiers</b>	
17 Definitions for div 3.2	12
18 Eligibility for appointment—certifiers and government certifiers	12
19 Appointment of certifiers	12
20 Appointment of government certifiers	13
21 Power to require building documents	14
22 Protection of government certifiers from liability	15
23 Entitlement to act as certifier	15
24 Notice of certifier's appointment or end of appointment	16
25 Prohibition against contracting out of pt 3	16
<b>Division 3.3 Building approvals</b>	
26 Building approval applications	16
27 Certifier not to consider certain applications	17
28 Issue of building approvals	18
29 Approval requirements	20
30 External design, siting and building material considerations	22
31 Application for amendment of approved plans	22
32 Amendment of approved plans	23
33 Marking approval of amendment	24
34 Effect of issue of further building approval	25
35 Land to be used in accordance with lease	25
36 Period for which approvals operate	25
<b>Division 3.4 Building commencement notices</b>	
37 Building commencement notice issue	26

	Page
38	27
39	28
40	29
41	29
<b>Division 3.5</b>	<b>Carrying out building work</b>
42	30
42A	31
43	32
44	33
45	34
46	35
<b>Division 3.6</b>	<b>Completion of building work</b>
47	36
48	36
<b>Division 3.7</b>	<b>Offences</b>
49	38
50	39
51	40
<b>Part 4</b>	<b>Stop and demolition notices</b>
52	42
53	42
54	44
55	45
56	46
57	46
58	47
59	48
60	48
61	49
62	51
63	52
64	52

	Page
<b>Part 5</b>	<b>Building occupancy</b>
<b>Division 5.1</b>	<b>Certificates of occupancy and other certificates</b>
65	Application of pt 5 to building work 53
66	Meaning of <i>prescribed requirements</i> for div 5.1 53
67	Registrar may have regard to documents given 54
68	Effect of certificates under div 5.1 54
69	Certificates of occupancy 54
70	Cancellation of part certificate of occupancy 55
71	Certificate for building work involving demolition 56
72	Certificate for building work involving erection of structure 56
73	Certificates of occupancy and use for owner-builders 56
74	Government buildings—application for fitness certificate 57
75	Decision on s 74 application 58
76	Occupation and use of buildings 59
77	Use of buildings restricted 60
78	Occupation and use of ex-government buildings 62
79	Action by registrar on unauthorised use of building etc 62
80	Copies of certificates of occupancy and regularisation 63
81	Safe live load plates 63
82	Exceeding safe live load 65
<b>Part 6</b>	<b>Residential buildings—statutory warranties, insurance and fidelity certificates</b>
<b>Division 6.1</b>	<b>Application and interpretation of pt 6</b>
83	Application of pt 6 to building work 66
84	Definitions for pt 6 66
85	Meaning of <i>completion day</i> for pt 6 69
86	Cost of building work for pt 6 69
<b>Division 6.2</b>	<b>Statutory warranties</b>
87	Residential building work to which pt 6 does not apply 70
88	Statutory warranties 70
89	Builder's liability 72

	Page
<b>Division 6.3 Residential building insurance</b>	
90 Complying residential building work insurance	72
91 Provisions of residential building insurance policies	74
92 Builder's misrepresentation etc does not prevent liability	74
93 Claims if builder insolvent and work unfinished	75
94 Recovery from builder	76
95 Duties of insurers	76
<b>Division 6.4 Approved fidelity fund schemes</b>	
96 Approval of fidelity fund schemes	78
97 Additional information for approval of scheme etc	78
98 Authority may require changes to scheme	79
99 Approval criteria for schemes	79
100 Approval of scheme may be conditional	80
101 Application for changes to approved scheme	80
102 Approval of changes to approved scheme	81
103 Prudential standards	81
104 Compliance with prudential standards by trustees	83
105 Notice to trustees to comply with prudential standards	83
106 Notice to trustees requiring information	84
107 Suspension or cancellation of approval of approved scheme	85
108 Cancellation of approval on application	86
109 Orders consequential on etc suspension or cancellation	87
110 Address for service for trustees	87
<b>Division 6.5 Auditors and actuaries of approved schemes</b>	
111 Appointment of auditor and actuary for approved scheme	88
112 Approval of appointment of auditor or actuary	88
113 Revocation of approval of appointment of auditor or actuary	89
114 When person stops holding appointment as auditor or actuary	89
115 Notification of appointment or ending of appointment of auditor or actuary	90
116 Compliance with prudential standards by auditors and actuaries	90
117 Auditor and actuary to tell authority if scheme insolvent etc	91
118 Giving of information to authority by auditor or actuary etc	91
119 Auditor's role	92

## Contents

---

	Page
120	Actuary's role 92
121	Certificates and reports required to be given to authority 93
122	Special actuary to investigate liabilities 93
123	Objection to special actuary by authority 94
124	Special actuary's report 95
125	Who can be appointed as special actuary 96
126	Obligations of trustees to auditors and actuaries 96
127	Protection of auditor and actuary from liability 96
 <b>Part 7 Administration</b>	
<b>Division 7.1 Building inspectors</b>	
128	Appointment of building inspectors 97
129	Identity cards 97
130	Inspection of approved building work 98
131	Inspection of building work where no approval 98
132	Costs of inspection 99
133	Power to authorise required work 100
134	Building inspector 100
 <b>Part 8 Building code and recognised standards</b>	
<b>Division 8.1 Building code and recognised standards</b>	
136	Building code 101
137	Publication of building code etc in newspaper 102
138	Inspection of building code 102
139	Certified copies of building code 103
139A	Recognised standards 103
<b>Division 8.2 Asbestos code</b>	
139B	Approval of asbestos code 104
 <b>Part 9 Limitation of liability</b>	
140	Meaning of <i>building action</i> for pt 9 105
141	Limit of liability of people jointly or severally liable 105
142	Limitation of liability for building actions 106



	Page
<b>Part 10</b>	<b>Miscellaneous</b>
143	Sustainability guidelines 107
144	Service of notices etc 107
145	Giving copies of documents 108
146	Review by administrative appeals tribunal 108
147	Recovery of costs of work carried out by inspector 109
148	Evidentiary certificates 109
149	Legal liability for acts of registrar etc 110
150	Determination of fees 111
151	Approved forms 111
152	Regulation-making power 111
<b>Part 11</b>	<b>Transitional</b>
153	Definitions for pt 11 113
154	Things required to be given to building controller or deputy 113
155	Application of Act to Territory building work contracted before 1 July 2001 113
156	Exempt buildings 114
157	Certifiers 115
158	Application to building work whenever happening 115
159	Application to contraventions of Act whenever happening 115
160	Requirements to do things by times 116
161	Canberra Sewerage and Water Supply Regulations 116
162	Government buildings—application for fitness certificate 116
163	Occupation and use of buildings 117
164	Meaning of <i>builder</i> for pt 6 117
164A	Certificate of regularisation 117
164C	Prudential standards 118
165	Building inspectors and identity cards 118
166	Approved scheme 118
167	Existing auditors and actuaries 118
168	Application for approval of appointment 118
169	Giving information under s 118 119
170	Inspection powers 119

## Contents

---

	Page	
171	Previously authorised required work	119
173	Meaning of <i>building work</i> for pt 9	120
174	Limitation of liability for building actions	120
175	Evidentiary certificates—s 148 (1) (c)	120
176	Evidentiary certificates—s 148 (1) (f)	121
179	Regulations modifying pt 11	121
180	Expiry of pt 11	121

## **Dictionary** 122

### **Endnotes**

1	About the endnotes	129
2	Abbreviation key	129
3	Legislation history	130
4	Amendment history	131
5	Earlier republications	136
6	Modifications of republished law with temporary effect	137



Australian Capital Territory

# Building Act 2004

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An Act to regulate buildings and building work, and for other purposes

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Building Act 2004*.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*occupation class*—see the *Construction Occupations (Licensing) Act 2004*, dictionary.' means that the expression 'occupation class' is defined in that dictionary and the definition applies to this Act.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

## 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

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

## Part 2 Important concepts

### 6 Meaning of *building work*

(1) In this Act:

*building work* means—

- (a) work in relation to the erection, alteration or demolition of a building, and includes disposal of waste materials generated—
  - (i) by the alteration of a building other than a building excluded under the regulations; or
  - (ii) by the demolition of a building (but not part of the building); or
- (b) work in relation to repairs of a structural nature to a building.

(2) The regulations may—

- (a) exempt a kind of work from the definition of *building work*; or
- (b) include a kind of work in the definition of *building work*.

### 7 Meaning of *building*

(1) In this Act:

*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) part of a building, whether the building is completed or not.

**Example of part of building**

footings poured for a building that is being built

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) However, **building** does not include—
- (a) a vehicle or craft that is not used or adapted for use as a class of building or structure classified under the building code; or
  - (b) a transportable building, mobile home, caravan or similar that:
    - (i) is not used for long-term habitation; and
    - (ii) is readily transportable without disassembly or without removal from associated components including a footing, pier, stump, rigid annexe or an attached building or similar; or
  - (c) something exempted under the regulations.
- (3) To remove any doubt, something is not excluded from the definition of **building** only because it is temporary or novel.

**Example**

a building used in connection with a fair, circus, carnival, celebration, market, show, concert, display, exhibition, competition, training event, recreational event or publicity event is not excluded on the basis of its temporary or novel nature

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**8 Meaning of *structure***

- (1) In this Act:  
*structure* includes—
- (a) a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, aerial, advertising device, notice or sign; and
  - (b) a thing prescribed under the regulations as a *structure*.
- (2) However, *structure* does not include something that is part of a machine or mechanical plant unless it is—
- (a) part of something classified as a building or structure by the building code; or
  - (b) prescribed under the regulations for this section.

**9 Meaning of *specialist building work***

In this Act:

*specialist building work*—

- (a) means—
  - (i) the installation of a swimming pool; or
  - (ii) the demolition of a building; and
- (b) includes building work prescribed under the regulations as specialist building work.

**10 Meaning of *basic building work***

- (1) In this Act:  
*basic building work*—
- (a) means the following building work:
    - (i) erecting a prefabricated class 10a building;



- (ii) erecting a class 10a outbuilding;
  - (iii) installing fireplaces or solid-fuel heaters;
  - (iv) non-structural work; but
- (b) does not include specialist building work.
- (2) In subsection (1):
- non-structural work***—
- (a) means work on a part of a building that does not, or is not intended to, carry a structural load imposed or transmitted by another part of a building; and
  - (b) includes work on non-load bearing walls, doors, partitioning, reticulated pipework, ventilation ductwork and building fit-out items; but
  - (c) does not include the following work:
    - (i) work that may affect the structural integrity of a structural element of a building, or weaken or remove, completely or partly, the structural element, if the element is installed in a way that it carries, or can carry, a load of part of a building;
    - (ii) work that involves the use of a structural element to carry, or to possibly carry, a structural load of part of a building.

**Example for par (c) (i)**

work that affects the existing bracing beams on a multi-storey car park if the bracing beams are designed to bear wind load, even though most of the time they do not carry any load

**Examples for par (c) (ii)**

- 1 the installation of a new storey on a building
- 2 underpinning a subsiding building

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The regulations may—
- (a) exempt a kind of work from the definition of *basic building work*; or
  - (b) include a kind of work in the definition of *basic building work*.

**10A Meaning of *minor maintenance work***

- (1) In this Act:
- minor maintenance work* means minor maintenance on premises that is personally done by an individual who owns or occupies the premises.
- (2) In this section:
- minor maintenance* means all or any of the following done in relation to bonded asbestos:
- (a) low speed or hand drilling;
  - (b) sealing;
  - (c) painting;
  - (d) coating;
  - (e) cleaning.

**10B Meaning of *disturbs friable asbestos***

For this Act, work *disturbs* friable asbestos if the work increases, or may significantly increase, the risk of the dispersal of asbestos fibres into the air.

**11 Act does not affect other ACT laws**

This Act does not affect the operation of any other law in force in the ACT relating to land use or to the provision of services for a building.

**Example of related laws not affected**

*Electricity Safety Act 1971*

*Scaffolding and Lifts Act 1912*

*Utilities Act 2000*

*Water and Sewerage Act 2000*

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**12 Exempt buildings**

In this Act:

***exempt building*** means a building prescribed under the regulations.

*Note* ***Exempt building*** is used to narrow the application of pt 3, pt 5 and pt 6.

**13 Application of Act to buildings and building work**

- (1) This Act does not apply to—
- (a) a temporary building (other than a dwelling) if—
    - (i) the temporary building is erected on the site of building work for the erection or alteration of another building; and
    - (ii) building approval has been obtained for the building work; and
    - (iii) the temporary building is to be removed on completion of the building work; or
  - (b) a building prescribed by regulation.

- (2) However, if building work in relation to a building mentioned in subsection (1) involves handling asbestos or disturbing friable asbestos, this Act applies in relation to the building work as if this Act applied to the building.

**Example**

Friable asbestos insulation is discovered in the roof of a temporary shed at a building site. Under subsection (2), removal of the asbestos from the shed's roof must comply with the provisions of this Act applying to asbestos removal work, (eg getting a building approval and a certificate of occupancy). However, the shed itself as a building need not comply with this Act. Nevertheless, the shed as a whole may be affected by the building work if, for example, it needs to be enclosed in an isolation structure during asbestos removal.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 14 Temporary exemptions for buildings

- (1) The Minister may, in writing, exempt a building from the application of this Act or a provision of this Act for a stated period.
- (2) The period stated in the exemption must not be longer than 1 year.
- (3) If no period is stated in the exemption, the exemption is in force for 1 week.
- (4) An exemption may be conditional.

**Examples of conditions**

- 1 restricting number of people allowed in the building
- 2 requiring the fire brigade to be present outside the building when it is used for a stated event

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (5) An exemption is a disallowable instrument.

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

## **Part 3                      Building work**

### **Division 3.1              Preliminary**

#### **15                      Application of pt 3 to building work**

- (1) This part does not apply to—
  - (a) building work in relation to an exempt building; or
  - (b) building work that is exempt under a regulation.
- (2) However, this part applies to building work mentioned in subsection (1) if—
  - (a) the work involves—
    - (i) handling asbestos; or
    - (ii) disturbing friable asbestos; and
  - (b) the work is not—
    - (i) minor maintenance work done in accordance with the asbestos code; or
    - (ii) exempt from this subsection under a regulation.

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

In this part:

*stage*, of building work, means a stage prescribed under section 43 (1).

## Division 3.2 Certifiers and government certifiers

### 17 Definitions for div 3.2

In this division:

*certifier* does not include government certifier.

