

2007

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Building Legislation Amendment Bill 2007

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Planning)

Building Legislation Amendment Bill 2007

A Bill for

An Act to amend legislation relating to building because of the enactment of the *Planning and Development Act 2006*, 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 **1 Name of Act**

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

3 **2 Commencement**

4 This Act commences on the commencement of the *Planning and*
5 *Development Act 2006*.

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

8 **3 Legislation amended—sch 1**

9 This Act amends the legislation mentioned in schedule 1.

1 **Schedule 1** **Legislation amended**

2 (see s 3)

3 **Part 1.1** **Building Act 2004**

4 **[1.1] Section 7**

5 *substitute*

6 **7** **Meaning of *building***

7 (1) In this Act:

8 *building* includes—

- 9 (a) a structure on or attached to land; and
10 (b) an addition to a building; and
11 (c) a structure attached to a building; and
12 (d) fixtures; and
13 (e) part of a building, whether the building is completed or not.

14 **Example of part of building**

15 footings poured for a building that is being built

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

19 (2) However, *building* does not include—

- 20 (a) a vehicle or craft that is not used or adapted for use as a class
21 of building or structure classified under the building code; or

- 1 (b) a transportable building, mobile home, caravan or similar
2 that—
- 3 (i) is not used for long-term habitation; and
- 4 (ii) is readily transportable without being disassembled or
5 removed from associated components including a
6 footing, pier, stump, rigid annexe or an attached building
7 or similar; or
- 8 (c) if on the ground and not inside a building—paving, a driveway
9 or a road; or
- 10 (d) a surface-level carpark that is not inside a building; or
- 11 (e) a ground treatment; or
- 12 (f) vegetation; or
- 13 (g) ground excavations or fillings; or
- 14 (h) fittings, other than fittings included in a building—
- 15 (i) to make the building comply with the building code; or
- 16 (ii) that cause the building to not comply with the building
17 code; or
- 18 (i) fixtures that are not integral to the building, but are fixed to the
19 building to prevent theft or for some other reason not related to
20 the building; or
- 21 (j) something exempted under the regulations.

22 **Examples—par (h)**

- 23 1 An existing house was built when there was no requirement for the
24 house to satisfy any energy efficiency requirements or thermal
25 insulation requirements. Bulk thermal insulation batts are included in
26 an extension to the house to comply with the building code's energy
27 efficiency provisions which apply to the extension. The opportunity is
28 taken to include batts in the ceiling of the existing house. The batts sit
29 loosely on the ceiling and are not fixed to the building.

- 1 The batts are part of the extension, because they are regulated under
2 the building code for the extension. However, they are not part of the
3 existing house, because they are not fixtures, and are not regulated
4 under the building code in relation to the existing house, unless they
5 are needed in the existing house to make the extension comply with
6 the building code.
- 7 2 Some light fittings in an office building are fitted with energy efficient
8 lamps to comply with the energy efficiency provisions of the building
9 code. The lamps are part of the building. However, other lamps that
10 are not relied on to comply with the building code are not part of the
11 building unless another provision brings them within the definition of
12 **building** for the Act.
- 13 3 An office building has cubicles that are not fixed to the building. The
14 cubicles have partition walls, are part of the fit-out for the building and
15 are shown in the building approval. Some cubicles are placed where
16 they obstruct a fire evacuation path in a way that prevents compliance
17 with the building code. Those cubicles are part of the building. The
18 others are not unless another provision brings them within the
19 definition of **building** for the Act.
- 20 4 A warehouse is being extended. The warehouse stores furniture.
21 Some partitions for cubicles stored in the warehouse impede fire
22 evacuation paths relied on for the extension to comply with the fire
23 evacuation provisions of the building code. The partitions cause the
24 extension to not comply with the building code. The partitions are
25 stored goods and not fittings, so they are not part of the building unless
26 another provision of the Act brings them within the definition of
27 **building** for the Act.
- 28 5 An apartment building has a surface-level carpark, part of which is
29 below the apartments and part of which is adjacent to the building with
30 no building above, below or within it. The part of the surface-level
31 carpark below the apartments is part of the building or a separate
32 building, depending on the building code. The other part of the
33 carpark is not part of the building unless another provision of the Act
34 brings it within the definition of **building** for the Act.
- 35 6 A concrete floor slab for a home is being poured together with a floor
36 slab for a garage and a surface-level driveway to the garage. The floor
37 slabs are parts of the building. The surface-level driveway is not part
38 of the building unless another provision of the Act brings it within the
39 definition of **building** for the Act.

- 1 (3) To remove any doubt, something is not excluded from the definition
2 of *building* only because it is temporary or novel.

