



Australian Capital Territory

Building Legislation Amendment Act 2007

A2007-26

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J2007-204

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au



Australian Capital Territory

Building Legislation Amendment Act 2007

A2007-26

An Act to amend legislation relating to building because of the enactment of the *Planning and Development Act 2007*, and for other purposes

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

J2007-204

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Building Legislation Amendment Act 2007*.

2 Commencement

- (1) This Act (other than schedule 1, part 1.5) commences—
- (a) on a day fixed by the Minister by written notice; or
 - (b) if not earlier commenced, on the commencement of the *Planning and Development Act 2007*, section 428 (Repeals).

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

- (2) Schedule 1, part 1.5 commences on the commencement of the *Planning and Development Act 2007*, part 11.2 (Complaints about controlled activities).
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended—sch 1

This Act amends the legislation mentioned in schedule 1.

Schedule 1 Legislation amended

(see s 3)

Part 1.1 Building Act 2004

[1.1] Section 7

substitute

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) fixtures; and
- (e) 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 being disassembled or removed from associated components including a footing, pier, stump, rigid annexe or an attached building or similar; or
- (c) if on the ground and not inside a building—paving, a driveway or a road; or
- (d) a surface-level carpark that is not inside a building; or
- (e) a ground treatment; or
- (f) vegetation; or
- (g) ground excavations or fillings; or
- (h) fittings, other than fittings included in a building—
 - (i) to make the building comply with the building code; or
 - (ii) that cause the building to not comply with the building code; or
- (i) fixtures that are not integral to the building, but are fixed to the building to prevent theft or for some other reason not related to the building; or
- (j) something exempted under the regulations.

Examples—par (h)

- 1 An existing house was built when there was no requirement for the house to satisfy any energy efficiency requirements or thermal insulation requirements. Bulk thermal insulation batts are included in an extension to the house to comply with the building code's energy efficiency provisions which apply to the extension. The opportunity is taken to include batts in the ceiling of the existing house. The batts sit loosely on the ceiling and are not fixed to the building.

The batts are part of the extension, because they are regulated under the building code for the extension. However, they are not part of the existing house, because they are not fixtures, and are not regulated under the building code in relation to the existing house, unless they are needed in the existing house to make the extension comply with the building code.

- 2 Some light fittings in an office building are fitted with energy efficient lamps to comply with the energy efficiency provisions of the building code. The lamps are part of the building. However, other lamps that are not relied on to comply with the building code are not part of the building unless another provision brings them within the definition of *building* for the Act.
- 3 An office building has cubicles that are not fixed to the building. The cubicles have partition walls, are part of the fit-out for the building and are shown in the building approval. Some cubicles are placed where they obstruct a fire evacuation path in a way that prevents compliance with the building code. Those cubicles are part of the building. The others are not unless another provision brings them within the definition of *building* for the Act.
- 4 A warehouse is being extended. The warehouse stores furniture. Some partitions for cubicles stored in the warehouse impede fire evacuation paths relied on for the extension to comply with the fire evacuation provisions of the building code. The partitions cause the extension to not comply with the building code. The partitions are stored goods and not fittings, so they are not part of the building unless another provision of the Act brings them within the definition of *building* for the Act.
- 5 An apartment building has a surface-level carpark, part of which is below the apartments and part of which is adjacent to the building with no building above, below or within it. The part of the surface-level carpark below the apartments is part of the building or a separate building, depending on the building code. The other part of the carpark is not part of the building unless another provision of the Act brings it within the definition of *building* for the Act.
- 6 A concrete floor slab for a home is being poured together with a floor slab for a garage and a surface-level driveway to the garage. The floor slabs are parts of the building. The surface-level driveway is not part of the building unless another provision of the Act brings it within the definition of *building* for the Act.

- (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

7A Meaning of *site work*

In this Act:

site work is development that is—

- (a) building work; and
- (b) work other than building work that—
 - (i) physically affects the place (the *building site*) where the building work is being carried out; and
 - (ii) if not carried out at the building site, is carried out near, and connected with, the building site.

Examples of site work

- 1 putting up temporary fencing to protect trees growing on a road verge
- 2 building a house
- 3 damaging or removing a significant tree
- 4 laying paving for driveways and parking areas

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).

[1.2] Section 10A

omit

[1.3] Section 12, note

substitute

Note 1 **Exempt building** is used to narrow the application of pt 3, pt 5 and pt 6.

Note 2 A regulation may also exempt a building from the application of this Act or a part of the Act (see s 152 (1A)).

[1.4] Section 13

omit

[1.5] Section 14

omit

[1.6] Section 15 (2) (b)

substitute

(b) the work is not exempt from this subsection under a regulation.

[1.7] Section 16

omit

[1.8] Division 3.2, new note

insert

Note about application—div 3.2

This division applies to building work and other site work.

[1.9] Section 17, definitions of *eligible person* and *government certifier*

substitute

eligible entity, for building work—see section 18.

government certifier, for building work, means an entity that is appointed under section 20 (4) for the work.

[1.10] Section 18

omit everything before paragraph (a), substitute

18 Eligibility for appointment—certifiers and government certifiers

A licensed construction practitioner (an *eligible entity*) is eligible to be appointed certifier or government certifier for building work if the construction practitioner—

[1.11] Section 19

substitute

19 Appointment of certifiers—work not begun

The owner of land where it is proposed to carry out building work may appoint an eligible entity as certifier for the work.

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

19A Appointment of certifiers—work begun

- (1) This section applies if—
 - (a) building work has begun on a parcel of land; and
 - (b) the building work has been carried out in accordance with this part.
- (2) The owner of land may appoint an eligible entity as certifier for the building work.

19B Automatic suspension

An entity's appointment as certifier is suspended if the entity stops being an eligible entity.

19C Ending suspensions

- (1) This section applies if an entity's appointment as certifier is suspended.
- (2) The entity's suspension ends when—
 - (a) the entity becomes an eligible entity; or
 - (b) the entity's appointment as a certifier ends.

19D Ending appointments

- (1) An entity's appointment as certifier for building work on land ends if—
 - (a) the owner of the land revokes the appointment by written notice given to the entity; or
 - (b) the entity resigns the appointment; or
 - (c) the entity's appointment has been suspended for a single period of 3 months or longer; or
 - (d) each of the following apply:
 - (i) a certificate under part 5 (Building occupancy) is issued for the building work;
 - (ii) the certificate is not subject to a condition that requires building work to be done;
 - (iii) there is no part of the building work for which a certificate under part 5 has not been issued; or
 - (e) it has been 5 years since the certifier was last appointed as certifier for the building work.
- (2) An entity may resign an appointment as certifier only—
 - (a) with the written approval of the construction occupations registrar; and

- (b) by written notice given to the owner of the land.
- (3) The construction occupations registrar may approve the resignation of the entity as certifier only if satisfied that—
 - (a) the entity can not exercise the entity’s functions as a certifier in relation to the building work because of mental or physical incapacity; or
 - (b) the entity has arranged for another certifier to take over the entity’s functions as a certifier in relation to the building work; or
 - (c) it is otherwise appropriate to approve the resignation.
- (4) An appointment that ends under subsection (1) (c) ends—
 - (a) for a suspension for a single period of 3 months—on the day after the end of the 3-month period; or
 - (b) for a suspension for a single period of longer than 3 months—on the day after the end of the first 3 months of the period.