*eligible person*, for building work—see section 18.

*government certifier*, for building work, means a person who is appointed under section 20 (4) for the work.

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

A licensed 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 Occupations (Licensing) Act 2004* to perform services as certifier for the work; and
- (b) is qualified under the regulations to be appointed for the work.

### 19 Appointment of certifiers

- (1) The owner of land where it is proposed to carry out building work may appoint an eligible person (the *certifier*) as certifier for the work.

*Note* An appointment must be in writing (see Legislation Act, s 206).

- (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 construction occupations registrar; and
  - (b) by written notice given to the owner of the land.
- (4) The construction occupations registrar 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.

## **20 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 licence is suspended for longer than 3 months; or
  - (b) the certifier's licence has been cancelled; or
  - (c) the certifier has resigned the appointment under section 19; or
  - (d) the certifier is dead; or
  - (e) for a building certifier in the same occupation class as the certifier—the certifier is not covered by insurance required under the *Construction Occupations (Licensing) Act 2004*.

- (3) The owner of the land where the building work is being carried out (or proposed to be carried out) may apply to the construction occupations registrar for the appointment of a government certifier for the work.

*Note* If a form is approved under s 151 for an application, the form must be used.

- (4) The construction occupations registrar 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.
- (6) In this section:

*licence* means a building surveyor licence under the *Construction Occupations (Licensing) Act 2004*.

## 21 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 (that is 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 contravenes a notice given to the person under subsection (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 48 (2).



**22 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.

**23 Entitlement to act as certifier**

- (1) A licensed construction practitioner is not entitled to perform services as a certifier in relation to building work if he or she has an interest in the work.
- (2) For this section, a licensed construction practitioner has an *interest* in building work if the practitioner, or a person related to the practitioner—
  - (a) has a legal or equitable interest in the land where the building work is, or is to be, carried out; or
  - (b) has prepared, or intends to prepare, drawings intended to be used in relation to the construction of the building work; or
  - (c) has carried out, or intends to carry out, any of the building work; or
  - (d) has a financial interest in the construction or completion of the building work.
- (3) For this section, a person is *related to* a licensed construction practitioner if the person is—
  - (a) a person with whom the practitioner has a personal, professional, commercial or financial relationship; or
  - (b) an employer or employee of the practitioner; or
  - (c) a company of which the practitioner is a director or in which the practitioner holds a share.

- (4) This section does not prevent a certifier from sketching a required design solution as part of a direction under section 44 (2).

## **24 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) Within 7 days after the day the person is appointed or the appointment ends, the person must give the construction occupations registrar written notice of the appointment or end.

*Note* If a form is approved under s 151 for a notification, the form must be used.

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

## **25 Prohibition against contracting out of pt 3**

A provision in a contract or agreement is void if it 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.

## **Division 3.3 Building approvals**

### **26 Building approval applications**

- (1) The owner of a parcel of land may, in writing, apply to the certifier for a building approval for building work to be carried out on the land.

*Note* At common law, an agent may make an application on the owner's behalf.

- (2) The application must—
- (a) be accompanied by the number of copies of the plans relating to the proposed work prescribed under the regulations; and
  - (b) be accompanied by a waste management plan if the building work involves—
    - (i) the demolition of a building; or
    - (ii) the alteration of a building other than a class 1, class 2 or class 10a building; and
  - (c) be accompanied by an asbestos removal control plan if a building to which the building work relates—
    - (i) is a class 1, class 2, class 3 or class 4 building, or a class 10 building associated with a class 1, class 2, class 3 or class 4 building; and
    - (ii) was erected before, or the erection of which started before, 1985; and
  - (d) if there is an asbestos assessment report for premises to which the building work relates—be accompanied by a copy of the asbestos assessment report unless the applicant cannot obtain the report after taking reasonable steps.

*Note* If a form is approved under s 151 for an application, the form must be used.

- (3) The regulations may require the application to contain other details or be accompanied by other material.

## **27 Certifier not to consider certain applications**

- (1) A certifier must not consider an application under section 26 unless—
- (a) the plans that accompany the application comply with any requirements prescribed under the regulations; and

- (b) if the regulations require consultation with, or the consent or approval of, an entity—the entity has been consulted or has consented or approved as required under the regulations; and
- (c) 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
- (d) the training levy has been paid.

- (2) In this section:

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

## 28 Issue of building approvals

- (1) This section applies if—
- (a) an application for a building approval is made to the certifier under section 26; and
  - (b) the certifier may consider the application; and
  - (c) section 30 (External design and siting considerations) does not apply to the application.
- (2) The certifier must issue the building approval if satisfied on reasonable grounds that the plans meet each approval requirement under section 29.
- (3) If the certifier issues a building approval—
- (a) the building approval must be marked on, attached to or partly marked on and partly attached to, each page of the plans it relates to; and
  - (b) the certifier must—
    - (i) initial and mark his or her licence number on each page of the plans; and

- (ii) attach each accompanying document to the plans; and
- (iii) if the accompanying documents do not include an asbestos assessment report—attach an asbestos advice to the plans.

*Note* If a form is approved under s 151 for a building approval, the form must be used.

- (4) However, if, because of the size of the plans, it is impractical to mark the building approval on each page of the plans, the certifier may, instead of marking the approval under subsection (3) (a), mark each page of the plans with an indication that the approval, or part of the approval, is in a separate document.
- (5) Also, if, because of the size of 1 or more of the accompanying documents (the *relevant documents*), it is impractical to attach the relevant documents to the plans, the certifier may, instead of attaching the relevant documents under subsection (3) (b) (ii), mark each page of the plans with an indication that the relevant documents are separate.
- (6) If the certifier issues the building approval, the certifier must—
  - (a) give to the person who applied for the approval a copy of—
    - (i) the approval; and
    - (ii) the relevant plans; and
    - (iii) if 1 or more of the accompanying documents are not attached to the plans—the accompanying documents that are not attached; and
  - (b) not later than 7 days after the day of issue, give to the construction occupations registrar—
    - (i) a copy of the approval; and
    - (ii) a copy of the relevant plans; and

- (iii) if 1 or more of the accompanying documents are not attached to the plans—a copy of the accompanying documents that are not attached; and
- (iv) if notification of the certifier's appointment has not previously been given to the registrar—notification of the appointment.

*Note 1* If a form is approved under s 151 for a notification of appointment, the form must be used.

*Note 2* A fee may be determined under s 150 for this section.

- (7) In this section:

***accompanying document***, in relation to a building approval, means a document required to accompany the application for the building approval.

*Note* Section 26 requires certain documents to accompany applications for building approval and allows other material required to accompany applications to be prescribed by regulation.

## 29 Approval requirements

- (1) Each of the following is an ***approval requirement*** for plans:
- (a) if the plans are for the substantial alteration of a building—the building as altered will comply with this Act and the building code;
    - Note 1* ***Substantial alteration***—see s (2).
    - Note 2* 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, s 104).
  - (b) if the plans are for the erection of a building—the building as erected will comply with this Act;
  - (c) if a waste management plan is required to accompany the application—the plan is adequate;

- (d) if an asbestos removal control plan is required to accompany the application—the plan complies with the asbestos code;
  - (e) the building as proposed to be erected or altered will be structurally sufficient, safe and stable.
- (2) A regulation may declare that—
- (a) an alteration of a building is or is not a substantial alteration; or
  - (b) a part of a building (the *unaltered part*) that has not been altered need not comply with the building code despite subsection (1) (a).
- (3) For subsection (1)—
- (a) a building or a building as altered does not fail to comply with this Act only because the plans for the building or alteration contain something to which the building code does not apply; and
  - (b) a building product, construction method, design, component or system connected with a building is taken to comply with the building code if the product, method, design, component or system complies with a recognised standard.
- (4) For subsection (1) (c), a waste management plan is *adequate* if—
- (a) the plan satisfies any requirements prescribed under the regulations; and
  - (b) there is a recycling facility for the reuse or recycling of material mentioned in the plan and the plan states that the material will be disposed of, if practicable, at the facility.
- (5) The Minister may, in writing, declare that a facility outside the ACT is suitable to reuse or recycle stated material.
- (6) A declaration is a notifiable instrument.

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

(7) In this section:

*recycling facility*, for material, means—

- (a) a facility in the ACT where the material is reused or recycled;  
or
- (b) a facility outside the ACT that the Minister has declared is suitable to reuse or recycle the material under subsection (5).

### 30 External design, siting and building material considerations

(1) A certifier must not issue a building approval if carrying out the building work to which the application for the approval relates would result in the contravention of this Act or any other law in force in the ACT because of—

- (a) the external design or siting of a proposed building or a building as proposed to be altered; or
- (b) the material used in the building.

*Note* See the sustainability guidelines made under s 143.

(2) This section does not apply to building work forming part of a development that is not required to be approved under the Land Act, division 6.2.

(3) In this section:

*external design*, of a building, includes anything affecting the appearance of the exterior of the building.

### 31 Application for amendment of approved plans

(1) This section applies if—

- (a) a building approval has been issued for building work; and



- (b) the owner of the parcel of land where the building work is being, or is to be, done proposes to amend the plans for the work.
- (2) The owner may apply, in writing, to a certifier for approval for the proposed amendment of the plans.

*Note* If a form is approved under s 151 for an application, the form must be used.

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

- (1) This section applies if an application under section 31 for the amendment of plans has been made to a certifier.
- (2) The certifier must approve the plans as amended and amend the building approval only if—
  - (a) the approval requirements, so far as they apply to plans, are satisfied in relation to the plans as amended; and
  - (b) the application would not be refused because of section 30 (External design and siting considerations) if it were an application for a building approval; and
  - (c) a building built to the amended plans would not be significantly different from a building built to the unamended plans.

*Note* The regulations may prescribe when a building is significantly different (see s (4)).

- (3) If the certifier cannot approve the plans as amended, the certifier must tell the applicant in writing that the application is refused.
- (4) The regulations may prescribe when a building built to amended plans is significantly different from a building built to unamended plans.

### 33 Marking approval of amendment

- (1) If a certifier approves plans as amended under section 32—
  - (a) the amended building approval must be marked on, attached to or partly marked on and partly attached to, each page of the plans; and
  - (b) the certifier must initial and mark his or her licence number on each page of the plans.

*Note* If a form is approved under s 151 for a building approval, the form must be used.

- (2) However, if, because of the size of the plans, it is impractical to mark the amended building approval on each page of the plans, the certifier may, instead of marking the amended building approval under subsection (1) (a), mark each page of the plans with an indication that the approval, or part of the approval, is in a separate document.
- (3) The certifier must—
  - (a) give a copy of the amended approval and the amended plans as soon as practicable to the person who applied for the approval; and
  - (b) within 7 days after the day of issue, give to the construction occupations registrar—
    - (i) a copy of the amended approval; and
    - (ii) a copy of the amended plans; and
    - (iii) if notification of the certifier's appointment has not previously been given to the registrar—notification of the appointment.

*Note 1* If a form is approved under s 151 for a notification of appointment, the form must be used.

*Note 2* A fee may be determined under s 150 for this section.

**34 Effect of issue of further building approval**

- (1) This section applies if—
  - (a) a building approval is in force for building work; and
  - (b) another building approval is issued for the building work (whether or not the approval also relates to other building work).
- (2) The first building approval ends because of this section.

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

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

- (a) for land leased from the Commonwealth—use of the land for a purpose other than that for which the lease was granted; or
- (b) use of the land contrary to a provision, covenant or condition of any lease on the parcel.

**36 Period for which approvals operate**

- (1) A building approval operates until the end of the earliest of the following:
  - (a) 3 years beginning on the day of its issue;
  - (b) the development period applying to the building work;

*Note* A building approval ends if a further approval is issued for the same building work (see s 34).
- (2) If the development period applying to the building work is extended, the certifier may extend the period of operation of the building approval to a day that is no later than the day the extended development period ends.

(3) However, subsection (2) does not authorise 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 in force in the ACT or a condition of the relevant lease, the building work must be completed.

## Division 3.4 Building commencement notices

### 37 Building commencement notice issue

(1) This section applies if—

- (a) a building approval has been issued for building work; and
- (b) under the *Construction Occupations (Licensing) Act 2004*, any of the work must be done by a licensed builder; and
- (c) a licensed builder has been engaged to do the work.

(2) The licensed builder may apply, in writing signed by the owner of the parcel of land where the building work is to be done, to a certifier for a commencement notice for the work or part of it.

*Note 1* The ordinary rules of agency apply in relation to an application under this section.

*Note 2* If a form is approved under s 151 for an application, the form must be used.

(3) If the application is for residential building work, the application must be accompanied by—

- (a) a residential building insurance policy for the work; or
- (b) a certificate issued by an approved insurer stating that the insurer has insured the work under a residential building insurance policy; or

- (c) a fidelity certificate for the work issued by the trustees of a scheme approved under division 6.4 (Approved fidelity fund schemes).
- (4) On receiving the application, the certifier must issue a building commencement notice for the building work if satisfied on reasonable grounds that the builder's licence authorises the work in the building approval.

*Note 1* 'Under' includes 'in accordance with' (see Legislation Act, dict, pt 1, def *under*), so an application must comply with this section before it can be approved.

*Note 2* If a form is approved under s 151 for a notice, the form must be used.

- (5) If a certifier issues a building commencement notice, the certifier must give a copy of it to the construction occupations registrar within 1 week after the day of its issue,
- (6) In this section:

*approved insurer* means an authorised insurer who—

- (a) has had a form of residential building insurance policy approved by the construction occupations registrar; and
- (b) has not given to the registrar a notice under section 95 (Duties of insurers).

*residential building work*—see section 84.

### **38 Automatic end of building commencement notices**

- (1) A building commencement notice for building work ends if—
- (a) for residential building work—the work is no longer insured; or
- (b) the building approval for the work ends.

(2) In this section:

*insured*, for building work, means—

- (a) the work is insured under a residential building insurance policy; or
- (b) a fidelity certificate is in force for the work by the trustees of a scheme approved under division 6.4 (Approved fidelity fund schemes).

### 39 Application for cancellation of building commencement notice

- (1) This section applies if a building commencement notice is in force for building work.
- (2) The licensed builder mentioned in the building commencement notice—
  - (a) may apply, in writing, for cancellation of the building commencement notice; and
  - (b) if the builder does apply for its cancellation—must give to the owner of the parcel of the land where the work is being, or is to be, done—
    - (i) a copy of the application; and
    - (ii) a notice that states that the owner has 2 weeks (the *representation time*) to make representations to the construction occupations registrar about whether the building commencement notice should be cancelled.

*Note* If a form is approved under s 151 for an application, the form must be used.

- (3) The application must explain why the building commencement notice should be cancelled.

**40 Decision on building commencement notice application**

- (1) This section applies if—
  - (a) the construction occupations registrar receives an application under section 39 for the cancellation of a building commencement notice; and
  - (b) either—
    - (i) the representation time for the application has ended; or
    - (ii) the owner of the land where the building work is being, or is to be, done agrees in writing to the cancellation.
- (2) If the representation time has ended without the owner of the land agreeing to the cancellation, the construction occupations registrar must consider any representation made by the owner within the representation time.
- (3) The construction occupations registrar may cancel the building commencement notice if satisfied—
  - (a) that the builder mentioned in the notice cannot do the building work; or
  - (b) it is otherwise appropriate to cancel the notice.

**41 Multiple or part building commencement notice**

- (1) Two or more building commencement notices for the same building work may be in force at the same time.
- (2) A building commencement notice continues to operate for building work even if the building work being done is only part of the building work for which the commencement notice was issued.

## Division 3.5 Carrying out building work

### 42 Requirements for carrying out building work

- (1) Building work must not be carried out except in accordance with the following requirements:
- (a) the materials used in the building work must comply with the standards under the building code for the materials in buildings of the kind being built or altered;
  - (b) the way the materials are used in the building work must comply with their acceptable use under the building code for buildings of the kind being built or altered;
  - (c) the building work must be carried out in a proper and skilful way;

*Note* The considerations to be taken into account to decide when work is carried out in a *proper and skilful way* may be prescribed under the regulations (see s (2)).

- (d) building work must be carried out—
  - (i) in accordance with approved plans; or
  - (ii) if the building work involves handling asbestos or disturbing friable asbestos—in accordance with approved plans that comply with this Act in relation to the asbestos;
- (e) the building work required to be done by a licensed builder must be carried out by or under the supervision of the builder mentioned in the building commencement notice;
- (f) the building licensee in charge of the building work must take—
  - (i) all the safety precautions stated in or with the application for the building approval; and



- (ii) any other safety precaution that a certifier or building inspector may require the building licensee to take under section 46.
- (2) The regulations may prescribe considerations to be taken into account to decide whether building work is carried out in a proper and skilful way.

**42A      Contravention of requirements for building work involving asbestos**

- (1) This section applies to specialist building work that involves handling asbestos or disturbing friable asbestos.
- (2) The person who carries out the building work commits an offence if the carrying out of the work contravenes section 42.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that—
- (a) the carrying out of the building work contravened section 42 only because friable asbestos was disturbed in carrying out the work; and
  - (b) either—
    - (i) the defendant took reasonable steps to minimise the risk of friable asbestos being disturbed; or
    - (ii) the disturbing of the friable asbestos happened in the defendant taking reasonable steps to minimise the risks resulting from the disturbance of the friable asbestos.
- (5) The owner of the parcel of land where the building work is carried out commits an offence if—
- (a) the work is carried out in contravention of section 42; and

- (b) the owner knows that the work is carried out in contravention of that section.

Maximum penalty: 50 penalty units.

- (6) The owner of the parcel of land where the building work is carried out commits an offence if—
  - (a) the work is carried out in contravention of section 42; and
  - (b) the owner is reckless about whether the work is carried out in contravention of that section.

Maximum penalty: 20 penalty units.

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

- (1) The regulations may prescribe stages of building work.
- (2) A building licensee in charge of building work must not proceed with any building work above dampcourse level unless—
  - (a) the certifier has received—
    - (i) a plan (a *survey plan*) signed by a registered surveyor stating the position of the building in relation to the boundaries of the parcel of land where the building is to be erected and stating the level that the floor or floors of the building will have in relation to a level stated in the approved plans; or
    - (ii) another document prescribed under the regulations; 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 consent or approval mentioned in section 27 (1) (b) is subject.

Maximum penalty: 50 penalty units.

- (3) A building licensee in charge of building work that has reached a stage must not proceed with building work beyond the stage unless—
- (a) the licensee has given to the certifier notice that the stage has been reached; and
  - (b) the certifier has inspected the building work and given written permission for the work to proceed.

Maximum penalty: 50 penalty units.

- (4) If a building licensee in charge of building work is required under section 44 (5) to conduct a test, the licensee must, as soon as practicable after the test is completed, give the person who made the requirement the written results of the test.
- (5) An offence against this section is a strict liability offence.

#### **44 Stage inspections**

- (1) If a certifier receives a notice under section 43 (3) (a) for building work, the certifier must inspect the building work as soon as practicable.
- (2) On, or as soon as practicable (but in any case within 2 business days), after inspection, the certifier must—
- (a) if satisfied on reasonable grounds that the building work does not comply with section 42 (Requirements for carrying out building work)—give the building licensee in charge of the building work written directions that are reasonable and appropriate for achieving compliance; or
  - (b) if satisfied on reasonable grounds that building work complies with section 42—certify that the work complies and give the

certificate to the building licensee in charge of the building work.

- (3) A certifier commits an offence if the certifier contravenes subsection (1) or (2).

Maximum penalty: 10 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) A certifier may, by written notice, require the building 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 anything else connected with the work, the tests stated in the notice.

#### **45 Records of tests**

- (1) A building licensee in charge of building work must keep records of—
- (a) any test borings, test loadings or other investigations made to work out 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) any test loadings and excavations made to work out the bearing capacity of the foundation for the building or proposed building, or building as proposed to be altered; and
  - (c) tests under section 44 (5).
- (2) A record under subsection (1)—
- (a) must be kept until a certificate of occupancy for the building work is issued; and
  - (b) must be given to the certifier when the certificate of occupancy is issued.

## **46 Safety precaution directions**

- (1) This section applies if—
- (a) building work for which a building approval has been issued is being carried out at or near a street or place that is open to or used by the public; and
  - (b) a building inspector or certifier finds, on inspection, that inadequate safety precautions in relation to the building work are being taken to protect the safety of people using the street or place.

### **Examples**

- 1 George is building a swimming pool on his property, but the property is not yet fenced and is open to the street.
- 2 Building work is being done on an area of the ground floor of a building in Civic to which the public have access.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The building inspector or certifier may, in writing, give the building licensee in charge of the building work directions about the safety precautions that the inspector or certifier believes on reasonable grounds are necessary to protect the safety of people using the street or place.
- (3) Subsection (2) applies—
- (a) whether or not safety precautions were submitted to the certifier who issued the building approval; and
  - (b) if safety precautions were submitted—whether or not those precautions are being complied with.
- (4) The building licensee in charge of the building work must comply with a direction under subsection (2).

## **Division 3.6 Completion of building work**

### **47 Structural engineer's certificate**

- (1) A certifier may require the owner of a parcel of land where building work is being, or has been, carried out to give the certifier the certificates by professional engineers about the structural sufficiency, soundness and stability of the building as erected or altered for the purposes for which the building is to be occupied or used.
- (2) The certifier may require the certificates only if satisfied on reasonable grounds that it is desirable to do so in the interests of people who occupy or use, or are likely to occupy or use, the building or part of the building that is being, or has been, erected or altered.
- (3) The certifier may require the certificate at any time before or after the completion of building work.

### **48 Completion of building work**

- (1) This section applies if building work appears to have been completed and the certifier is satisfied on reasonable grounds that—
  - (a) the work has been completed in accordance with this Act and substantially in accordance with the approved plans; and
  - (b) the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used.
- (2) Within 7 days after the day the certifier is satisfied, the certifier must give to the construction occupations registrar the following:
  - (a) if a consent or approval mentioned in section 27 (1) (b) was required to be obtained—written evidence of the consent or approval;
  - (b) a copy of the plan or document mentioned in section 43 (2) (a);

- (c) a copy of each certificate issued for the building work under section 44 (2);
- (d) if the regulations require that, on completion of the building work, the consent or approval of anyone is to be obtained—written evidence of the obtaining of the consent or approval;
- (e) a certificate by the certifier that the building work has been completed in accordance with this Act and substantially in accordance with the approved plans;
- (f) if a certificate has been obtained under section 47 (Structural engineer's certificate)—the certificate;
- (g) if no certificate under section 47 has been obtained—a written statement to the effect that—
  - (i) the certifier is satisfied that 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 47 is required;
- (h) if, in the certifier's view, the requirements of a stated subsection of section 69 (Certificate of occupancy) have been satisfied—written advice that the registrar would be justified in issuing a certificate of occupancy for the building under the section;
- (i) 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 or given (a *relevant document*);

- (iv) any certificate or other document given or prepared by someone else that the certifier has relied on for the purpose of issuing or giving a relevant document;
  - (v) the certifier's working papers and calculations that are relevant to the issuing or giving of a relevant document.
- (3) The construction occupations registrar may, in writing, exempt a certifier from complying, completely or partly, with anything mentioned in subsection (2) (i) in relation to building work stated in the exemption.
- (4) A certifier is not required to give the construction occupations registrar a copy of a document or paper mentioned in subsection (2) (i) if—
  - (a) the certifier has already given to the registrar, under this Act, the document or paper, or a copy of the document or paper; or
  - (b) the registrar has exempted the certifier under subsection (3) from giving the copy.
- (5) This section applies in relation to a part of a building in the same way as it applies to a building.

## **Division 3.7 Offences**

### **49 Complying with building code**

- (1) A person must carry out building work only in a way that will, or is likely to, result in a building that complies with the building code.  
Maximum penalty: 50 penalty units.
- (2) An offence against subsection (1) is a strict liability offence.



- (3) For subsection (1), building work is taken not to result in a building that complies with the building code if, for each provision of the building code with which the building must comply—
- (a) the building will not comply with the deemed-to-satisfy provision of the building code; and
  - (b) the approved plans for the building work do not state an alternative solution under the building code.
- (4) For this section, building work is taken to result in a building that complies with the building code if the building complies with the building code as in force at the time the approved plans for the building work were approved.

## **50 Notification by certifier of contraventions of Act**

- (1) A certifier must, as soon as practicable, notify the construction occupations registrar of any contravention of this Act that comes 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, s 104).

- (2) However, subsection (1) does not apply to building work only because the work does not comply with section 42 (Requirements for carrying out building work) if the building licensee in charge of the building work fixes the matter to the satisfaction of the certifier within a reasonable time after the day the matter is brought to the licensee's notice.

**Example of non-application of s (2)**

It comes to a certifier's attention that a builder proceeded with building work above the dampcourse level without a plan or document mentioned in s 43 (2). That contravention of this Act must be reported under s (1) and s (2) does not have an affect because the contravention relates to s 43, not s 42.

*Note 1* The certifier has the evidentiary burden of establishing the matters mentioned in s (2) (see Criminal Code, s 58).

*Note 2* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) Subsection (1) applies whether or not a direction under section 44 (2) (Stage inspections) has been given in relation to the matter.
- (4) An offence against this section is a strict liability offence.

**51 Carrying out building work in contravention of s 42**

- (1) Building work must not be begun or carried out except in compliance with section 42 (Requirements for carrying out building work).
- (2) A person commits an offence if—
- (a) building work is begun or carried out on a parcel of land in contravention of subsection (1); and
  - (b) the person is the owner of the parcel of land or the person who carries out the building work.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) It is a defence to a prosecution against the owner of the parcel of land for an offence against subsection (2) if the owner satisfies the court that the owner—
  - (a) believed on reasonable grounds that section 42 had been complied with; or
  - (b) was not aware, and could not reasonably have been aware, that the building work had begun or been carried out.
- (5) It is a defence to a prosecution against a person other than the owner of the parcel of land if the person satisfies the court that—
  - (a) the person carried out the building work under a contract entered into by the person with someone else or at the request and on the instructions of someone else; and
  - (b) that the person believed on reasonable grounds that—
    - (i) a building approval had been issued for the building work; and
    - (ii) the work had been carried out in compliance with section 42.

## Part 4 Stop and demolition notices

### 52 Meaning of *easement* for pt 4

In this part:

*easement* includes 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 under the *Districts Act 2002*.

### 53 Stop notices

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

- (g) for building work for an exempt building—so that the building, or part of the building, is or will be on an easement.

**Examples of building work**

- 1 The footings of a building have been poured and are setting. The footings are on an easement. A stop notice can be issued for the building work continuing on top of the footings.
- 2 A concrete truck is about to deliver concrete to a building site for which there needs to be an approved plan, although there is no plan. A stop notice can be issued for the building work to be done.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The construction occupations registrar, a building inspector or a certifier may, by written notice (a **stop notice**), prohibit the carrying out of any further building work or of stated building work.
- (3) A stop notice ends if—
  - (a) the person who gave the stop notice cancels the stop notice in writing signed by the person; or
  - (b) the grounds for giving the stop notice no longer exist; or
  - (c) the stop notice is cancelled under section 55 (Application by land owner for cancellation of stop notice) or section 57 (Decision on application by other than land owner).

**Examples for par (b)**

- 1 if the ground for issue of the notice was s (1) (a)—an approval has been issued for the work
- 2 if the ground for issue of the notice was s (1) (b)—the building work that was not in accordance with the approval has been removed so that the remaining work complies with the existing building approval or a new approval has been obtained that allows the building work
- 3 if the ground for issue of the notice was s (1) (c)—if the grounds of the contravention were that the building work was being carried out by a person without a builders licence, an appropriately licensed builder continues the building work

- 4 if the ground for issue of the notice was s (1) (d)—the building work that was not in accordance with the lease is removed or the lease varied to allow the work
- 5 if the ground for issue of the notice was s (1) (e)—the approval is obtained
- 6 if the ground for issue of the notice was s (1) (f)—the building work that was not in accordance with the approval is removed or the approval varied to allow the work
- 7 if the ground for issue of the notice was s (1) (g)—the building work that was on the easement is removed or the easement is changed to allow the work

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) A stop notice may not be issued on a ground mentioned in subsection (1) (a) or (b) for work in relation to an exempt building.

## 54 Building work allowed under stop notice

- (1) This section applies if a stop notice has been issued in relation to building work.
- (2) The stop notice does not prevent building work that does not, or would not, contravene this Act apart from the stop notice if—
  - (a) the only purpose of the work (*rectification work*) is to fix or reverse the building work that caused the stop notice to be issued; or
  - (b) the work is necessary to ensure rectification work is carried out safely.

### Examples

- 1 A stop notice is issued in relation to an extension on a house, which does not comply with the building code. The extension may be pulled down, but the rest of the house may not.