19E Appointment of certifier after appointment ends under s 19D (1) (e)

- (1) This section applies if an eligible entity’s appointment as certifier for building work on land (the *first appointment*) ends under section 19D (1) (e).
- (2) The owner of the land may appoint the entity as certifier for the building work (the *second appointment*).
- (3) If the certifier is an eligible entity during all of the relevant period, the second appointment is taken—
 - (a) to begin on the day after the day the first appointment ends; and
 - (b) to be a continuation of the first appointment, not a new appointment.

- (4) However, for section 19D (1) (e), the second appointment is taken to be the last appointment if no appointment has been made after it.
- (5) In this section:
- relevant period* means the period that—
- (a) begins on the day after the day the first appointment ends; and
- (b) ends on the day before the day the second appointment is made.

[1.12] Section 20 (2) (c)

omit

section 19

substitute

section 19D (Ending appointments)

[1.13] Section 21

substitute

21 Power to require building documents

- (1) A government certifier appointed for building work may, by written notice, require the entity that was the certifier (or last certifier) for the building work to give the government certifier any building document the entity has in relation to the work within the period stated in the notice.
- (2) The period stated in the notice must not be less than 2 weeks after the day the notice is given.

- (3) A person commits an offence if the person contravenes a notice given to the person under subsection (1).
Maximum penalty: 50 penalty units.
- (4) Each partner commits an offence if the partnership contravenes a notice given to the partnership under subsection (1).
Maximum penalty: 50 penalty units.
- (5) It is a defence to a prosecution for an offence against subsection (4) if the partner proves—
- (a) that—
 - (i) the partner did not know about the contravention of the subsection involved in the offence; and
 - (ii) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (b) that the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.
- (6) An offence against subsection (3) or (4) is a strict liability offence.
- (7) In this section:
building document means a document mentioned in section 48 (2) (Completion of building work).

[1.14] Section 23 (4)

substitute

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

[1.15] Section 24

substitute

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) after the issue, either—
 - (i) an entity is appointed certifier for the work; or
 - (ii) an entity's appointment as certifier for the work ends under section 19D (1) (a) or (b).
- (2) Within 7 days after the day the entity is appointed or the appointment ends, the entity 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.

[1.16] New sections 25A to 25C

in division 3.3, insert

25A Overview—div 3.3

- (1) This division deals with building approvals for building work carried out on land and how the owner of the land may apply for building approval.
- (2) Section 27 to section 30A affect the issue of building approvals as follows:
- (a) section 27 provides that a certifier must not consider an application for building approval unless, amongst other things, the accompanying plans comply with the requirements prescribed by regulation;

- (b) section 28 provides that an application for building approval must be approved if the plans meet each approval requirement under section 29, and deals with how the approval is given;
- (c) section 28A sets out how a building approval is marked on plans;
- (d) section 29 sets out the approval requirements for the plans;
- (e) section 30 and section 30A set out when an application for building approval must be refused.

25B Why are building approvals necessary?

- (1) A building approval is necessary because—
 - (a) section 42 (1) (d) requires building work to be carried out in accordance with approved plans (which may have to comply with this Act in relation to asbestos); and
 - (b) approved plans are plans that relate to building work for which a building approval is in effect.
- (2) Section 42 provides that building work must not be carried out except in accordance with the requirements set out in the section.
- (3) Not complying with section 42, for example—
 - (a) is an element of offences against section 42A (Contravention of requirements for building work involving asbestos) and section 51 (Carrying out building work in contravention of s 42); and

- (b) is a ground for giving a notice to a building licensee under section 44 (2) (a) (Stage inspections); and
- (c) is a ground for giving a notice to carry out building work under section 62 (see s 61 (b)).

Note 1 Not complying with s 42 may also be grounds for disciplinary action under the *Construction Occupations (Licensing) Act 2004*.

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).

25C Building approvals apply to building work

To remove any doubt—

- (a) a building approval only relates to building work shown on the approved plans under the approval, other than building work—
 - (i) identified in the plans as not forming part of the approval; and
 - (ii) on a parcel of land other than a parcel to which the application for approval relates; and
- (b) the issue of a building approval does not indicate that carrying out work other than building work identified in the plans is consistent with the law or lease provisions applying to carrying out the work.

Example of work other than building work shown in approved plans

Approved plans show a multi-unit townhouse development. As well as showing the townhouse buildings, the plans include landscape plans and structural engineer's plans for structural elements, brickwork screen walls, paling fencing and reinforced concrete pedestrian surface paving. The building approval only relates to the townhouse buildings (including their structural elements), the retaining walls, the screen walls and the fencing.

Example of building work on parcel of land other than parcel to which application relates

- 1 Approved plans show a shop which is proposed to have an awning over the footpath in front of the shop. The awning is over unleased territory land, while the rest of the shop is on leased land. An application for building approval may only be made by the owner of the parcel of land for approval to carry out building work on the land. If only the owner of the leased land applies for building approval and the building approval is issued, the building approval can relate only to building work on the leased land and not to the awning. However, if the Territory and the owner of the leased land jointly apply for building approval and the approval is issued, the approval can relate to building work on both the awning and the leased land. But, if the Territory grants the applicant a permit for the awning to be over a public place, the permit-holder is, under this Act, taken to be the owner and may apply for building approval for all the building work, including the awning.
- 2 Approved plans show proposed demolition of a fence and a party wall. The wall and fence straddle a common boundary shared by 2 land parcels. The building approval can not operate in relation to only 1 of the parcels. If building approval is required for the demolition, it must relate to both parcels of land.

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).

[1.17] New sections 26A to 26C

insert

26A Applications for building approval—certifier may require further information

- (1) This section applies if—
 - (a) the owner of a parcel of land (the *applicant*) has applied to a certifier for building approval for building work to be carried out on the land; and
 - (b) further information is required for the certifier to be able to decide the application without personally inspecting the land where the building work is to be carried out; and

- (c) the applicant and the certifier have not agreed that the certifier will obtain the further information.
- (2) The certifier may, by written notice, ask the applicant to give the certifier stated further information in relation to the application if the certifier believes on reasonable grounds that the information will help the certifier to decide the application without personally inspecting the land where the building work is to be carried out.

Examples of what certifier may ask for

- 1 photos, including ground, aerial, or satellite photos of the land or anything on, over or near the land
- 2 approval, permission or tenure documents, including leases, licences, permits, statutory approvals or advices
- 3 topographical information, including ground surface height contours, for the land and surroundings

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) To remove any doubt, this section does not entitle a certifier to require—
- (a) photographs to be taken by someone other than the applicant;
or
 - (b) photographs to be taken using equipment of the applicant's choice at or near ground level; or
 - (c) further information if—
 - (i) the certifier has, or has reasonable access to, suitable information that allows the certifier to decide the application without personally inspecting the land where the building work is to be carried out; or

- (ii) a territory law requires the certifier to personally obtain or be given the information.

Examples of suitable information certifier has or has reasonable access to

- 1 The internet website www.actmapi.act.gov.au provides aerial photographs and topographical information including ground contours for some ACT areas. If the land to which an application relates is covered by the website, the photographs and contours have sufficient information, and are accurate and recent enough, to decide the application in relation to tree and ground-height related matters, the certifier may not require further information or documents by way of photographs or topographical information in relation to trees and ground heights.
- 2 A certifier may verify land tenure and permit and statutory approval matters by contacting the statutory custodians of the information to a sufficient degree to decide the application in relation to those matters. The certifier may not require further information in relation to those matters.
- 3 The land to which an application relates is covered by www.actmapi.act.gov.au but, because the slope of the land to be built on is steeper than would be adequately shown on the website, the certifier does not have suitable information to allow the certifier to decide the application without personally inspecting the land. Another website has some topographical information on the land, but it is not of sufficient resolution, or recent enough, to be relied on by the certifier in relation to ground heights to decide the application. The certifier may require further information in relation to ground heights.