- 2 A garage has been built partly on an easement. If it is decided to make the garage smaller so it is not on the easement, the building of temporary supports necessary to support the roof and ensure the safety of the rest of the garage while the garage is made smaller is building work allowed to be done despite the stop notice.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **55 Application by land owner for cancellation of stop notice**

- (1) This section applies if a stop notice has been given in relation to building work on a parcel of land, regardless of who gave the notice.
- (2) The owner of the parcel of land may apply in writing to the construction occupations registrar for cancellation of the stop notice, giving reasons why the notice should be cancelled.

*Note* The ordinary rules of agency apply in relation to an application under this section.

- (3) Before making a decision on the application, the construction occupations registrar must consider—
  - (a) the application; and
  - (b) the reasons why the stop notice was given; and
  - (c) the current state of the building work to which the notice relates.
- (4) The construction occupations registrar may cancel the stop notice if satisfied that the cancellation will not endanger the public or people who will use the building on which the building work is being, or is to be, done or affect public confidence about the standard of building work in the ACT.

**56 Application other than by land owner for cancellation of stop notice**

- (1) This section applies if a stop notice has been given in relation to building work on a parcel of land, regardless of who gave the notice.
- (2) A person other than the owner of the parcel of land may apply in writing to the construction occupations registrar for cancellation of the stop notice, giving reasons why the notice should be cancelled.
- (3) On receiving an application, the construction occupations registrar must—
  - (a) give the owner of the parcel of land a copy of the application; and
  - (b) tell the owner in writing that the owner may, within 2 weeks after the day the owner is given the copy of the application—
    - (i) make written comments on the merits of the application; or
    - (ii) tell the registrar in writing that the owner does not object to cancellation of the stop notice.

**57 Decision on application by other than land owner**

- (1) This section applies if—
  - (a) a person has made an application under section 56 in relation to a stop notice; and
  - (b) the construction occupations registrar has given the owner of the parcel of land to which the stop notice relates a copy of the application and the information required under section 56 (3) (b); and
  - (c) either—
    - (i) the owner has told the registrar in writing that the owner does not object to cancellation of the stop notice; or



- (ii) the 2-week period for making written comments on the merits of the application has ended.
- (2) Before making a decision on the application, the construction occupations registrar must consider—
  - (a) the application; and
  - (b) the reasons why the stop notice was given; and
  - (c) any written comments from the owner given to the registrar within the 2-week period; and
  - (d) the current state of the building work to which the notice relates.
- (3) The construction occupations registrar may cancel the stop notice if satisfied that the cancellation will not endanger the public or people who will use the building on which the building work is being, or is to be, done or affect public confidence about the standard of building work in the ACT.

## **58 Further notices relating to stop notices**

- (1) This section applies if a stop notice has been given on a ground other than a ground mentioned in section 53 (1) (a) (which is about building work for which there is no approval).
- (2) Within 7 days after the day the stop notice is given, the construction occupations registrar may, by a further written notice, state the building work (including 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.
- (3) The further notice must state the period within which the building work stated in the notice must be carried out.

- (4) However, if the ground for the stop notice is mentioned in section 53 (1) (f) (which is about building work that does not comply with an approval), the construction occupations registrar may give a notice under this section to carry out the demolition of a building only if the planning and land authority recommends giving the notice.
- (5) Any building work done by a person to comply with a notice under this section is taken not to contravene the stop notice.
- (6) A notice issued under this section ends if the ground for the issue of the stop notice to which it relates no longer exists.

## **59 Service of stop notices and further notices**

A notice under section 53 or section 58 may be given to—

- (a) the owner of the parcel of land where the building work mentioned in the notice is being, or is to be, carried out; or
- (b) the person by whom the building work mentioned in the notice is being, or is to be, carried out; or
- (c) for a stop notice—on any person carrying out building work mentioned in the notice; or
- (d) any 2 or more of the people, jointly, to whom the notice may be given under paragraph (a), (b) or (c).

*Note* See s 144 for service of notices.

## **60 Notice to produce survey plan etc**

- (1) This section applies if building work for which a building approval has been issued has been carried out in contravention of section 43 (2) (Stages of building work).

- (2) The construction occupations registrar may give the owner of the parcel of land where the building work was carried out, or the person by whom the building work was carried out, a notice requiring the person to give to the registrar the plan or document mentioned in section 43 (2) (a).
- (3) The notice under subsection (2) must state the period (at least 7 days after the day the notice is given to the person) within which the person must comply with the notice.

## **61 Preconditions for s 62 notice**

Each of the following is a precondition for the giving of a notice under section 62 (Notice to carry out building work):

- (a) building work has been carried out without a building approval required for the work;
- (b) building work for which a building approval has been given has been carried out in contravention of section 42 (Requirements for carrying out building work), or otherwise than in accordance with section 43 (Stages of building work);
- (c) building work, in relation to which a notice has been served under this part, has been carried out otherwise than in accordance with the notice;
- (d) building work has been carried out on a parcel of land held under lease from the Commonwealth, contrary to a provision, covenant or condition of the lease;
- (e) building work forming part of a development requiring approval under the Land Act, division 6.2 has been carried out without the approval;
- (f) building work forming part of a development approved under the Land Act, division 6.2 has been carried out contrary to the approval, or a condition of the approval;

- (g) building work in relation to an exempt building has been carried out so that the building or part of the building is, or will, be on an easement;
- (h) the construction occupations registrar is satisfied, on reasonable grounds, that—
  - (i) for a building if plans or plans and specifications in relation to its erection or alteration have been approved under this Act—the completed building has deteriorated, or is likely to deteriorate, so that the building is, or is likely to become, unfit for use as a building of the class stated, or for the purpose stated in the plans or plans and specifications approved for the most recent building work carried out in relation to the building; or
  - (ii) for a building other than a building of a kind mentioned in subparagraph (i)—the completed building has deteriorated, or is deteriorating, so that the building is, or is likely to be, unfit for any kind of use; or
  - (iii) building work has not been completed when the building approval for the building work ended; or
  - (iv) a building or part of a building is not structurally sound; or
  - (v) the maximum safe live load, or the load that a building was designed to carry, has been exceeded; or
  - (vi) injury to people or damage to property may result from a part of a building becoming detached because of the external condition of the building; or
  - (vii) a building or part of a building is unsafe because of fire hazard or unfit for use because of a danger to health.

**62 Notice to carry out building work**

- (1) If a precondition under section 61 exists in relation to building work on a parcel of land, the construction occupations registrar may give the owner of the parcel a notice directing the owner to carry out stated building work (including demolition) on the parcel within a stated period and may, in the notice, direct the owner to submit plans for approval and obtain the issue of a building approval and commencement notice.
- (2) If building work has been carried out in the circumstances mentioned in section 61 (a), a notice given by the construction occupations registrar under subsection (1) is taken to have been revoked if a certifier, on application by or on behalf of the owner of the parcel of land made under this Act within 2 weeks after the day the notice is given, issues a building approval for the building work.
- (3) If building work has been carried out in the circumstances mentioned in section 61 (f), the construction occupations registrar may give a notice under this section to carry out the demolition of a building only if the planning and land authority recommends the demolition.
- (4) A notice given to the owner of a parcel of land by the construction occupations registrar under subsection (1) directing the person to carry out building work may state reasonable safety precautions to be taken in carrying out the building work.
- (5) If the owner of a parcel of land does not hold a builders licence that authorises the doing of building work required to be done by a notice under this section, and the building work is required to be done by a building licensee, the owner must appoint someone to do the work who has a builders licence that authorises the work.
- (6) This section does not allow the construction occupations registrar to require a person doing building work in relation to an exempt building to obtain an approval for the building work.

**63 Payment of fees otherwise payable**

- (1) This section applies if the owner of a parcel of land—
  - (a) is directed by a notice under section 62 (1) to carry out building work (other than demolition); and
  - (b) the notice contains no requirements about the approval of plans or the obtaining of a building approval.
- (2) The owner of the parcel of land must give the construction occupations registrar the fees that would have been payable to the registrar if the owner had been required to submit plans for approval and that would have been payable to the registrar by the certifier for a building approval in relation to that building work.

**64 Compliance with notices under pt 4**

- (1) A person commits an offence if—
  - (a) the person is given a notice under this part; and
  - (b) the person contravenes the notice.Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the defendant establishes that the defendant paid a reasonable amount to have the work done by someone else who was licensed to do the work.

## **Part 5**                      **Building occupancy**

### **Division 5.1**              **Certificates of occupancy and other certificates**

#### **65**              **Application of pt 5 to building work**

- (1) This part does not apply to building work in relation to an exempt building.
- (2) However, this part applies to building work mentioned in subsection (1) if—
  - (a) the work involves—
    - (i) handling asbestos; or
    - (ii) disturbing friable asbestos; and
  - (b) the work is not—
    - (i) minor maintenance work done in accordance with the asbestos code; or
    - (ii) exempt from this subsection under a regulation.

#### **66**              **Meaning of *prescribed requirements* for div 5.1**

In this division:

*prescribed requirements*, in relation to building work, means—

- (a) if the building work involves handling asbestos or disturbing friable asbestos—the requirements of this Act; or
- (b) for any other building work—
  - (i) the requirements of this Act; or

- (ii) the approved plans for the work.

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

**67 Registrar may have regard to documents given**

In working out whether building work has been completed in accordance with the prescribed requirements, the construction occupations registrar may have regard to certificates and other documents given to the registrar by a certifier under section 48.

**68 Effect of certificates under div 5.1**

The giving of a certificate under this division in relation to a building or part of a building does not affect the liability of anyone to comply with the provisions of a Territory law (including this Act) relating to the building or part of the building.

**69 Certificates of occupancy**

- (1) 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 construction occupations registrar must, on 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 the requirements and that the building as erected or as altered is fit for occupation and use as a building of the class stated in the approved plans for that building work.
- (2) 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 the requirements, the construction occupations registrar may, on 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 stated in the approved plans for that building work.

- (3) If part of a building has been erected in accordance with the prescribed requirements so far as they relate to the part of the building, the construction occupations registrar may, on an application made by the owner of a parcel of land where the building is being erected, issue a certificate that the part of the building is fit for occupation and use as a part of a building of the class stated in the approved plans in relation to the building work.
- (4) For this section—
- (a) a certificate under the *Water and Sewerage Act 2000* that the plumbing, sewerage and drainage work carried out in building work complies with the prescribed requirements for the building work relating to plumbing, sewerage and drainage work is evidence of the fact; and
- (b) a certificate signed by an inspector under the *Electricity Safety Act 1971* certifying that the electrical wiring work, as defined by the *Electricity Safety Act 1971*, carried out in the building work complies with the prescribed requirements for the building work relating to the electrical wiring work is evidence of the fact.

*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, s 104).

## **70 Cancellation of part certificate of occupancy**

- (1) This section applies if—
- (a) a certificate of occupancy has been issued under section 69 (3) for a part of a building; and
- (b) the construction occupations registrar, on completion of the whole of the building work, issues a certificate of occupancy for the whole of the building.

- (2) The construction occupations registrar must cancel the certificate of occupancy that relates to the part of the building.

**71 Certificate for building work involving demolition**

- (1) This section applies if building work involving the demolition of a building has been completed in accordance with the prescribed requirements for the building work.
- (2) The construction occupations registrar must, on application made by the owner of the parcel of land where the building work was carried out, issue a certificate to the effect that the building work was carried out in accordance with the prescribed requirements for the work.

**72 Certificate for building work involving erection of structure**

- (1) This section applies 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 the building work.
- (2) The construction occupations registrar must, on application made by the owner of the parcel of land where the building work was carried out, issue a certificate to the effect that the building work was carried out in accordance with the prescribed requirements for the work.

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

If the construction occupations registrar issues a certificate for building work carried out by a person who holds an owner-builders licence, the certificate must include a statement to the effect that part 6 (Residential building—statutory warranties, insurance and fidelity certificates) may not apply to the building work.

**74 Government buildings—application for fitness certificate**

- (1) This section applies to a building if—
  - (a) the building was erected on land that, when the building was erected, was held—
    - (i) by the Commonwealth; or
    - (ii) by the Territory; or
    - (iii) by someone else under a lease from the Commonwealth;  
and
  - (b) a certificate of occupancy or regularisation has not been issued for the building.
- (2) Application for a certificate that the building 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, 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, the application may be made by—
  - (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—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—the tenant; or
  - (c) for national land—the Commonwealth; or
  - (d) for Territory land—the Territory.

- (5) The application must—
- (a) be in writing signed by or on behalf of the applicant; and
  - (b) provide sufficient information to allow 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 150 for this section.

## **75 Decision on s 74 application**

- (1) On receiving an application under section 74, the construction occupations registrar must—
- (a) if satisfied that the building complies with subsection (2)—issue a certificate (*certificate of regularisation*) that the building is fit for occupation if each part of it is used only for the purpose stated in the certificate; or
  - (b) in any other case—refuse to issue the certificate.
- (2) 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 people 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.
- (3) To decide whether the building complies with subsection (2), the construction occupations registrar—
- (a) may require the applicant to provide a written statement by a qualified licensed construction practitioner that deals with the matters mentioned in subsection (2) (a) and (b), or such of the matters as the registrar states; and
  - (b) may consider the statement.
- (4) In this section:
- qualified licensed construction practitioner*** means a person who—
- (a) is licenced under the *Construction Occupations (Licensing) Act 2004*; and
  - (b) in the construction occupations registrar's opinion, has sufficient expertise to provide a statement under subsection (3) that would help the registrar to decide whether the building complies with subsection (2).

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

- (1) A person commits an offence if—
- (a) the person occupies or uses, or allows someone else to occupy or use, a building or part of a building; and
  - (b) the construction occupations registrar has not issued a certificate of occupancy for the building or part of the building.

Maximum penalty: 50 penalty units.

- (2) A person commits an offence if—
- (a) the construction occupations registrar has issued a certificate of occupancy for only a part of a building (the *approved part*); and
  - (b) the person occupies or uses, or allows someone else to occupy or use, a part of the building for which no certificate of occupancy has been issued; and
  - (c) the purpose of the use is not incidental to the use of the approved part.

Maximum penalty: 50 penalty units.

- (3) An offence under this section is a strict liability offence.

- (4) In this section:

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

## 77 Use of buildings restricted

- (1) A person commits an offence if—
- (a) the person occupies or uses, or allows someone else to occupy or use, a building or part of a building—
    - (i) 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 stated in the plans approved in relation to the most recent building work that has been carried out in relation to the building; or
    - (ii) 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 approved in relation to the most recent

building work that has been carried out in relation to the building; and

- (b) the construction occupations registrar has not given written approval for the occupation and use.

Maximum penalty: 50 penalty units.

- (2) An offence against subsection (1) is a strict liability offence.
- (3) The construction occupations registrar must, on written application, give his or her written approval for the occupation and use of a building or part of a building as a building or a part of a building of a class stated in the application if the construction occupations registrar is satisfied that a reasonable certifier would, under this Act, approve the plans for the erection of the building or part if—
- (a) the building or part had not been erected and the certifier were then and there considering the plans; and
- (b) the plans required the building or part to be of the same class as that stated in the application.
- (4) If a parcel of land is held under a lease from the Commonwealth, an approval given by the construction occupations registrar under subsection (3) in relation to the parcel of land does not authorise—
- (a) the use of the parcel for a purpose other than the purpose 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.
- (5) In this section:

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

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

- (1) This section applies to a building for which a certificate of regularisation has been issued that is—
  - (a) on land held under a lease or tenancy from the Commonwealth by a person other than the Territory; or
  - (b) on land held under a sublease or tenancy from the Territory.
- (2) A person must not occupy or use, or allow anyone else to occupy or use, the building, or a part of the building, for a purpose other than the purpose stated in the certificate of regularisation.  
Maximum penalty: 50 penalty units.
- (3) An offence against this section is a strict liability offence.

**79 Action by registrar on unauthorised use of building etc**

- (1) In this section:  
*building occupancy offence section* means any of the following sections:
  - section 76 (Occupation and use of buildings);
  - section 77 (Use of restricted buildings);
  - section 78 (Occupation and use of ex-government buildings).
- (2) This section applies if, after being convicted for an offence against a building occupancy offence section, a person continues to use or continues to allow someone else to use a building or a part of a building in contravention of the section for an offence against which the person has been convicted.
- (3) The construction occupations registrar may, by written notice to the occupier or to the person allowing the occupation (or both)—
  - (a) for a conviction for an offence against section 76—require the building to be vacated within the period stated in the notice; or



- (b) for a conviction for an offence against section 77 or section 78—require the occupation or use of the building or the part of the building in contravention of that section to stop within the period stated in the notice.
- (4) A person to whom a notice under subsection (3) is given must not fail to comply with the notice.
- (5) A person who contravenes subsection (4) commits an offence, in relation to each day the person contravenes the subsection (including any day when the person is convicted of an offence).
- Maximum penalty: 50 penalty units.
- (6) An offence against subsection (5) is a strict liability offence.

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

- (1) A copy of each certificate issued under this part must be kept in the construction occupations registrar's office.
- (2) Anyone may inspect a certificate at the construction occupations registrar's office during the hours the office is open for business.
- (3) If the construction occupations registrar issues a certificate under section 69 (1) or (3) (Certificates of occupancy) for a building or part of a building and a copy of a certificate of occupancy for the building or part of a building is already being kept in the registrar's office, the registrar must replace the earlier certificate with a copy of the later certificate.

## **81 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 must attach, in a conspicuous place on the walls of each storey of the building, in a way approved in writing by the construction occupations registrar, the number of metal plates of a

size and form approved in writing by the registrar showing the maximum live load for which the floor on that storey has been designed.

Maximum penalty: 5 penalty units.

- (2) An approval under subsection (1) is a notifiable instrument.

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

- (3) The owner of a building commits an offence if—
- (a) the building is altered; and
  - (b) a later certificate is issued under this part for the altered building; and
  - (c) when the certificate is issued, the safe live load for a floor of the altered building is different from that shown for that floor on the metal plates attached to the walls of the floor under subsection (1); and
  - (d) the owner does not substitute other plates showing the current maximum safe live load for the floor.

Maximum penalty: 5 penalty units.

- (4) The owner of the building must maintain each plate attached under this section.

Maximum penalty: 5 penalty units.

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

Maximum penalty: 5 penalty units.

- (6) An offence against this section is a strict liability offence.

**82 Exceeding safe live load**

- (1) The owner and occupier of a building in relation to a floor of which a metal plate mentioned in section 81 shows a maximum live load must each ensure that the maximum live load shown on the metal plate is not exceeded on that floor.

Maximum penalty: 50 penalty units.

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

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

### Division 6.1 Application and interpretation of pt 6

#### 83 Application of pt 6 to building work

- (1) This part does not apply to—
  - (a) building work in relation to an exempt building; or
  - (b) building work that is exempt under a regulation.
- (2) However, this part applies to building work mentioned in subsection (1) if—
  - (a) the work involves—
    - (i) handling asbestos; or
    - (ii) disturbing friable asbestos; and
  - (b) the work is not—
    - (i) minor maintenance work done in accordance with the asbestos code; or
    - (ii) exempt from this subsection under a regulation.

#### 84 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 99 (Approval criteria for schemes).

***approved scheme*** means a fidelity fund scheme approved under section 96.

***builder***, in relation to residential building work or a residential building, means the person stated to be the builder in the commencement notice for the building work or building.

***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 relation to the demolition of a whole building.

***complying residential building work insurance*** means an insurance policy issued in relation to residential building work that complies with section 90.

***cost***, of building work, means the cost of the work as worked out under section 86.

***fidelity certificate***, for building work, means a certificate issued for the 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.

***prudential standards*** means the standards determined under section 103.

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

- (a) the building has no more than 3 storeys at any point, excluding any storey used exclusively for parking; or

- (b) for a part of a building—the part provides structural support, or is a structurally integral adjunct, to the building.

**Examples**

- 1 A building has shops on its ground storey, a hotel on its 2nd storey and private residential units on its 3rd storey. It is not a residential building because it is not used mainly for private residential use.
- 2 A building has 2 wings, which are structurally independent of each other. The north wing has 3 storeys including the ground storey. The south wing has 6 storeys including the ground storey. All storeys contain residential units. The north wing is a residential building. The south wing is not a residential building because it is 6 storeys.
- 3 A building has 2 wings that are dependent on each other for structural support. The north wing has 3 storeys including the ground storey. All storeys contain residential units. The lower 3 storeys of the south wing are structurally integrated with the north wing. A structural instability in any of the lower 3 storeys in the south wing could compromise the structural integrity of both wings of the building. The south wing storeys that are higher than the north wing are structurally independent of the north wing. The north wing of the building is a residential building. The lower 3 storeys of the south wing are a residential building to the extent that they are a structurally integral adjunct to the building as a whole. The upper 3 storeys of the south wing are not a residential building because they are over 3 storeys and not a structurally integral adjunct to the building.
- 4 A 4-storey residence has a parking garage as its ground storey. A structural instability in the garage could compromise the building's structural integrity. The garage is a residential building because it is a structurally integral adjunct to the building and the building is a residential building.
- 5 A single storey residence has a garage attached at the side. The roof trusses of the building span across the residence and garage in a single span. A structural instability in the garage could compromise the structural integrity of the roof trusses and, because of that, compromise the structural integrity of the building. The garage is a residential building because it is a structurally integral adjunct to the building and the building is a residential building.
- 6 A single storey residence has a garage attached at the side and under the same roofline as the residence. The garage is mainly used for cars and is not for residential use. No structural elements of the residence depend on the garage for structural integrity. A structural instability in the garage could not compromise the structural integrity of the residence. The garage is not a residential building because it is not a structurally integral adjunct to a

building intended primarily for residential use. The residence, apart from the garage, is a residential building.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***residential building work*** means building work in relation to a residential building.

***special actuary***—see section 122 (Special actuary to investigate liabilities).

***storey*** does not include a storey below the ground storey.

## **85 Meaning of *completion day* for pt 6**

(1) In this part:

***completion day***, for residential building work, means the day the work is completed or the day the contract relating to the work ends, whichever is the later.

(2) Without limiting subsection (1), the work is taken to have been completed no later than the day a certificate of occupancy (if any) is issued for the work.

## **86 Cost of building work for pt 6**

(1) For this part, the ***cost*** of building work is—

(a) if a contract has been entered into for 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 construction occupations registrar and the builder; or

(ii) if an amount is not agreed—an amount worked out by the registrar.

- (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**

### **87 Residential building work to which pt 6 does not apply**

- (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-builders licence has been granted; or
  - (c) if the cost of the work is less than the amount prescribed under the regulations; or
  - (d) in relation to a building or dwelling other than a class 1 or class 2 building.
- (2) Subsection (1) (d) does not prevent this part from applying in relation to residential building work carried out in relation to a garage that provides structural support for, or is a structurally integral adjunct to, a class 1 or class 2 building.

### **88 Statutory warranties**

- (1) By force of this section, every contract for the sale of a residential building, and every contract to carry out residential building work to which the builder is a party, is taken to contain a warranty under this section.



- (2) The builder warrants the following:
- (a) that the residential building work has been or will be carried out in accordance with this Act;
  - (b) that the work has been or will be carried out in a proper and skilful way and—
    - (i) in accordance with the approved plans; or
    - (ii) if the work involves or involved handling asbestos or disturbing friable asbestos—in accordance with approved plans that comply with this Act in relation to the asbestos;
  - (c) that good and proper materials for the work have been or will be used in carrying out the work;
  - (d) if the work has not been completed, and the contract does not state a date by which, or a period within which, the work is to be completed—that the work will be carried out with reasonable promptness;
  - (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 an employee 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 the purpose or of such a nature and quality that they might reasonably be expected to achieve the result.
- (3) Each of the owner's successors in title succeeds to the rights of the owner in relation to the statutory warranties.
- (4) The warranties end at the end of the period prescribed under the regulations after the completion day for the work.

(5) In subsection (2):

*owner* means—

- (a) for a contract mentioned 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 mentioned 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.

**89 Builder’s liability**

This Act does not limit the liability a builder would have to anyone apart from this Act.

**Division 6.3 Residential building insurance**

**90 Complying residential building work insurance**

- (1) An insurance policy issued for 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 amount prescribed under the regulations, or the cost of the work, whichever is less, for 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 day the certifier for the work issues a building commencement notice under section 37 for the work and ending at the end of the period prescribed under the regulations after the day 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 day the title in the land is transferred to someone else and ending at the end of the period prescribed under the regulations after the day a certificate of occupancy is issued for the work; and
  - (e) the whole of the premium payable for the 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, because 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 period prescribed under the regulations, or a stated 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 construction occupations registrar.
- (2) However, if the owner is a developer, the insurance is taken to comply with subsection (1) (c), (f), (g) or (h) if it insures the owner’s successors in title, even though it does not insure the owner.
- (3) To remove any doubt, an insurance policy issued in relation to residential building work may exclude claims other than those in

circumstances in which the builder is insolvent, dead or has disappeared.

- (4) In this section:

*developer*, for residential building work, means a person for whom the work is done in a building or residential development where 4 or more of the existing or proposed dwellings are or will be owned by the person.

## **91 Provisions of residential building insurance policies**

- (1) A complying residential building insurance policy may provide that the authorised insurer who issues the policy is not liable for the amount prescribed under the regulations, or the stated lesser amount, of each claim.
- (2) In calculating the amount of the premium payable in relation to a complying residential building insurance policy, the value of the work is taken to be equal to the cost of the work.
- (3) A provision, stipulation, covenant or agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this part is void.
- (4) A complying residential building insurance policy—
- (a) is not be taken to be invalid only because it contains a term, condition or warranty not contained in the form of policy approved by the construction occupations registrar; but
  - (b) a term, condition or warranty mentioned in paragraph (a) is void.

## **92 Builder's misrepresentation etc does not prevent liability**

An authorised insurer is not entitled to avoid liability under a complying residential building insurance policy only because the policy was obtained by misrepresentation or nondisclosure by the builder.

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**93 Claims if builder insolvent and work unfinished**

- (1) This section applies if—
  - (a) a builder is not the owner of the land where the builder is carrying out residential building work; and
  - (b) the builder fails to complete the work because the builder becomes insolvent; 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 complying residential building insurance policy.
- (2) The owner is not entitled to recover from the insurer any amount by which the amount paid exceeds the cost of the work done.
- (3) However, 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 the lesser of the following amounts:
  - (a) the amount of the deposit less the cost of any work done;
  - (b) the amount prescribed under the regulations less the cost of any work done.
- (4) For this section, a builder is 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.
- (5) In subsection (3):

*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.

## **94 Recovery from builder**

- (1) This section applies if—
  - (a) a court gives judgment in favour of a person in relation to a matter for which the person is insured under a complying residential building insurance policy; and
  - (b) the insurer is a party to the proceeding in which the judgment is given; and
  - (c) the judgment is not satisfied in full within 30 days after the day judgment is entered.
- (2) 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.
- (3) The judgment creditor must give the insurer at least 7 days written notice of his or her intention to make an application.
- (4) 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.
- (5) An authorised insurer may, in addition to any other right or remedy, recover from a builder in relation to whose work a complying residential building insurance policy was issued so much of the following as the insurer has paid under or because of the policy:
  - (a) any judgment entered or obtained against the insurer; and
  - (b) any amounts paid by the insurer in payment, settlement or compromise of a claim or 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.

## **95 Duties of insurers**

- (1) A person commits an offence if—

- (a) the person has been an authorised insurer in the business of issuing residential building insurance policies; and
- (b) the person ceases to be in that business, or the person's authority to carry on insurance business is cancelled under the *Insurance Act 1973* (Cwlth); and
- (c) the person fails to notify the construction occupations registrar of the cessation or cancellation within 7 days after the day of cessation or cancellation.

Maximum penalty: 50 penalty units.

- (2) An offence under subsection (1) is a strict liability offence.
- (3) An authorised insurer must not represent that an insurance policy issued or to be issued by the insurer is complying residential building work insurance if the insurer knows that it is not.

Maximum penalty: 250 penalty units.

- (4) On or before 31 July in each year, an authorised insurer must give a written statement to the construction occupations registrar in relation to claims on residential building insurance policies dealt with by the insurer in the financial year ending on the previous 30 June, stating the following:
  - (a) the number of claims;
  - (b) the amount of each claim;
  - (c) the number of claims that were paid;
  - (d) the amount paid on each claim;
  - (e) if a claim was rejected—the reason for its rejection.

Maximum penalty: 100 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.

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

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

- (1) The planning and land authority 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 planning and land authority 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.

### **97 Additional information for approval of scheme etc**

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



- (3) The planning and land authority need not consider the application further until the trustees comply with the requirement.

## **98 Authority may require changes to scheme**

Before approving a fidelity fund scheme, the planning and land authority 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, s 104).

## **99 Approval criteria for 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 and 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) complying 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, s 47 (5) or (6) is not disappplied (see s 47 (7)).

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

- (4) A determination is a disallowable instrument.

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

## **100 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 a strict liability offence.

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

- (1) The trustees of an approved scheme may apply in writing to the planning and land authority 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.