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) For this section, a certifier that is a partnership inspects land personally if any partner inspects the land.

26B Contents of request for further information

- (1) A request under section 26A must—
 - (a) state the period within which the further information asked for must be provided; and
 - (b) if the further information is not a document—state that the further information must be provided in writing; and

- (c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the certifier may refuse to issue a building approval under section 28; and
 - (d) state that, despite the applicant and certifier having previously not agreed that the certifier would obtain the further information, the applicant and certifier may agree that the certifier will obtain the information.
- (2) The request may require the applicant to verify all or part of any information provided by statutory declaration.
 - (3) The period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.
 - (4) The certifier may, on application before the end of the period stated under subsection (1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

Note The certifier may extend the period within which further information must be provided after the end of the period being extended (see Legislation Act, s 151C (3)).

26C Applications for building approval—effect of failure to provide further information

- (1) This section applies if—
 - (a) a certifier has asked for further information under section 26A in relation to an application; and
 - (b) the applicant has not provided some or all of the information in accordance with the request; and
 - (c) the applicant and the certifier have not agreed that the certifier will obtain the further information.

- (2) The certifier may refuse to issue a building approval under section 28.

[1.18] Section 27 (1) (b)

substitute

- (b) if—
- (i) a regulation prescribes that an entity's advice on the application must be sought—the entity's advice has been sought; or
 - (ii) a regulation prescribes that an entity must be consulted about the application—the entity has been consulted; or
 - (iii) a regulation prescribes that an entity's consent to, or approval of, the application is required—the entity has consented to, or approved, the application; or
 - (iv) a consent or approval prescribed by regulation contains a condition that must be complied with—the certifier is satisfied on reasonable grounds that the condition has been complied with; and

[1.19] Section 28 (1) (c)

substitute

- (c) section 30 (When building approvals not to be issued—general) and section 30A (When building approvals not to be issued—advice on referral) do not prevent the issue of the approval; and
- (d) if there is a written agreement between the certifier and applicant for the payment of an amount for deciding the application and the agreement states that the amount is to be paid before the application is decided—the amount has been paid.

[1.20] Section 28 (2)

substitute

- (2) As soon as practicable after receiving the application for building approval, the certifier must—
- (a) take all reasonable steps to get the information the certifier reasonably needs to decide the application; and
 - (b) if satisfied on reasonable grounds that the plans meet each applicable approval requirement under section 29 and is not prevented from being issued under section 30 or section 30A—
 - (i) prepare a notice (the ***building approval certificate***) certifying what approval requirements apply to the application and why the building approval is not prevented from being issued; and
 - (ii) issue the building approval and give the building approval certificate to the applicant.

Note 1 If a form is approved under s 151 for this provision, the form must be used.

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

- (2A) To remove any doubt, a certifier is not required to decide an application for building approval if the applicant has asked the certifier to delay making the decision, whether to allow the applicant to negotiate with an entity to which the application has been referred or for any other reason.

[1.21] Section 28 (3) to (7)

substitute

28A Marking building approval

- (1) If a certifier issues a building approval under section 28—
- (a) the 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, date and mark the certifier's 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.

- (2) 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 (1) (a), mark each page of the plans with—
- (a) the certifier's initials and licence number and the date; and
 - (b) an indication that the approval, or part of the approval, is in a separate document.
- (3) 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 (1) (b) (ii), mark each page of the plans with an indication that the relevant documents are separate.

- (4) 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) the building approval certificate; and
 - (iii) a copy of the relevant plans; and
 - (iv) 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
 - (v) 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.

- (5) 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.

[1.22] Section 29 (1) (b)

substitute

- (b) if the plans are for the erection or alteration of a building—the building, if erected or altered in accordance with the plans, will comply with this Act;
- (ba) if the plans are for the demolition of a building—demolition in accordance with the plans will comply with this Act;

[1.23] New section 29 (1) (f)

insert

- (f) if the plans show site work that, if carried out in accordance with the plans, might be exempt under the *Planning and Development Act 2007* from requiring development approval—
 - (i) the plans show all the information necessary to establish that the site work will be exempt; or
 - (ii) development approval for the site work is attached.

Example

Plans show a proposed residence and garage, and development approval has not been given. The information in the plans in relation to the residence and garage suggests that the residence and garage might be exempt from the requirement for development approval.

However, the territory plan sets out other requirements that must be satisfied before the proposed residence and garage will be exempt from requiring development approval, for example, requirements in relation to trees, driveways, car parking, colours and the amount of the land parcel that must not contain certain buildings.

The plans must show all the information necessary for the certifier to be satisfied that all the requirements for the proposed residence and garage to be exempt from requiring development approval have been met, including the requirements in relation to trees, driveways and other matters related to the residence and garage in the territory plan.

If development approval is given for the proposed residence and the garage, then the plans do not need to include the information necessary to establish that they are exempt from requiring development approval.

Note 1 Section 30 and s 30A prevent building approval from being given in some cases.

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).

[1.24] Sections 30 and 31

substitute

30 When building approvals not to be issued—general

- (1) A certifier must not issue a building approval if carrying out the site 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 design or siting of a proposed building or a building as proposed to be altered; or
 - (b) the material used in the building; or
 - (c) the proposed use of the building as determined by the class of building; or
 - (d) the number of buildings on the land.

Example

Under the *Planning and Development Act 2007*, s 247 leased land must not be used for a purpose other than a purpose authorised by the lease. A lease provides that the leased land may be used only for a single dwelling.

If an application for building work on the land contains plans for 2 dwellings in a single building, carrying out the site work will result in a contravention of the lease and therefore the *Planning and Development Act 2007*. Accordingly, a certifier must not issue the building approval.

If an application for building work on the land indicates that 1 room is to be used for a home office, and part of the lounge room is to contain a bar area, the building may still be used as a dwelling and a certifier could issue building approval, even though conducting a home business may require development approval.

Note 1 The power to make a statutory instrument includes the power to amend or repeal the instrument in the same way (see Legislation Act, s 46).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 3 See the sustainability guidelines made under s 143.

Note 4 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) A regulation may prescribe when, apart from this section, a building approval must not be issued.

(3) In this section:

design, of a building, includes anything affecting the appearance of the building.

30A When building approvals not to be issued—advice on referral

(1) This section applies to an application to a certifier for building approval if—

(a) a regulation requires the advice of an entity to be sought on the application; and

(b) the entity's advice has been sought as prescribed by regulation; and

(c) issuing the approval or carrying out work in accordance with the approval would be inconsistent with the advice; and

- (d) the entity has not—
 - (i) withdrawn the advice; or
 - (ii) changed or added to the advice so that issuing the approval or carrying out work in accordance with the approval would not be inconsistent with the advice as changed or added to.
- (2) The certifier must not issue the building approval unless satisfied on reasonable grounds that—
 - (a) further information or amendments of the application address the advice of the entity; or
 - (b) the advice relates to an area other than an area that the entity giving the advice is authorised by regulation to give advice on.
- (3) A regulation may prescribe the following:
 - (a) when the advice of an entity must be sought on an application to a certifier for building approval;
 - (b) if an entity's advice must be sought on an application to a certifier for building approval—the advice the entity may give;
 - (c) anything else in relation to the advice.

31 Application for approval of amended 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 has amended the plans for the work.
- (2) The owner may apply, in writing, to a certifier to approve the amended plans.

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

[1.25] Section 32 (2)

omit

plans as amended

substitute

amended plans

[1.26] Section 32 (2) (b)

substitute

- (b) the application would not be refused because of section 30 (When building approvals not to be issued—general) or section 30A (When building approvals not to be issued—advice on referral) if it were an application for a building approval; and

[1.27] Section 32 (3)

omit

plans as amended

substitute

amended plans

[1.28] New sections 32A to 32C

insert

**32A Application for approved plans amendment—certifier
 may require further information**

- (1) This section applies if—
- (a) the owner of a parcel of land (the *applicant*) has applied to a certifier under section 31 to approve amended plans; and

- (b) further information is required for the certifier to be able to decide the application without personally inspecting the land where the building work is being, or is to be, carried out; and
 - (c) the applicant and the certifier have not agreed that the certifier will obtain the further information.
- (2) The certifier may, by written notice, ask the applicant to give the certifier stated further information in relation to the application if the certifier believes on reasonable grounds that the information will help the certifier to decide the application without personally inspecting the land where the building work is being, or is to be, carried out.
- (3) To remove any doubt, this section does not entitle a certifier to require—
- (a) photographs to be taken by someone other than the applicant; or
 - (b) photographs to be taken using equipment of the applicant's choice at or near ground level; or
 - (c) further information if—
 - (i) the certifier has, or has reasonable access to, suitable information that allows the certifier to decide the application without personally inspecting the land where the building work is to be carried out; or
 - (ii) a territory law requires the certifier to personally obtain or be given the information.
- Note* For examples of suitable information a certifier has or has reasonable access to, see s 26A (Applications for building approval—certifier may require further information).
- (4) For this section, a certifier that is a partnership inspects land personally if any partner inspects the land.

32B Contents of request for further information

- (1) A request under section 32A must—
 - (a) state the period within which the further information asked for must be provided; and
 - (b) if the further information is not a document—state that the further information must be provided in writing; and
 - (c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the certifier may refuse to approve the amended plans to which the application relates; and
 - (d) state that, despite the applicant and certifier having previously not agreed that the certifier would obtain the further information, the applicant and certifier may agree that the certifier will obtain the information.
- (2) The request may require the applicant to verify all or part of any information provided by statutory declaration.
- (3) The period stated under subsection (1) (a) must be at least 20 working days or, if a shorter period is prescribed by regulation, the shorter period.
- (4) The certifier may, on application before the end of the period stated under subsection (1) (a), extend the period within which the further information must be provided once only, for a period not longer than 20 working days.

Note The certifier may extend the period within which further information must be provided after the end of the period being extended (see Legislation Act, s 151C (3)).

32C Approved plans amendment—effect of failure to provide further information

- (1) This section applies if—
 - (a) a certifier has asked for further information under section 32A in relation to an application; and
 - (b) the applicant has not provided some or all of the information in accordance with the request; and
 - (c) the applicant and the certifier have not agreed that the certifier will obtain the further information.
- (2) The certifier may refuse to approve the amended plans to which the application relates.

[1.29] Section 33 (1)

omit

plans as amended

substitute

amended plans

[1.30] Section 33 (1) (b)

substitute

- (b) the certifier must initial, date and mark the certifier's licence number on each page of the plans.

[1.31] Section 33 (2)

substitute

- (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 approval under subsection (1) (a), mark each page of the plans with—
- (a) the certifier’s initials and licence number and the date; and
 - (b) an indication that the approval, or part of the approval, is in a separate document.

[1.32] Section 35

substitute

35 Land to be used in accordance with lease and development approval

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; or
- (c) development on the land for which development approval is required unless there is the required development approval; or
- (d) if development on the land requires development approval—development on the land contrary to a required development approval.

[1.33] Section 36 (1) (b)

substitute

- (b) any development period applying to the building work.

[1.34] New section 36 (3A)

insert

- (3A) To remove any doubt, a building approval, or part of the building approval, does not operate while the approval or part is suspended.

Note A building approval, or part of the approval, may be suspended under s 53.

[1.35] New section 36A

in division 3.3, insert

36A Requirement to give advice in relation to proposed building work

- (1) This section applies if—
- (a) an entity's advice on an application for building approval has been sought as prescribed by regulation; and
- Note* See s 30A (3) (When building approvals not to be issued—advice on referral).
- (b) either—
 - (i) the entity has given advice on the application; or
 - (ii) has not given advice within the time prescribed for giving the advice; and
 - (c) the certifier is required under section 28 to issue a building approval on the application; and
 - (d) the certifier issues the building approval; and
 - (e) the approved plans for the building approval are substantially consistent with the advice.
- (2) For this section, if an entity fails to give advice sought within the time prescribed by regulation in relation to an application for building approval referred to the entity, the entity is taken to have given advice that the entity supports the application.

- (3) The entity must not act inconsistently with the advice in relation to the application for building approval unless—
- (a) further information in relation to the building work proposed in the application comes to the entity's attention (other than information mentioned in subsection (4)); and
 - (b) the entity did not have the further information when the entity gave the advice; and
 - (c) the further information is relevant to the advice the entity gave; and
 - (d) the entity would have given different advice if the entity had the further information before giving the advice.
- (4) Subsection (3) (a) does not apply to further information in relation to building work proposed in the application for building approval if the information—
- (a) was not required in the building approval application; and
 - (b) is required by the entity after the application is approved; and
 - (c) is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.
- (5) For this section, an entity *acts inconsistently* with advice in relation to an application for building approval if—
- (a) the advice is that the entity will issue or give an approval or other thing in relation to the building work; and
 - (b) the application is approved; and
 - (c) the entity—
 - (i) does not issue or give the approval or other thing consistent with the advice; or

- (ii) issues or gives the approval or other thing in a way, or subject to a condition, that prevents the applicant undertaking the building work approved.

Example of advice

that the entity will agree to the erection of a building over a buried sewer main

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).

- (6) Also for this section, an entity *acts inconsistently* with advice in relation to an application if—
 - (a) the advice is that an activity to which the application relates does not require a particular authorisation (however described); and
 - (b) the entity prosecutes someone, or takes other compliance action, in relation to the activity because the activity is carried out without the particular authorisation.

Example of acting inconsistently

An Act prohibits activity A without an approval. The entity responsible for administering the Act gives advice sought as prescribed by regulation (see s 30A (3)) that the activity (activity B) in the application does not fall within the description of activity A. The application is approved consistent with the advice. The entity can not prosecute a person for carrying out activity B in accordance with the approved application because activity B does fall within the description of activity A and the person did not have approval.

- (7) For this section, an entity *acts inconsistently* with advice in relation to an application if the entity—
 - (a) refuses to do something required to be done by the entity to allow the applicant to undertake the development approved in the application; or
 - (b) does something in a way, or subject to a condition, that prevents the applicant from undertaking the development approved in the application.