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

- (1) The planning and land authority may, in writing, approve or refuse to approve a change to an approved scheme.
- (2) The planning and land authority 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.

### **103 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, s 48).

- (2) The prudential standards may—
  - (a) require 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, 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, s 47 (5) or (6) is not disapplied (see s 47 (7)).

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

- (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.

(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.

#### **104 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 a strict liability offence.

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

(1) This section applies if the planning and land authority 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 planning and land authority may, by written notice given to the trustees of the approved scheme, require the trustees to comply with a 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 a 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 a strict liability offence.

### **106 Notice to trustees requiring information**

- (1) The planning and land authority may, by written notice given to the trustees of an approved scheme, require the trustees to give the authority 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; and
- (d) claims received by the scheme.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (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 a strict liability offence.

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

- (1) The planning and land authority 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, 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 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 a stated reasonable time, give a written response to the authority about the matters in the notice.
- (3) If, after considering any response given under subsection (2) (c), the planning and land 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.
- (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.

## **108 Cancellation of approval on application**

- (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.



- (2) If the planning and land authority cancels the approval, the authority 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.

### **109 Orders consequential on etc suspension or cancellation**

- (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.
- (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.

### **110 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 planning and land authority.
- (3) The address continues to be the address for service until the planning and land authority is given written notice by the trustees of another address for service for the trustees.

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

### **111 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, pt 19.3.

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

### **112 Approval of appointment of auditor or actuary**

- (1) The trustees of an approved scheme may, in writing, ask the planning and land authority 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 planning and land authority may approve the appointment only if satisfied that the person meets the eligibility criteria for the appointment prescribed under the prudential standards.

- (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.

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

- (1) The planning and land authority 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, 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 planning and land authority must give a copy of the revocation to the person and to the trustees of the approved scheme.

**114 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 113; 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.

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

- (1) Within 14 days after the day the trustees for an approved scheme appoint a person as auditor or actuary for the scheme, the trustees must give the planning and land authority written notice of the appointment and anything else prescribed under the prudential standards.
- (2) Within 14 days after the day a person stops being auditor or actuary for an approved scheme, the trustees must give the planning and land authority 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 planning and land authority of the approval of a person's appointment.

**116 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.

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**117 Auditor and actuary to tell authority if scheme insolvent etc**

The auditor or actuary for an approved scheme commits an offence if the auditor or actuary—

- (a) forms the belief that—
  - (i) the scheme is insolvent, or there is a significant risk that it will become insolvent; or
  - (ii) the trustees have contravened this Act or another Territory law in relation to the scheme; and

*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, s 104).

- (b) fails to give the planning and land authority written notice about the matter within 7 days after the day the auditor or actuary forms the belief.

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

**118 Giving of information to authority 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 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) If this section applies to a person, the planning and land authority may, by written notice given to the person, require the person to give stated information about the approved scheme to the authority within a stated reasonable time.

- (4) A person commits an offence if the person contravenes a notice under subsection (3).

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

### **119 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 everything 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.

### **120 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 everything required under the prudential standards to be dealt with in the report.

**121 Certificates and reports required to be given to authority**

- (1) The trustees of an approved scheme must, in accordance with the prudential standards, give to the planning and land authority —
  - (a) a copy of each certificate given to the trustees under section 119 (Auditor’s role); and
  - (b) the reports mentioned in that section and section 120.Maximum penalty: 60 penalty units.
- (2) An offence against this section is a strict liability offence.

**122 Special actuary to investigate liabilities**

- (1) The planning and land authority 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 authority a written report within a stated period.
- (2) The special actuary must not be—
  - (a) the actuary appointed under section 111 (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 s 125.

- (3) Within 7 days after the day the trustees are given the notice, the trustees must appoint the special actuary and give the planning and land authority written notice of the actuary's name.
- (4) The trustees of an approved scheme commit an offence if the trustees fail to comply with subsection (3).

Maximum penalty: 100 penalty units.

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

### **123 Objection to special actuary by authority**

- (1) This section applies if the trustees of an approved scheme notify the planning and land authority of the special actuary's name under section 122 (3).
- (2) Within 7 days after the day the planning and land authority is notified, the authority may give written notice to the trustees that the actuary is not acceptable to the authority.
- (3) If the trustees are given a notice under subsection (2), the trustees must within 7 days after the day they are given notice—
  - (a) appoint a different special actuary; and
  - (b) give the planning and land authority written notice of the name of that actuary.
- (4) Subsection (2) applies whether the notification of the special actuary's name is under section 122 (3) or subsection (3) (b).
- (5) The trustees of an approved scheme commit an offence if the trustees fail to comply with subsection (3).

Maximum penalty: 100 penalty units.

- (6) An offence against this section is a strict liability offence.



**124 Special actuary's report**

- (1) The trustees must ensure that a special actuary's report is given to the planning and land authority—
  - (a) within 30 days after the day the authority gave the notice under section 122 (1); or
  - (b) within any additional further time the authority allows in writing.
- (2) The report must be signed by the special actuary.
- (3) 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) anything else in relation to which the prudential standards require a statement of the actuary's opinion to be included in the report.
- (4) The trustees of an approved scheme commit an offence if the trustees fail to comply with subsection (1).

Maximum penalty: 100 penalty units.

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

**125 Who can be appointed as special actuary**

- (1) A person can only be appointed as a special actuary for section 122 (Special actuary to investigate liabilities) if the person—
  - (a) is a Fellow of The Institute of Actuaries of Australia; or
  - (b) the planning and land authority has, in writing, approved the person as an actuary for that section.
- (2) The planning and land authority 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 122.

**126 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 a strict liability offence.

**127 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 Administration**

### **Division 7.1 Building inspectors**

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

The construction occupations registrar may appoint a person to be a building inspector for this Act.

*Note 1* For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

*Note 2* In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

#### **129 Identity cards**

- (1) The construction occupations registrar must issue a building inspector with an identity card that states the person is an inspector for this Act, or stated provisions of this Act, and shows—
  - (a) a recent photograph of the person; and
  - (b) the name of the person; and
  - (c) the date of issue of the card; and
  - (d) a date of expiry for the card; and
  - (e) anything else prescribed under the regulations.
- (2) A person who ceases to be an inspector must return his or her identity card to the construction occupations registrar as soon as practicable, but no later than 7 days after ceasing to be an inspector.  
Maximum penalty: 1 penalty unit.
- (3) An offence against subsection (2) is a strict liability offence.

### **130 Inspection of approved building work**

A building inspector may inspect building work for which a building approval has been issued to decide 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, s 104).

### **131 Inspection of building work where no approval**

- (1) This section applies if the construction occupations registrar has reasonable grounds for suspecting that—
  - (a) a building approval has not been issued for building work that is being, or has been, carried out; or
  - (b) building work is not being, or has not been, carried out in accordance with the approved plans for the work or a notice under part 4 (Stop and demolition notices); or
  - (c) if plans or plans and specification have been approved under this Act for the erection or alteration of a building—
    - (i) the completed building has deteriorated, or is likely to deteriorate, so that the building is, or is likely to become, unfit for use as a building of the class stated, or for the purpose stated, in the plans or plans and specifications approved in relation to the most recent building work carried out in relation to the building; or
    - (ii) the building is being used other than as a building of the class stated, or for the purpose stated, in the plans or plans and specifications approved in relation to the most recent building work carried out in relation to the building; or
  - (d) for a building other than a building to which paragraph (c) applies—the building has deteriorated to the extent that it is unfit for any use; or

- (e) a building or part of a building is no longer structurally sound;  
or
  - (f) 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
  - (g) a building or part of a building is unsafe because of fire hazard or unfit for use because of a danger to health.
- (2) The construction occupations registrar may, in writing, authorise a building inspector to carry out an inspection of the building work or the building at any reasonable time.
- (3) The construction occupations registrar may authorise the inspector to do 1 or more of the following:
- (a) make tests of the soil or the building materials used or to be used in the building work or building;
  - (b) order the opening or cutting into or pulling down of any building work.

### **132 Costs of inspection**

- (1) If, on inspection, it is found that there are grounds for the giving of a stop notice, the builder must bear the costs (the *inspection costs*) of any pulling down, opening or cutting into the building work carried out during the inspection.
- (2) However, if, on inspection, it is found that there are no grounds for the giving of a stop notice, the Territory must bear the inspection costs and the costs of making good any damage to the building work caused by the inspection.

**133 Power to authorise required work**

If the requirements of a notice under part 4 (Stop and demolition notices) have not been complied with in accordance with the notice, the planning and land authority may, in writing, authorise a building inspector, with the assistance the construction occupations registrar considers necessary, to enter on the land where the building work mentioned in the notice has been, is being or should have been carried out and to carry out the requirements.

**134 Building inspector**

- (1) A building inspector authorised under section 130 or section 131 to inspect a building or building work may enter on premises where the building has been erected or building work is being or has been carried out.
- (2) However, the building inspector is not authorised to remain on the premises if, when asked by the occupier of the premises, the building inspector does not produce—
  - (a) if authorised under section 130—the inspector’s identity card; or
  - (b) if authorised under section 131—a written certificate signed by the construction occupations registrar that the inspector is authorised to enter the premises.

## **Part 8**                      **Building code and recognised standards**

### **Division 8.1**              **Building code and recognised standards**

#### **136**              **Building code**

- (1) In this Act:

*building code* means 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, 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.

*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, s 46 (2)).

- (4) The regulations may make provision in relation to the application of the building code.

**Example**

prescribe an area to be a bushfire-prone area

*Note* An example is part of the regulations, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

- (1) The planning and land authority must publish, in a daily ACT newspaper, 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.

- (3) In this section:

*daily ACT newspaper* means a daily newspaper printed and published in the ACT.

**138 Inspection of building code**

- (1) The construction occupations registrar must keep a copy of the building code at his or her office.

- (2) A person may, on request, inspect the building code kept by the construction occupations registrar whenever the registrar's office is open for business.



**139 Certified copies of building code**

In a proceeding before a court or the administrative appeals tribunal, evidence of the building code as in force on a stated date or during a stated period may be given by the production of an office copy of the building code certified by the construction occupations registrar as a true copy as at the date or during the period.

**139A Recognised standards**

- (1) The Minister may declare a document to be a recognised standard for this Act.
- (2) However, the Minister must not make a declaration under subsection (1) in relation to a document unless the document has been approved (however described)—
  - (a) by or on behalf of the Australian Building Codes Board; or
  - (b) under a system or scheme (however described) administered or approved (however described) by the Australian Building Codes Board; or
  - (c) as prescribed by regulation.

- (3) A declaration under subsection (1) is a notifiable instrument.

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

- (4) In this section:

***Australian Building Codes Board*** includes an entity prescribed by regulation.

## Division 8.2 Asbestos code

### 139B Approval of asbestos code

- (1) The Minister may approve codes of practice for this Act.

*Note* A power given under an Act to make a statutory instrument (including a code of practice) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

- (2) A code of practice may—
- (a) set out practices, standards and other matters about building work if the work involves the use, handling or disposal of asbestos; and
  - (b) be approved as in force from time to time.
- (3) An approved code of practice is a disallowable instrument.

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

*Note 2* An amendment or repeal of a code of practice is also a disallowable instrument (see Legislation Act, s 46 (2)).

- (4) The construction occupations registrar must make a copy of the asbestos code, and any instrument (or provision of an instrument) applied (with or without change) by the asbestos code, available for public inspection during ordinary office hours at—
- (a) the office of the construction occupations registrar; or
  - (b) another place prescribed by regulation.
- (5) In this section:

***applied*** includes adopted and incorporated.

## **Part 9**                      **Limitation of liability**

### **140**            **Meaning of *building action* for pt 9**

In this part:

*building action*—

- (a) means an action (including a counterclaim) for damages for loss or damage in relation to—
  - (i) defective building work; or
  - (ii) defective construction work other than building work; or
  - (iii) the negligent exercise by a licensed construction practitioner of a function as a certifier, or the negligent failure to exercise such a function; but
- (b) does not include an action for damages for death or personal injury.

### **141**            **Limit of liability of people jointly or severally liable**

- (1) A court that decides an award of damages in a building action must give judgment against each defendant to the action who is found to be jointly or severally liable for the damage for the proportion of the total amount of the damages that the court considers to be just, having regard to the extent of that defendant's responsibility for the loss or damage.
- (2) The liability for damages of a person found to be jointly or severally liable for damages in a building action is limited to the amount for which judgment is given against the person, even if another Act or a rule of law provides otherwise.

- (3) A person found to be liable for a proportionate part of damages under subsection (1) in a building action is not liable to contribute to the damages apportioned to anyone else in the action or to indemnify any other person in relation to the damages.

## 142            **Limitation of liability for building actions**

- (1) A building action may not be brought more than 10 years after—
- (a) if a certificate of completion of the relevant building work has been given under this Act—the day the certifier gives the certificate; or
  - (b) if paragraph (a) does not apply, but the certifier has, in the course or on completion of the building work, inspected it—the day when the last inspection took place; or
  - (c) if neither paragraph (a) nor paragraph (b) applies—the day the relevant building was 1st occupied or used.
- (2) If a person has given, in relation to the building work, a notice under section 24 (2) that his or her appointment as certifier has ended, a building action in relation to the building work may not be brought against the person more than 10 years after the day the person gave the notice.
- (3) Subsections (1) and (2) do not apply to a building action if a shorter limitation period applies to the building action under another Territory law.
- (4) In this section:
- building***, in relation to building work that consists of, or includes, the alteration of a building, means the building as altered.

## Part 10                      Miscellaneous

### 143                      Sustainability guidelines

- (1) The Minister must, in writing, make guidelines (the *sustainability guidelines*) for the sustainable use of materials for building.
- (2) A builder must not use a building material in contravention of the sustainability guidelines.

#### Examples

- 1 The sustainability guidelines may prohibit the use of rainforest timber for new buildings or repairs other than repairs to things that already consist mainly of rainforest timber. If the guidelines did this, a builder could use rainforest timber to repair window frames made of rainforest timber, but could not put in an extension containing rainforest timber.
- 2 The sustainability guidelines may allow the demolition of a building containing material from an unsustainable industry, eg rainforest timber. If the guidelines did this, a builder could demolish such a building without contravening the sustainability guidelines.
- (3) The sustainability guidelines are a disallowable instrument.

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

### 144                      Service of notices etc

- (1) A notice or other document under this Act addressed to 1 person may be served 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 people, a number of copies of the notice equal to the number of people to whom the notice is addressed must be signed by the person giving the notice, and 1 of those copies must be served on each of the people.

*Note* For how documents may also be served, see Legislation Act, pt 19.5.

#### **145 Giving copies of documents**

Copies of plans submitted under the Act must not be given to anyone except in accordance with the instructions of—

- (a) the lessee or the owner of the parcel of land where the building to which the plans relate is erected; or
- (b) if the plans relate to a unit within the meaning of the *Unit Titles Act 2001*—the proprietor of the unit.

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

- (1) Application may be made to the administrative appeals tribunal for the review of an appealable decision.
- (2) The administrative appeals tribunal must 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 53 or a notice under section 58 (2) or (4) (Further notices relating to stop notices) or section 62 (1) (Notice to carry out building work), 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 58 (4), or substitute a decision for such a decision it has set aside, unless the development has been approved under that division.

- (3) If the construction occupations registrar makes an appealable decision, the registrar must give written notice of the decision to the relevant person in relation to the decision.
- (4) A notice under subsection (3) must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).
- (5) The regulations may prescribe—
  - (a) what decisions are appealable decisions; and
  - (b) the relevant person for each appealable decision.

#### **147 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 (Stop and demolition notices) or a decision of the construction occupations registrar by a building inspector or his or her assistants under section 131 (Inspection of building work where no approval) or section 133 (Power to authorise required work) is recoverable as a debt owing to the Territory from the person who was required to carry them out by the notice or order.

#### **148 Evidentiary certificates**

In a proceeding before a court or the administrative appeals tribunal—

- (a) a document purporting to be a copy of a notice under this Act and certified as a true copy by the construction occupations registrar or of a person authorised in writing by the registrar must be received in evidence and must be taken without further proof to be a true copy of the notice; and
- (b) a notice certified as a true copy under this section must be taken, unless the contrary is proved, to have been given by the person purporting to give it and to have been given on the date stated in the certified copy of the notice; and

- (c) a document purporting to be a certificate given by the construction occupations registrar and certifying that there was a building approval in force for stated building work on a stated date or during a stated period is evidence that on the stated date or during the stated period the building approval was in force; and
- (d) a document purporting to be a certificate given by the construction occupations registrar and certifying that there was no building approval in force for stated building work on a stated date or during a stated period is evidence that on the stated date or during the stated period no building approval was in force for the building work; and
- (e) a certificate signed by the construction occupations registrar certifying that a document attached to the certificate is a true copy of plans approved by the registrar under this Act or of a part of such plans is evidence of the plans or of the part as so approved; and
- (f) a certificate signed by the construction occupations registrar and certifying that, at a stated date a certificate of occupancy had not been issued for a stated building or a stated part of the building is evidence that, at that date, a certificate of occupancy had not been issued for the building or part of a building.

*Note* A document that purports to be signed by the construction occupations registrar is presumed to have been signed by the registrar unless the contrary is proved (see Evidence Act 1995 (Cwlth), s 150).

#### **149 Legal liability for acts of registrar etc**

- (1) The construction occupations registrar, a building inspector, or a person who was the registrar or an inspector, is not civilly or criminally liable in relation to anything done or omitted to be done honestly by him or her in the exercise of a function under this Act.



- (2) A civil or criminal liability that would, apart from this section, attach to the construction occupations registrar or a building inspector attaches instead to the Territory.

### **150 Determination of fees**

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

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

- (2) A fee for the issue of a building approval under section 28 (2) must only be determined by reference to the value of building work for which the 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.

### **151 Approved forms**

- (1) The construction occupations registrar may, in writing, approve forms for this Act.

- (2) If the construction occupations registrar 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, s 255.

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

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

### **152 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.

- (2) The regulations may make provision in relation to—
  - (a) the approval of building work in relation to particular buildings; and
  - (b) anything else in relation to the approval of building work on particular buildings.
- (3) The regulations may make provision about a matter by applying, adopting or incorporating (with or without change) a standard, or a provision of a standard, as in force from time to time.
- (4) The Legislation Act, section 47 (6) does not apply in relation to an Australian Standard, or an Australian/New Zealand Standard, applied, adopted or incorporated as in force from time to time under the regulations.
- (5) 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.

## Part 11 Transitional

### 153 Definitions for pt 11

In this part:

*building controller*—see the *Building Act 1972* (repealed), section 5 (1).

*commencement day* means the day this Act commences.

### 154 Things required to be given to building controller or deputy

- (1) This section applies if, immediately before the commencement day—
  - (a) a person was required to give the building controller or a deputy building controller something; and
  - (b) the person had not given the building controller or deputy the thing.
- (2) The thing is taken to be required to be given to the construction occupations registrar under this Act.

### 155 Application of Act to Territory building work contracted before 1 July 2001

- (1) This Act, other than section 49 (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, section 121 (Binding effect of Acts).

**156 Exempt buildings**

- (1) Part 3 (Building work) does not apply to building work carried out before 9 December 1992 in relation to a building if, had that building work been carried out on or after that commencement, it would have been building work carried out in relation to an exempt building.
- (2) Part 5 (Building occupancy) does not apply to a building erected or altered before 9 December 1992 if—
  - (a) the building work in relation to the building was completed before that date; and
  - (b) the building would have been an exempt building if it had been erected or altered after that date.
- (3) Section 53 (1) (g) does not apply to building work in relation to an exempt building if—
  - (a) approval was obtained for the building work before 9 December 1992; and
  - (b) the building work is carried out in accordance with—
    - (i) the approved plans for the building work; and
    - (ii) the conditions subject to which a building permit for the building work was granted under the *Building Act 1972* as in force at the time of issue of the permit.
- (4) The construction occupations registrar may not make a requirement of a person under section 62 in relation to building work if—
  - (a) the building work is in relation to an exempt building; and
  - (b) approval for the building work was obtained before 9 December 1992; and
  - (c) the building work has been carried out in accordance with—
    - (i) the approved plans for that building work; and

(ii) the conditions subject to which a building permit for the building work was granted under the *Building Act 1972* as in force at the time of issue of the permit.

(5) In this section:

*exempt building* includes a building prescribed under the *Building Act 1972* as in force at the relevant time, section 6AA.

### **157 Certifiers**

- (1) This section applies to a person who was a certifier under the *Building Act 1972* (repealed).
- (2) If, immediately before the commencement day, the person was a government certifier, the person is taken to be a government certifier under this Act and the person's appointment continues as if it had been made under this Act.
- (3) If, immediately before the commencement day, the person was a certifier other than a government certifier, the person is taken to be a certifier other than a government certifier under this Act and the person's appointment continues as if it had been made under this Act.
- (4) If, before the commencement day, a certifier did something under the *Building Act 1972* as in force at any time, the certifier is taken to have done that thing for this Act.

### **158 Application to building work whenever happening**

To remove any doubt, this Act applies to building work, whether done before or after the commencement day.

### **159 Application to contraventions of Act whenever happening**

A reference in section 50 to a contravention of this Act is taken to include a reference to a contravention of the *Building Act 1972* as in force at any time.

**160 Requirements to do things by times**

- (1) This section applies if—
  - (a) under the *Building Act 1972* (repealed), a person was required to do something; and
  - (b) immediately before the commencement day, the person had not done the thing.
- (2) The time for doing the thing ends when it would have ended if the *Building Act 1972* had not been repealed.
- (3) The person is taken to be required to do the thing under this Act.
- (4) If the thing required the giving of something to the building controller, the person complies with the requirement if the person gives the thing to the construction occupations registrar.

**161 Canberra Sewerage and Water Supply Regulations**

For section 69 (Certificate of occupancy), a certificate under the *Canberra Sewerage and Water Supply Regulations 1933* as in force immediately before the repeal of the *Energy and Water Act 1988* that the plumbing, sewerage and drainage work carried out in building work complies with the prescribed requirements for the building work that relate to plumbing, sewerage and drainage work is evidence of the fact.

**162 Government buildings—application for fitness certificate**

To remove any doubt, section 74 (Government buildings—application for fitness certificate) applies to a building whether erected before or after the commencement day.

**163 Occupation and use of buildings**

A reference in section 76 (1) (b) (Occupation and use of buildings) to the construction occupations registrar issuing a certificate of occupancy for the building or part of the building includes a reference to—

- (a) the building controller issuing the certificate under the *Building Act 1972* as in force at any time; and
- (b) for a building erected or altered before 1 September 1972 or to which the laws repealed by the *Building Act 1972* continued to apply while that Act was in force—a certificate for the building or part of the building issued in accordance with the *Canberra Building Regulations*, regulation 69A, as in force at the time of issue.

**164 Meaning of *builder* for pt 6**

In section 84:

*builder*, in relation to residential building work or a residential building, includes a person whose name was notified to the relevant certifier under the *Building Act 1972*, section 37A (Notifications by owner of land in relation to building work) at any time before its repeal.

**164A Certificate of regularisation**

A certificate of regularisation issued under the *Building Act 1972* as in force at any time is taken to be a certificate of regularisation issued under this Act, section 75.

**M 164C Prudential standards**

**165 Building inspectors and identity cards**

- (1) A person who was a building inspector under the *Building Act 1972* immediately before the commencement day is taken to be a building inspector under this Act.
- (2) An identity card issued to a building inspector under the *Building Act 1972* and in force immediately before the commencement day is taken to have been issued under this Act.

**166 Approved scheme**

An approved scheme under the *Building Act 1972* is taken to be an approved scheme for this Act.

**167 Existing auditors and actuaries**

A person who was an auditor or actuary under the *Building Act 1972* immediately before the commencement day is taken to be an auditor or actuary under this Act.

**168 Application for approval of appointment**

- (1) This section applies if, before the commencement day—
  - (a) the trustees of an approved scheme had asked for an approval under the *Building Act 1972* (repealed), section 83; and
  - (b) the planning and land authority had not made a decision on the approval.
- (2) The trustees are taken to have asked for the approval under this Act, section 112.



**169 Giving information under s 118**

A reference in section 118 (Giving of information to authority by auditor or actuary etc) to a person who has been an auditor or actuary for an approved scheme includes a reference to a person who has been an auditor or actuary for an approved scheme under the *Building Act 1972* as in force at any time.

**170 Inspection powers**

In section 130 (Inspection where approval) and section 131 (Inspection where no approval):

*this Act* includes the *Building Act 1972* as in force at any time.

*building approval* includes a building approval under the *Building Act 1972* as in force at any time.

*approved plans* include approved plans under the *Building Act 1972* as in force at any time.

*notice under part 4* includes a notice under the *Building Act 1972*, part 4 as in force at any time.

**171 Previously authorised required work**

- (1) This section applies if, before the commencement day—
  - (a) the planning and land authority authorised a building inspector to enter land and carry out building work under the *Building Act 1972* (repealed), section 9 (4); and
  - (b) the building inspector had not carried out the work.
- (2) The authorisation is taken to be an authorisation under this Act, section 133.

**173 Meaning of *building work* for pt 9**

In part 9:

*building work* includes building work under the *Building Act 1972* as in force at any time after 18 December 1998, in relation to which a building approval was issued after 18 December 1998.

**174 Limitation of liability for building actions**

For section 142—

- (a) a *certificate of completion* includes a certificate of completion under the *Building Act 1972* (repealed); and
- (b) a reference to an inspection or a certifier includes an reference to an inspection or a certifier under the *Building Act 1972* (repealed); and
- (c) a reference to a notice under section 24 (2) about the end of the certifier's appointment includes a reference to a certificate under the *Building Act 1972* (repealed), section 32 about the end of a certifier's appointment.

**175 Evidentiary certificates—s 148 (1) (c)**

- (1) A reference to document mentioned in section 148 (1) (c) includes a reference to a document purporting to be a certificate given by the building controller or registrar and certifying that a stated builder was or was not the holder of a builder's licence for stated building work or a building licence included in a stated occupation class on a stated date or during a stated period.

- (2) In this section:

*building approval*—see the *Building Act 1972* (repealed), section 5 (1).

*builder's licence*—see the *Building Act 1972* (repealed).

*building permit* means a building permit issued under the *Building Act 1972* as in force as at the time of issue of the permit.

**176 Evidentiary certificates—s 148 (1) (f)**

A reference in section 148 (1) (f) to a certificate signed by the construction occupations registrar includes a reference to—

- (a) a certificate issued by the building controller under the *Building Act 1972* as in force at the time of issue of the certificate; and
- (b) for a building erected or altered before 1 September 1972 or to which the laws repealed by the *Building Act 1972*, as in force at any time, continued to apply while that Act was in force—a certificate for the building or part of the building issued in accordance with the *Canberra Building Regulations*, regulation 69A, as in force at the time of issue.

**179 Regulations modifying pt 11**

The regulations may modify the operation of this part to make provision in relation to any matter that is not, or is not in the Executive's opinion adequately, dealt with in this part.

**180 Expiry of pt 11**

This part expires 2 years after the commencement day.

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this Act.

*Note 2* In particular, the Legislation Act, dict, pt 1, defines the following terms:

- contravene
- exercise
- function
- law
- may (see s 146)
- must (see s 146)
- national land
- planning and land authority
- Territory land
- under.

***actuary***, for an approved scheme, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

***alteration***, of a building, includes—

- (a) demolition of part of the building; and
- (b) an addition to the building.

***approval criteria***, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

***approval requirement***, for plans—see section 29.

***approved plans***—

- (a) means plans that relate to building work for which a building approval is in effect; and
- (b) includes amended plans.

**approved scheme**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**asbestos advice**—see the *Dangerous Substances Act 2004*, section 47J.

**asbestos assessment report**, for premises—see the *Dangerous Substances Act 2004*, section 47K.

**asbestos code** means the codes of practice that are approved under section 139B.

**asbestos removal control plan**, in relation to building work, means a plan, complying with the asbestos code, that provides for the management of any asbestos disturbance resulting from the building work.

**authorised insurer** means a body corporate authorised to carry on insurance business under the *Insurance Act 1973* (Cwlth), section 12.

**basic building work**—see section 10.

**bonded asbestos** means asbestos in a form where the asbestos fibres are held within another material (for example, cement) but does not include friable asbestos.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**builder**, in relation to residential building work or a residential building, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**builders licence** means a licence issued under the *Construction Occupation (Licensing) Act 2004* in the construction occupation of builder.

***building***—

- (a) for Act—see section 7; but
- (b) for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

***building action***, for part 9 (Limitation of liability)—see section 140.

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

***building code***—see section 136 (1).

***building inspector*** means a person appointed under section 128.

***building work***—

- (a) for Act—see section 6; but
- (b) for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

***certificate of occupancy*** means a certificate under section 69.

***certificate of regularisation***—see section 75 (1).

***certifier***—

- (a) for building work—means a person who is appointed to act as certifier under section 19 (Appointment of certifiers), or as government certifier under section 20 (Appointment of government certifiers), for the work; but
- (b) for division 3.2 (Certifiers and government certifiers)—see section 17.