[1.36] Section 42 (1) (e)

substitute

- (e) for building work required to be done only by a licensed builder—
- (i) the building work must be carried out by or under the supervision of the builder mentioned in the building commencement notice; and
 - (ii) the builder's licence must authorise the doing of the building work;

[1.37] Sections 43 and 44

substitute

43 Stages of building work

- (1) The regulations may prescribe—
- (a) stages of building work; and
 - (b) for building work done beyond a stage in contravention of this section—
 - (i) when further building work is exempted from subsection (2) or (3) to allow building work to proceed beyond the stage; and
 - (ii) how the building work may proceed beyond the stage.

Example of regulations with s 43 (3)

A regulation under section 43 (1) (a) prescribes that a stage of building work is completion of the structural framework before the placement of any internal lining (the *structural framework stage*). A licensee in charge of building a house completes the structural framework for the house, but attaches plasterboard sheets to the inside of the wall frames without giving the certifier for the work notice that the structural framework is complete. The certifier has not inspected the work or given written permission for the work to proceed, so the licensee has contravened section 43 (3).

If the licensee does further building work on the house, that work would be beyond the structural framework stage.

A regulation under section 43 (1) (b) may prescribe to the effect that—

- (a) further building work is exempt if the further work is to undo all or part of the building work that was done beyond the stage, so that the certifier can inspect the building work for the stage (and give permission for building work to proceed beyond the stage); and
- (b) the building work may proceed if it is otherwise done in accordance with the Act.

Under the possible regulation, if all or some of the plasterboard sheets are removed so that the certifier can inspect the structural framework, and the sheets are removed in accordance with the Act, the removal of the sheets would not contravene section 43 (3).

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) A building licensee in charge of building work must not do building work above dampcourse level (other than further building work exempted under subsection (1) (b)) 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) any condition of the following:
 - (A) an advice mentioned in section 27 (1) (b) (i);

(B) an approval or consent mentioned in section 27 (1) (b) (iii).

Maximum penalty: 50 penalty units.

- (3) A building licensee in charge of building work that has reached a stage must not do building work beyond the stage (other than further building work exempted under subsection (1) (b)) 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 (6) 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 working 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 notice that—
 - (i) the work does not comply with section 42; and

- (ii) includes directions that are reasonable and appropriate for achieving compliance; and
 - (iii) states the date that the noncompliance came to the certifier's attention; 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 must certify that building work complies with section 42 and give the certificate to the building licensee in charge of the building work if the certifier—
- (a) has given a notice mentioned in subsection (2) (a) to the licensee; and
 - (b) is satisfied on reasonable grounds that—
 - (i) the building licensee in charge of the building work has done what is reasonable and appropriate to achieve compliance (even if what is done is not in accordance with the directions in the notice); and
 - (ii) the building work otherwise complies with section 42; and
 - (c) if a regulation prescribes a procedure to be followed in relation to the certification—follows the procedure.

- (6) 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.

[1.38] Section 45 (1) (c)

substitute

- (c) tests under section 44 (6).

[1.39] Section 48 (1)

substitute

- (1) This section applies if—
- (a) building work appears to have been completed; and
 - (b) either—
 - (i) the certifier is satisfied on reasonable grounds that the work has been completed—
 - (A) in accordance with this Act; and
 - (B) in accordance with, or substantially in accordance with, the approved plans; or
 - (ii) the certifier is satisfied on reasonable grounds that—
 - (A) the work has not been completed in accordance with this Act; and
 - (B) the work has been completed in accordance with, or substantially in accordance with, the approved plans or plans that have been approved plans for the work, but are no longer approved plans in the circumstances prescribed by regulation; and
 - (c) the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used.

- (1A) A regulation may prescribe when work is or is not substantially in accordance with approved plans.

[1.40] Section 48 (2) (a)

substitute

- (a) if advice mentioned in section 27 (1) (b) was sought—
- (i) written evidence of the advice; or
 - (ii) if the advice was not given within the time prescribed by regulation for giving it—a written statement by the certifier to the effect that the certifier is satisfied the advice was not given within the time;

Note See s 36A (Requirement to give advice in relation to proposed building work).

- (aa) if consultation mentioned in section 27 (1) (b) was required—
- (i) written evidence of the response to the consultation; or
 - (ii) if there has been no response to the consultation within the time prescribed by regulation for giving a response—a written statement by the certifier to the effect that the certifier is satisfied no response was given within the time;
- (ab) if a consent or approval mentioned in section 27 (1) (b) was required to be obtained—written evidence of the consent or approval;
- (ac) if compliance with a condition of a consent or approval prescribed by regulation was required—a written statement by the certifier to the effect that the certifier is satisfied on reasonable grounds that the condition has been complied with;

[1.41] Section 48 (2) (b) and (c)

substitute

- (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) (b) or (5);

[1.42] Section 48 (2) (e)

substitute

- (e) either—
 - (i) a certificate by the certifier that the building work has been completed in accordance with this Act and in accordance with, or substantially in accordance with, the approved plans; or
 - (ii) if subsection (1) (b) (ii) applies—a certificate prescribed by regulation;

[1.43] Section 48 (2) (h)

substitute

- (h) if, in the certifier's view, the requirements of section 69 (1), (2) or (3) (Certificates of occupancy) have been satisfied—written advice that the registrar would be justified in issuing a certificate of occupancy for the building under section 69 (1), (2) or (3);
- (ha) if, in the certifier's view, section 69 (2B) applies—written advice to that effect;

[1.44] New section 48 (2) (hb)

insert

- (hb) if, in the certifier's view, 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 under division 5.1 for the building work—written advice that the registrar would be justified in issuing a certificate for the building work under section 72;

[1.45] New section 48 (4A)

insert

- (4A) If the certifier is required to give the constructions occupations registrar written evidence of something under this section—
- (a) the registrar may ask for further information relevant to the thing in relation to anything not dealt with, or not adequately dealt with, in the written evidence; and
 - (b) the certifier must give the registrar the further information not later than 7 days after the day the registrar asked for it.

[1.46] Section 50

substitute

50 Notification by certifier of contraventions of building and development approvals—building work

- (1) A certifier commits an offence if—
- (a) building work in contravention of a building approval or development approval comes to the certifier's attention; and
 - (b) the certifier is certifier for the building work; and

- (c) the certifier does not tell the construction occupations registrar about the contravention—
 - (i) if the building work is fundamentally noncompliant—not later than the next working day after the day the contravention comes to the certifier’s attention; or
 - (ii) in any other case—within 21 days after the day the contravention comes to the certifier’s attention.

Maximum penalty: 5 penalty units.

Note Notice of a contravention given under this section is taken to be a complaint made under the *Construction Occupations (Licensing) Act 2004*, s 117.

- (2) Subsection (1) applies whether or not a notice under section 44 (2) (a) (Stage inspections) has been given in relation to the matter.
- (3) 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—
 - (a) the building work is not fundamentally noncompliant; and
 - (b) the certifier gives the building licensee in charge of the building work written notice that—
 - (i) the work does not comply with section 42; and
 - (ii) includes directions that are reasonable and appropriate for achieving compliance; and
 - (iii) states the date that the noncompliance came to the certifier’s attention; and

- (c) the certifier is satisfied on reasonable grounds that—
- (i) the building licensee in charge of the building work has done what is reasonable and appropriate to achieve compliance (even if what is done is not in accordance with the directions in the notice); and
 - (ii) the licensee achieved compliance within 14 days after the date mentioned in paragraph (b) (iii).

Example—s (3)

It comes to a certifier's attention that a builder has done building work above the dampcourse level without a plan or document mentioned in s 43 (2) (a). That contravention of this Act must be reported under s (1). Subsection (3) does not have an effect 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 (3) (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).

- (4) A regulation may prescribe when building work is fundamentally noncompliant.
- (5) An offence against this section is a strict liability offence.

50A Notification by certifier of possible noncompliant site work

- (1) A certifier must tell the planning and land authority if—
 - (a) the certifier suspects that—
 - (i) site work does not comply with, or is likely to produce a building that does not comply with, approved building plans; and
 - (ii) the site work is development requiring development approval; and

- (b) either—
- (i) there is no development approval for the site work; or
 - (ii) if there is development approval in relation to the site work—the site work has been done, or is likely to be done, in a way that will not comply with, or is likely to produce a result that will not comply with, the development approval; and
- (c) the certifier is certifier for building work at the land where the site work has been carried out.

Examples

- 1 The certifier for building work for a residence on land notices that a large tree on the land has been removed to build the residence. The approved plans for the building work indicate that the tree exists and do not indicate that the tree is to be removed. The certifier suspects that removal of the tree required development approval and suspects that there is no development approval for the tree's removal. The certifier must report the suspicion.
- 2 The certifier for building work on a parcel of land notices that formwork is being set up for a proposed concrete driveway on the same parcel. The driveway requires development approval because of its location. The certifier suspects there is no development approval for the driveway. The certifier must report the suspicion.

Note 1 Notice of a suspicion of noncompliant site work given under this section is taken to be a complaint made under the *Planning and Development Act 2007*, s 340.

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).

- (2) Subsection (1) applies whether or not a notice under section 44 (2) (a) (Stage inspections) has been given in relation to the matter.

- (3) To remove any doubt, for this section, a certifier is not required to—
- (a) inspect or investigate anything not associated with working out if a building or building work for which the certifier has been appointed certifier complies with this Act; and
 - (b) work out if something complies, or does not comply, with a law other than this Act (unless this Act requires something to comply with another law); and
 - (c) find out whether there is development approval for building work.

**50B Site work without adequate development approval—
people**

- (1) A certifier who is a person commits an offence if—
- (a) the certifier issues a building approval or approves amended plans; and
 - (b) the site work proposed in the approved plans requires development approval; and
- Note* *Approved plans* includes amended plans (see dict).
- (c) when the building approval is issued or the amended plans are approved, there is no development approval for the site work if carried out in accordance with the plans.

Maximum penalty: 60 penalty units.

Example

Plans for a house show the ground level around the house as relatively flat and level, and the house being not more than 9m tall at any point. The plans do not show structural details, but receive development approval for construction of the house. Structural plans for the house that accompany the application for building approval show the ground around the house slopes steeply and, because of this, one end of the house is 10m tall.

If the house is built in accordance with the structural plans, the building work would not have development approval because the development approval authorises building work that is 9m tall and the house built in accordance with the structural plans is 10m tall. If the certifier issues the building approval, the certifier commits an offence.

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) A certifier who is a person commits an offence if—
- (a) the certifier issues a building approval or approves amended plans; and
 - (b) the approved plans are defective because they—
 - (i) contain information that is false or inaccurate in a material respect; or
 - (ii) omit information required to be shown in the plans; and

Note **Approved plans** includes amended plans (see dict).

- (c) if the plans were not defective, the certifier would have contravened subsection (1).

Maximum penalty: 60 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves that the defendant—
- (a) took all reasonable steps to find out whether the site work, if carried out in accordance with the approved plans, required development approval; and
 - (b) was satisfied on reasonable grounds that the development did not require development approval.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant—
- (a) took all reasonable steps to find out if the approved plans were defective; and

- (b) was satisfied on reasonable grounds that the plans were not defective.
- (5) To remove any doubt, if a building approval indicates that something is not to have work done in relation to it, or is not part of the building approval, the certifier does not commit an offence under this section in relation to the thing.
- (6) An offence against subsection (1) or (2) is a strict liability offence.

**50C Site work without adequate development approval—
partners**

- (1) Each partner commits an offence if—
 - (a) the partnership is a certifier; and
 - (b) the certifier issues a building approval or approves amended plans; and
 - (c) the site work proposed in the approved plans requires development approval; and
- Note* **Approved plans** includes amended plans (see dict).
- (d) when the building approval is issued or the amended plans are approved, there is no development approval for the site work if carried out in accordance with the plans.

Maximum penalty: 60 penalty units.

Example

See example for s 50B (1).

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) Each partner commits an offence if—
 - (a) the partnership is a certifier; and

- (b) the certifier issues a building approval or approves amended plans; and
- (c) the approved plans are defective because they—
 - (i) contain information that is false or inaccurate in a material respect; or
 - (ii) omit information required to be shown in the plans; and
- (d) if the plans were not defective, the certifier would have contravened subsection (1).

Maximum penalty: 60 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (1) or (2) if the partnership proves that the partnership—
 - (a) took all reasonable steps to find out whether the site work, if carried out in accordance with the approved plans, required development approval; and
 - (b) was satisfied on reasonable grounds that the development did not require development approval.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the partner proves—
 - (a) that—
 - (i) the partner did not know about the contravention of the subsection involved in the offence; and
 - (ii) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (b) that the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

- (5) It is a defence to a prosecution for an offence against subsection (2) if the partnership proves that the partnership—
- (a) took all reasonable steps to find out if the approved plans were defective; and
 - (b) was satisfied on reasonable grounds that the plans were not defective.
- (6) To remove any doubt, if a building approval indicates that something is not to have work done in relation to it, or is not part of the building approval, the certifier does not commit an offence under this section in relation to the thing.
- (7) An offence against subsection (1) or (2) is a strict liability offence.

[1.47] New section 53 (1) (ba)

insert

- (ba) in accordance with a building approval that is, or part of which is, defective because it contains information that—
- (i) is false, misleading or inaccurate in a material respect; or
 - (ii) conflicts with other information in the approval so that carrying out building work, or site work that materially affects the building work, in accordance with the approval or part—
 - (A) is not physically possible; or
 - (B) is unlikely to be physically possible without amending the building approval; or
 - (C) is likely to contravene this Act, another territory law or a condition of a consent that applies to the building work or a lease, licence, permit or other authority that applies to the land where the building work is being carried out; or

[1.48] Section 53 (1) (e) and (f)

substitute

- (e) for building work forming part of a development requiring development approval—without development approval; or
- (f) for building work forming part of a development with development approval—contrary to the approval, or a condition of the approval; or

[1.49] New section 53 (2A)

insert

- (2A) A stop notice in relation to building work under a building approval suspends the operation of the building approval—
 - (a) if the stop notice prohibits the carrying out of any further building work—in relation to all building work under the approval; or
 - (b) if the stop notice prohibits the carrying out of stated building work—in relation to the stated building work.

[1.50] Section 53 (3) (a)

substitute

- (a) the entity that gave the stop notice cancels the stop notice in writing signed by the entity; or

[1.51] Section 53 (4)

substitute

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

- (5) To remove any doubt, the ending of a stop notice ends the suspension of any building approval suspended because of the stop notice.

Note A stop notice automatically suspends a building approval (see s (2A)).