***class***, of building, means that class of building under the building code.

***complying residential building work insurance***, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**completion day**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**cost**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 86.

**disturbs** friable asbestos—see section 10B.

**dwelling** means a class 1 or class 2 building.

**easement**, for part 4 (Stop and demolition notices)—see section 52.

**eligible person**, for division 3.2 (Certifiers and government certifiers)—see section 17.

**exempt building**—see section 12.

**fidelity certificate**, for building work, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**fidelity fund scheme**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**friable asbestos** means asbestos, whether or not contained in other material, that—

- (a) is crumbly, dusty or powdery; or
- (b) when dry, can be crumbled, pulverised or reduced to powder by hand pressure.

**Examples of friable asbestos**

- 1 sprayed asbestos coating or insulation
- 2 asbestos lagging
- 3 loose asbestos, asbestos in its raw form

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**government certifier**, for division 3.2 (Certifiers and government certifiers)—see section 17.

**handling** asbestos—to remove any doubt, **handling** asbestos (including friable asbestos) includes disturbing the asbestos.

**Land Act** means the *Land (Planning and Environment) Act 1991*.

**lease**—see the Land Act, section 159.

**licensed construction practitioner** means an entity licensed under the *Construction Occupations (Licensing) Act 2004*.

**licence number**—see the *Construction Occupations (Licensing) Act 2004*, section 23 (1) (c).

**load** includes superimposed load.

**minor maintenance work**—see section 10A.

**occupation class**—see the *Construction Occupations (Licensing) Act 2004*, dictionary.

**owner**, of 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 subdivided 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
- (c) if the land is occupied under a tenancy from the Territory or the Commonwealth—the occupier; or
- (d) if the Territory carries out or proposes to carry out building work on the land—the Territory; or
- (e) if the Commonwealth carries out or proposes to carry out building work on the land—the Commonwealth.



**owner-builder** means an entity licensed under the *Construction Occupations (Licensing) Act 2004* in the occupation class of owner-builder.

**premises** includes land or a structure and any part of an area of land or a structure.

**prescribed requirements**, for division 5.1 (Certificates of occupancy and other certificates)—see section 66.

**prudential standards**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**recognised standard** means a document declared to be a recognised standard under section 139A (1).

**removal**, of a building—

- (a) means the removal of the building from a place for re-erection, with or without further alteration, at another place; and
- (b) includes the demolition of part of the building removed or proposed to be removed.

**residential building**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**residential building work**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**special actuary**, for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—see section 84.

**specialist building work**—see section 9.

**stage**, in relation to building work, for part 3 (Building work)—see section 16.

**stop notice**—see section 53 (2).

**storey**—

- (a) means a floor level within a building that—
  - (i) is between 2 other floor levels; or
  - (ii) has a floor level above or below it; but
- (b) does not include a mezzanine level or a space that contains only 1 or more of the following:
  - (i) a lift shaft, stairway, meter room;
  - (ii) a bathroom, shower room, laundry, toilet or other sanitary compartment;
  - (iii) accommodation intended for up to 3 vehicles; and
- (c) for part 6 (Residential building—statutory warranties, insurance and fidelity certificates)—does not include a storey below the ground storey (see section 84).

**structure**—see section 8.

**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.

## 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.

### 2 Abbreviation key

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

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Building Act 2004 A2004-11**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

remainder commenced 1 September 2004 (s 2 and see Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

as amended by

#### **Criminal Code (Theft, Fraud, Bribery and Related Offences)**

##### **Amendment Act 2004 A2004-15 sch 2 pt 2.10**

notified LR 26 March 2004

s 1, s 2 commenced 26 March 2004 (LA s 75 (1))

sch 2 pt 2.10 commenced 1 September 2004 (LA s 79A)

#### **Emergencies Act 2004 A2004-28 sch 3 pt 3.1**

notified LR 29 June 2004

s 1, s 2 commenced 29 June 2004 (LA s 75 (1))

sch 3 pt 3.1 commenced 1 September 2004 (s 2 (2) and see Building Act 2004 A2004-11, s 2 and Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

#### **Dangerous Substances (Asbestos) Amendment Act 2004 A2004-66 sch 1 pt 1.1**

notified LR 31 August 2004

s 1, s 2 commenced 31 August 2004 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 September 2004 (s 2 (2))

as modified by

#### **Building Regulations 2004 SL2004-34 (as am by SL2004-46 reg 5; A2005-34 amdt 1.21)**

taken to have been notified LR 26 March 2004 (A2004-11, s 177 (3) (a))

reg 1 taken to have commenced 26 March 2004 (LA s 75 (1))

remainder commenced 1 September 2004 (A2004-11, s 177 (3) (b))

**Building Amendment Regulations 2004 (No 1) SL2004-46 reg 5**

notified LR 8 September 2004

reg 1, reg 2 commenced 8 September 2004 (LA s 75 (1))

reg 5 commenced 9 September 2004 (reg 2)

*Note* These regulations only amend the Building Regulations 2004 SL2004-34.

**Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.7**

notified LR 12 May 2005

s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))

sch 3 pt 3.7 commenced 2 June 2005 (s 2 (1))

**Construction Occupations Legislation Amendment Act 2005  
A2005-34 sch 1 pt 1.1, amdt 1.21**

notified LR 6 July 2005

s 1, s 2 commenced 6 July 2005 (LA s 75 (1))

sch 1 pt 1.1, amdt 1.21 commenced 27 July 2005 (s 2)

**Construction Occupations Legislation Amendment Act 2006  
A2006-15 sch 1 pt 1.1**

notified LR 6 April 2006

s 1, s 2 commenced 6 April 2006 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 September 2006 (s 2 and CN2006-19)

**Asbestos Legislation Amendment Act 2006 A2006-16 sch 1 pt 1.1 (as  
am by A2006-24 s 4)**

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

sch 1 pt 1.1 commenced 1 July 2006 (s 2 (1) as am by A2006-24 s 4)

**Asbestos Legislation Amendment Act 2006 (No 2) A2006-24**

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

remainder commenced 19 May 2006 (s 2)

*Note* This Act only amends the Asbestos Legislation Amendment Act 2006 A2006-16.

**4 Amendment history****Commencement**

s 2 om LA s 89 (4)

## Endnotes

4 Amendment history

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**Meaning of *minor maintenance work***

s 10A ins A2006-16 amdt 1.1

**Meaning of *disturbs friable asbestos***

s 10B ins A2006-16 amdt 1.1

**Application of Act to buildings and building work**

s 13 sub A2005-34 amdt 1.1  
am A2006-16 amdt 1.2, amdt 1.3

**Application of pt 3 to building work**

s 15 sub A2005-34 amdt 1.2; A2006-16 amdt 1.4

**Building approval applications**

s 26 am A2006-16 amdt 1.5

**Issue of building approvals**

s 28 am A2006-16 amdt 1.6

**Approval requirements**

s 29 am A2005-34 amdt 1.3, amdt 1.4; A2006-16 amdt 1.7;  
A2006-15 amdt 1.1

**Requirements for carrying out building work**

s 42 am A2005-20 amdt 3.86; A2005-34 amdt 1.5; A2006-16  
amdt 1.8

**Contravention of requirements for building work involving asbestos**

s 42A ins A2004-66 amdt 1.1  
am A2005-34 amdt 1.6; A2006-16 amdt 1.8, amdt 1.9

**Complying with building code**

s 49 am A2005-34 amdt 1.7

**Preconditions for s 62 notice**

s 61 am A2005-34 amdt 1.8; A2006-15 amdt 1.2

**Application of pt 5 to building work**

s 65 sub A2005-34 amdt 1.9; A2006-16 amdt 1.10

**Meaning of *prescribed requirements* for div 5.1**

s 66 sub A2005-34 amdt 1.10  
am A2006-16 amdt 1.11

**Action by registrar on unauthorised use of building etc**

s 79 hdg sub A2006-16 amdt 1.12

**Application of pt 6 to building work**

s 83 sub A2005-34 amdt 1.11; A2006-16 amdt 1.13

**Statutory warranties**

s 88 am A2005-34 amdt 1.12; A2006-16 amdt 1.14

**Statutory warranties**

s 134 am A2006-16 amdt 1.15

**Obstructing building inspector**

s 135 om A2004-15 amdt 2.25

**Building code and recognised standards**

pt 8 hdg sub A2006-16 amdt 1.16; A2006-15 amdt 1.3

**Building code and recognised standards**

div 8.1 hdg ins A2006-16 amdt 1.16

**Building code**

s 136 am A2004-28 amdt 3.1

**Recognised standards**

s 139A ins A2006-15 amdt 1.4

**Asbestos code**

div 8.2 hdg ins A2006-16 amdt 1.17

**Approval of asbestos code**

s 139B ins A2006-16 amdt 1.17

**Transitional**

pt 11 hdg exp 1 September 2006 (s 180)

**Definitions for pt 11**

s 153 exp 1 September 2006 (s 180)

**Things required to be given to building controller or deputy**

s 154 exp 1 September 2006 (s 180)

**Application of Act to Territory building work contracted before 1 July 2001**

s 155 exp 1 September 2006 (s 180)

**Exempt buildings**

s 156 exp 1 September 2006 (s 180)

**Certifiers**

s 157 exp 1 September 2006 (s 180)

**Application to building work whenever happening**

s 158 exp 1 September 2006 (s 180)

**Application to contraventions of Act whenever happening**

s 159 exp 1 September 2006 (s 180)

**Requirements to do things by times**

s 160 exp 1 September 2006 (s 180)

**Canberra Sewerage and Water Supply Regulations**

s 161 exp 1 September 2006 (s 180)

## Endnotes

4 Amendment history

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### **Government buildings—application for fitness certificate**

s 162 [exp 1 September 2006 \(s 180\)](#)

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

s 163 [exp 1 September 2006 \(s 180\)](#)

### **Meaning of *builder* for pt 6**

s 164 [exp 1 September 2006 \(s 180\)](#)

### **Certificate of regularisation**

s 164A ins as mod SL2004-46 reg 5  
om as mod A2005-34 amdt 1.21  
ins A2005-34 amdt 1.13  
[exp 1 September 2006 \(s 180\)](#)

### **Application of s 88 (2) (b)**

s 164B ins as mod SL2004-46 reg 5  
om as mod A2005-34 amdt 1.21

### **Prudential standards**

s 164C ins as mod SL2004-46 reg 5  
[exp 1 September 2006 \(s 180\)](#)

### **Building inspectors and identity cards**

s 165 [exp 1 September 2006 \(s 180\)](#)

### **Approved scheme**

s 166 [exp 1 September 2006 \(s 180\)](#)

### **Existing auditors and actuaries**

s 167 [exp 1 September 2006 \(s 180\)](#)

### **Application for approval of appointment**

s 168 [exp 1 September 2006 \(s 180\)](#)

### **Giving information under s 118**

s 169 [exp 1 September 2006 \(s 180\)](#)

### **Inspection powers**

s 170 [exp 1 September 2006 \(s 180\)](#)

### **Previously authorised required work**

s 171 [exp 1 September 2006 \(s 180\)](#)

### **Australian Capital Territory Appendix to the Building Code of Australia**

s 172 am A2005-34 amdt 1.14, amdt 1.15  
[exp 27 July 2005 \(s 172 \(3\)\)](#)

### **Meaning of *building work* for pt 9**

s 173 [exp 1 September 2006 \(s 180\)](#)

### **Limitation of liability for building actions**

s 174 [exp 1 September 2006 \(s 180\)](#)



**Evidentiary certificates—s 148 (1) (c)**s 175 [exp 1 September 2006 \(s 180\)](#)**Evidentiary certificates—s 148 (1) (f)**s 176 [exp 1 September 2006 \(s 180\)](#)**Building Regulations 2004**s 177 [exp 1 September 2004 \(s 177 \(5\)\)](#)**Building (Bushfire Emergency) Regulations 2004**s 178 [exp 1 September 2004 \(s 178 \(5\)\)](#)**Regulations modifying pt 11**s 179 [exp 1 September 2006 \(s 180\)](#)**Expiry of pt 11**s 180 [exp 1 September 2006 \(s 180\)](#)**Repeals**pt 12 hdg [om LA s 89 \(3\)](#)**Legislation repealed**s 181 [om LA s 89 \(3\)](#)**New Building Regulations**sch 1 [om R1 LA](#)**New Building (Bushfire Emergency) Regulations**sch 2 [om R1 LA](#)**Dictionary**

dict

def **asbestos advice** ins A2006-16 amdt 1.18

def **asbestos assessment report** ins A2006-16 amdt 1.18

def **asbestos code** ins A2006-16 amdt 1.18

def **asbestos removal control plan** ins A2006-16 amdt 1.18

def **bonded asbestos** ins A2006-16 amdt 1.18

def **disturbs** ins A2006-16 amdt 1.18

def **friable asbestos** ins A2006-16 amdt 1.18

def **handling** ins A2006-16 amdt 1.18

def **minor maintenance work** ins A2006-16 amdt 1.18

def **premises** ins A2006-16 amdt 1.18

def **recognised standard** ins A2006-15 amdt 1.5

## Endnotes

### 5 Earlier republications

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#### 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. Electronic and printed versions of an authorised republication are identical.

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R1 1 Sept 2004	1 Sept 2004– 1 Sept 2004	A2004-66	new Act and amendments by A2004-15, A2004-28 and A2004-66
R2 2 Sept 2004	2 Sept 2004– 8 Sept 2004	A2004-66	commenced expiry
R3 9 Sept 2004	9 Sept 2004– 1 June 2005	A2004-66	modifications by SL2004-34 as amended by SL2004-46
R4 2 June 2005	2 June 2005– 26 July 2005	A2005-20	amendments by A2005-20
R5 27 July 2005	27 July 2005– 27 July 2005	A2005-34	amendments by A2005-34
R6 28 July 2005	28 July 2005– 30 June 2006	A2005-34	commenced expiry
R7 1 July 2006	1 July 2006– 31 Aug 2006	A2006-24	amendments by A2006-16 as amended by A2006-24

**6 Modifications of republished law with temporary effect**

The following modifications have not been included in this republication:

<b>Building Regulation 2004 SL2004-34 s 32 (as am by SL2004-46 reg 5; A2005-34 amdt 1.21)</b>
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**32 Modifications of Act, pt 11—Act, s 179**

The Act is modified by inserting the following section:

**164C Prudential standards**

The prudential standards under the *Building Act 1972* (repealed) are taken to be the prudential standards under this Act.

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