[1.52] Section 54 (2), note

substitute

Note 1 A stop notice suspends a building approval in relation to all or stated building work under the approval (see s 53 (2A)). This means that building work that contravenes this Act unless done in accordance with a building approval contravenes this Act if a stop notice has suspended the approval.

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).

[1.53] New section 57 (4)

insert

- (4) To remove any doubt, the cancellation of a stop notice ends the suspension of any building approval suspended because of the stop notice.

Note A stop notice automatically suspends a building approval (see s 53 (2A)).

[1.54] Section 59 (b) and (c)

substitute

- (b) the person by whom the building work mentioned in the notice is being, or is to be, carried out or, if the building work is being carried out by a partnership, any partner; or
- (c) for a stop notice—
- (i) any person carrying out building work mentioned in the notice; or

- (ii) if the building work is being carried out by a partnership, any partner; or

[1.55] Section 60 (2)

substitute

- (2) The construction occupations registrar may give the owner of the parcel of land where the building work was carried out, the person by whom the building work was carried out or, if the work was carried out by a partnership, any partner a notice requiring the person to give to the registrar the plan or document mentioned in section 43 (2) (a).

[1.56] Section 61 (e) and (f)

substitute

- (e) building work forming part of a development requiring development approval has been carried out without development approval;
- (f) building work forming part of a development with development approval has been carried out contrary to the approval, or a condition of the approval;

[1.57] Section 64

substitute

64 Compliance with notices under pt 4

- (1) A person commits an offence if the person—
 - (a) is given a notice under this part; and
 - (b) contravenes the notice.Maximum penalty: 50 penalty units.
- (2) Each partner commits an offence if the partnership—
 - (a) is given a notice under this part; and

(b) contravenes the notice.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant proves that the defendant—
- (a) paid a reasonable amount to have the work done by someone else who was licensed to do the work; and
 - (b) believed on reasonable grounds that the other person would do the work.
- (5) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—
- (a) that—
 - (i) the partner did not know about the contravention of the notice involved in the offence; and
 - (ii) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or
 - (b) that the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

[1.58] Section 65 (2) (b)

substitute

- (b) the work is not exempt from this subsection under a regulation.

[1.59] Section 66

substitute

66 Meaning of *prescribed requirements*—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).

**66A Prescribed requirements and contraventions of s 43—
div 5.1**

- (1) This section applies to building work undertaken in contravention of section 43 (Stages of building work).
- (2) To remove any doubt, for this division, the building work is not taken not to comply with the requirements of this Act only because doing the work contravened section 43 if the work has been allowed to proceed beyond the stage where the contravention happened in accordance with a regulation under section 43 (1).

[1.60] New section 67 (2)

insert

- (2) To remove any doubt, this section does not limit the matters that the construction occupations registrar may reasonably have regard to.

[1.61] Section 68

omit

relating

substitute

in relation

[1.62] New section 69 (2A) to (2C)

insert

- (2A) The owner of a parcel of land where building work was carried out may apply for a certificate under subsection (2B).

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

- (2B) The construction occupations registrar may issue a certificate in relation to a building that the building as erected or altered is fit for occupation and use as a building of the class stated in the certificate if—

- (a) the registrar is not satisfied on reasonable grounds that building work involving the erection or alteration of the building has been completed in accordance, or substantially in accordance, with the prescribed requirements for the building work; and

Note **Prescribed requirements**—see s 66.

- (b) the applicant has completed any certification process prescribed by regulation in relation to the building or building work; and
- (c) the building, or building work, is not excluded by regulation from this subsection.

(2C) A certificate mentioned in subsection (2B) in relation to a building must include a statement to the effect that—

- (a) the construction occupations registrar is not satisfied on reasonable grounds that building work involving the erection or alteration of the building has been completed in accordance, or substantially in accordance, with the prescribed requirements for the building work; and

Note **Prescribed requirements**—see s 66.

- (b) the giving of the certificate does not affect the liability of anyone to comply with the provisions of a territory law (including this Act) in relation to the building; and

Note See s 68 (Effect of certificates under div 5.1).

- (c) part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates) may not apply to the building work.

[1.63] New section 70A

insert

70A Completion of building work involving demolition

- (1) This section applies if—
- (a) building work involving the demolition of a building appears to have been completed; and
- (b) the certifier for the building work is satisfied on reasonable grounds that the work has been completed in accordance with the prescribed requirements for the work.
- (2) Within 7 days after the day the certifier is satisfied, the certifier must give the construction occupations registrar written advice that the registrar would be justified in issuing a certificate for the building work under section 71.

[1.64] Section 71 (1)

substitute

- (1) This section applies if—
- (a) building work involving the demolition of a building has been completed in accordance with the prescribed requirements for the building work; and
 - (b) the certifier for the building work gives the construction occupations registrar the written advice mentioned in section 70A.

[1.65] Section 73

omit

Residential building

substitute

Residential buildings

[1.66] Section 75 (4), definition of *qualified licensed construction practitioner*

omit everything before paragraph (a), substitute

- (4) In this section:
qualified licensed construction practitioner means an entity that—

[1.67] Section 80 (3)

omit

69 (1) or (3)

substitute

69

[1.68] Section 83 (2) (b)

substitute

- (b) the work is not exempt from this subsection under a regulation.

[1.69] Section 84, definition of *builder*

substitute

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

[1.70] Section 142 (2)

substitute

- (2) Also, a building action in relation to building work may not be brought more than 10 years after—
- (a) if an entity has given a notice under section 24 (2) that the entity's appointment as certifier for the building work has ended—the day the entity gave the notice; or
- (b) if an entity's appointment as certifier for the building work has ended under section 19D and the entity need not give notice under section 24 (2)—the day the entity's appointment ended.

[1.71] Section 146

substitute

146 Review by AAT

- (1) Application may be made to the AAT for the review of a reviewable decision.

- (2) The AAT must not, in relation to a proposed building, or a building as proposed to be altered, forming part of a development—
- (a) vary a decision to issue a stop notice under section 53 (Stop notices) 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 a decision it has set aside, in a way that would be contrary to a development approval for the development; or
 - (b) vary a decision to issue a notice under section 58 (4), or substitute a decision for a decision it has set aside, unless there is a development approval for the development.
- (3) If the construction occupations registrar or another entity makes a reviewable decision, the registrar or other entity must give written notice of the decision to the relevant entity 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) A regulation may prescribe—
- (a) what decisions are reviewable decisions; and
 - (b) the relevant entity for each reviewable decision.

[1.72] New section 152 (1A)

insert

- (1A) A regulation may exempt a building from the application of this Act, or part of the Act, whether—
- (a) directly or by a further instrument; or
 - (b) conditionally or otherwise.

[1.73] New section 152 (2) (c)

insert

(c) the following:

- (i) when an entity must be consulted about, consent to, or approve, an application for building approval;
- (ii) anything else in relation to the consultation, consent or approval.

Note See s 27 (1) (b).

[1.74] Dictionary, definition of *certifier*, paragraph (a)

substitute

- (a) for building work—means an entity appointed to act as certifier under section 19 (Appointment of certifiers—work not begun), section 19A (Appointment of certifiers—work begun) or government certifier under section 20 (Appointment of government certifiers) for the work; but

[1.75] Dictionary, new definition of *development*

insert

development—see the *Planning and Development Act 2007*, section 7.

[1.76] Dictionary, new definition of *development approval*

insert

development approval means development approval under the *Planning and Development Act 2007*, chapter 7.

[1.77] Dictionary, definition of *eligible person*

substitute

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

[1.78] Dictionary, new definition of *information*

insert

information includes documents.

[1.79] Dictionary, new definition of *land*

insert

land includes—

- (a) a place under, on or above the ground; and
- (b) a place in relation to which a permit has been granted under the *Roads and Public Places Act 1937*; and
- (c) land, a building or a structure, the use of which is authorised by a licence under the *Planning and Development Act 2007*, part 9.11 (Licences for unleased land).

[1.80] Dictionary, definitions of *Land Act* and *lease*

substitute

lease—see the *Planning and Development Act 2007*, section 235.

[1.81] Dictionary, definition of *minor maintenance work*

omit

[1.82] Dictionary, definition of *owner*

substitute

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 land is subject to a permit under the *Roads and Public Places Act 1937*—the permit-holder; or
- (e) if the land is subject to a licence under the *Planning and Development Act 2007*, part 9.11 (Licences for unleased land)—the licensee; or
- (f) if the Territory carries out or proposes to carry out building work on the land—the Territory; or
- (g) if the Commonwealth carries out or proposes to carry out building work on the land—the Commonwealth.

[1.83] Dictionary, new definition of *site work*

insert

site work—see section 7A.

[1.84] Dictionary, definition of *stage*

substitute

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

Part 1.2 **Building and Construction Industry Training Levy Act 1999**

[1.85] **Section 15, definition of *exempt work*, paragraph (c), note**
omit

[1.86] **Section 15, definition of *exempt work*, paragraphs (d) to**
(f)

substitute

- (d) building work in relation to a building to which the Building Act does not apply because that Act exempts the building from the application of that Act; or

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

Note 2 See the Building Act, s 152 (1A).

- (e) building work to which the Building Act, part 3 (Building work) does not apply because of that Act, section 15 (Application of pt 3 to building work).

Part 1.3 Construction Occupations (Licensing) Act 2004

[1.87] New section 33A

insert

33A Rectification orders—exercise of registrar’s powers

- (1) To remove any doubt, the registrar is not prevented from having a belief on reasonable grounds, or being satisfied, about a matter mentioned in this part in relation to a construction service only because the registrar, the planning and land authority, a certifier or another entity has—
 - (a) given a certificate, or approval under—
 - (i) this Act or an operational Act in relation to the construction service; or
 - (ii) the *Planning and Development Act 2007* in relation to the place where, or the territory lease under which, the construction service was provided; or
 - (b) otherwise endorsed the construction service under this Act, an operational Act or the *Planning and Development Act 2007*.
- (2) In this section:
Planning and Development Act 2007 includes the *Land (Planning and Environment) Act 1991* (as in force at any time before its repeal).
- (3) Subsection (2) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) Subsections (2) and (3) and this subsection expire 3 months after the day this subsection commences.

[1.88] New section 36 (3)

insert

- (3) However, the registrar need not consider whether the registrar, planning and land authority, a certifier or other entity has—
- (a) given a certificate, or approval under—
- (i) this Act or an operational Act in relation to the construction service; or
- (ii) the *Planning and Development Act 2007* in relation to the place where, or the territory lease under which, the construction service was provided; or
- (b) otherwise endorsed the construction service under this Act, an operational Act or the *Planning and Development Act 2007*.
- (4) In this section:
- Planning and Development Act 2007* includes the *Land (Planning and Environment) Act 1991* (as in force at any time before its repeal).
- (5) Subsection (4) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (6) Subsections (4) and (5) and this subsection expire 3 months after the day this subsection commences.

[1.89] Section 56 (2) (b)

omit

section 19 (Appointment of certifiers)

substitute

section 19 (Appointment of certifiers—work not begun) or
section 19A (Appointment of certifiers—work begun)

[1.90] New section 117 (2)

insert

- (2) Notice of a contravention given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work) is taken to be a complaint made under this section.

[1.91] Section 118 (2)

substitute

- (2) However, the registrar—
- (a) may accept a complaint for consideration even if it does not comply with subsection (1); and
- (b) must accept a complaint for consideration even if it does not comply with subsection (1) if the complaint is notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work).

[1.92] New section 120 (4)

insert

- (4) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work).

[1.93] New section 122 (2)

insert

- (2) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work).

[1.94] New section 123 (1) (c)

insert

- (c) if the complaint was a notice given under the *Building Act 2004*, section 50 (Notification by certifier of contraventions of building and development approvals—building work) and the registrar is satisfied it should be referred to the planning and land authority—refer the complaint to the planning and land authority.

[1.95] New section 123 (3)

insert

- (3) The registrar refers a complaint to the planning and land authority by giving the authority—
- (a) a copy of the complaint or a summary of the information provided in the complaint; and
 - (b) any information relating to the complaint that the registrar considers may be helpful to the authority; and
 - (c) a statement about why the registrar considers that the authority is more appropriate to deal with the complaint than the registrar.

Part 1.4 Construction Occupations (Licensing) Regulation 2004

[1.96] Schedule 2, part 2.2, item 2.2.1, column 2

omit

s 28 (5)

substitute

s 28A (4)

[1.97] Schedule 2, part 2.2, item 2.2.3, column 2

omit

s 28 (3) or (4)

substitute

s 28A (1) or (2)

[1.98] Schedule 2, part 2.2, item 2.2.7, column 2

substitute

fail to comply with *Building Act 2004*, s 44 (2) (a)—certifier satisfied that building work not compliant with *Building Act 2004*, s 42, but did not give licensee in charge of building work written notice in accordance with s 44 (2) (a)

[1.99] Schedule 2, part 2.2, item 2.2.7, column 3

substitute

failure to give written notice in accordance with *Building Act 2004*, s 44 (2) (a)

[1.100] Schedule 2, part 2.2, item 2.2.8, column 2

substitute

fail to comply with *Building Act 2004*, s 44 (2) (b)—building work complied with *Building Act 2004*, s 42, but certifier did not certify compliant or give certificate of compliance to licensee in charge of work

[1.101] Schedule 2, part 2.2, item 2.2.9, column 2

substitute

fail to comply with *Building Act 2004*, s 50—certifier failed to notify registrar of contravention of building approval or development approval in accordance with s 50

[1.102] Schedule 2, part 2.2, item 2.2.9, column 3

substitute

failure to notify registrar of known contravention of building approval or development approval

Part 1.5 Planning and Development Act 2007

[1.103] New section 340 (2)

insert

- (2) The following are taken to be complaints made under this section:
- (a) notice of a contravention given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work);
 - (b) a complaint referred to the planning and land authority under the *Construction Occupations (Licensing) Act 2004*, section 123 (Action after investigating complaint).

[1.104] Section 341 (2)

substitute

- (2) However, the planning and land authority—
- (a) may accept a complaint for consideration even if it does not comply with subsection (1); and
 - (b) must accept a complaint for consideration even if it does not comply with subsection (1) if the complaint is notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

[1.105] New section 343 (4)

insert

- (4) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

[1.106] New section 346 (2)

insert

- (2) To remove any doubt, this section also applies to a complaint that is a notice given under the *Building Act 2004*, section 50A (Notification by certifier of possible noncompliant site work).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 31 May 2007.

2 Notification

Notified under the Legislation Act on 13 September 2007.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Building Legislation Amendment Bill 2007, which was passed by the Legislative Assembly on 23 August 2007.

Clerk of the Legislative Assembly

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