3 **Example**

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

7 **7A Meaning of *site work***

8 In this Act:

9 *site work* is development that is—

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

16 **Examples of site work**

- 17 1 putting up temporary fencing to protect trees growing on a road verge
18 2 building a house
19 3 damaging or removing a significant tree
20 4 laying paving for driveways and parking areas

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

24 **[1.2] Section 10A**

25 *omit*

- 1 **[1.3] Section 12, note**
- 2 *substitute*
- 3 *Note 1* **Exempt building** is used to narrow the application of pt 3, pt 5 and pt 6.
- 4 *Note 2* A regulation may also exempt a building from the application of this
- 5 Act or a part of the Act (see s 152 (1A)).
- 6 **[1.4] Section 13**
- 7 *omit*
- 8 **[1.5] Section 14**
- 9 *omit*
- 10 **[1.6] Section 15 (2) (b)**
- 11 *substitute*
- 12 (b) the work is not exempt from this subsection under a regulation.
- 13 **[1.7] Section 16**
- 14 *omit*
- 15 **[1.8] Division 3.2, new note**
- 16 *insert*
- 17 *Note about application—div 3.2*
- 18 This division applies to building work and other site work.
- 19 **[1.9] Section 17, definitions of *eligible person* and *government***
- 20 ***certifier***
- 21 *substitute*
- 22 ***eligible entity***, for building work—see section 18.
- 23 ***government certifier***, for building work, means an entity that is
- 24 appointed under section 20 (4) for the work.

- 1 **[1.10] Section 18**
- 2 *omit everything before paragraph (a), substitute*
- 3 **18 Eligibility for appointment—certifiers and government**
4 **certifiers**
- 5 A licensed construction practitioner (an *eligible entity*) is eligible to
6 be appointed certifier or government certifier for building work if
7 the construction practitioner—
- 8 **[1.11] Section 19**
- 9 *substitute*
- 10 **19 Appointment of certifiers—work not begun**
- 11 The owner of land where it is proposed to carry out building work
12 may appoint an eligible entity as certifier for the work.
- 13 *Note* An appointment must be in writing (see Legislation Act, s 206).
- 14 **19A Appointment of certifiers—work begun**
- 15 (1) This section applies if—
- 16 (a) building work has begun on a parcel of land; and
- 17 (b) the building work has been carried out in accordance with this
18 part.
- 19 (2) The owner of land may appoint an eligible entity as certifier for the
20 building work.
- 21 **19B Automatic suspension**
- 22 An entity’s appointment as certifier is suspended if the entity stops
23 being an eligible entity.

1 **19C Ending suspensions**

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

7 **19D Ending appointments**

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

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

13 **[1.12] Section 21**

14 *substitute*

15 **21 Power to require building documents**

- 16 (1) A government certifier appointed for building work may, by written
17 notice, require the entity that was the certifier (or last certifier) for
18 the building work to give the government certifier any building
19 document the entity has in relation to the work within the period
20 stated in the notice.
- 21 (2) The period stated in the notice must not be less than 2 weeks after
22 the day the notice is given.
- 23 (3) A person commits an offence if the person contravenes a notice
24 given to the person under subsection (1).
- 25 Maximum penalty: 50 penalty units.
- 26 (4) Each partner commits an offence if the partnership contravenes a
27 notice given to the partnership under subsection (1).
- 28 Maximum penalty: 50 penalty units.

- 1 (5) It is a defence to a prosecution for an offence against subsection (4)
2 if the partner proves—
3 (a) that—
4 (i) the partner did not know about the contravention of the
5 subsection involved in the offence; and
6 (ii) the partner took reasonable precautions and exercised
7 appropriate diligence to avoid the contravention; or
8 (b) that the partner was not in a position to influence the
9 partnership in relation to the conduct involved in the
10 contravention.
11 (6) An offence against subsection (3) or (4) is a strict liability offence.
12 (7) In this section:
13 *building document* means a document mentioned in section 48 (2)
14 (Completion of building work).

15 **[1.13] Section 23 (4)**

16 *substitute*

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

20 **[1.14] Section 24**

21 *substitute*

22 **24 Notice of certifier's appointment or end of appointment**

- 23 (1) This section applies if—
24 (a) a building approval has been issued for building work; and

- 1 (b) after the issue, either—
2 (i) an entity is appointed certifier for the work; or
3 (ii) an entity’s appointment as certifier for the work ends.
4 (2) Within 7 days after the day the entity is appointed or the
5 appointment ends, the entity must give the construction occupations
6 registrar written notice of the appointment or end.
7 *Note* If a form is approved under s 151 for a notification, the form must be
8 used.

9 **[1.15] New sections 25A to 25C**

10 *in division 3.3, insert*

11 **25A Overview—div 3.3**

- 12 (1) This division deals with building approvals for building work
13 carried out on land and how the owner of the land may apply for
14 building approval.
15 (2) Section 27 to section 30A affect the issue of building approvals as
16 follows:
17 (a) section 27 provides that a certifier must not consider an
18 application for building approval unless, amongst other things,
19 the accompanying plans comply with the requirements
20 prescribed by regulation;
21 (b) section 28 provides that an application for building approval
22 must be approved if the plans meet each approval requirement
23 under section 29, and deals with how the approval is given;
24 (c) section 28A sets out how a building approval is marked on
25 plans;
26 (d) section 29 sets out the approval requirements for the plans;
27 (e) section 30 and section 30A set out when an application for
28 building approval must be refused.

1 **25B Why are building approvals necessary?**

- 2 (1) A building approval is necessary because—
- 3 (a) section 42 (1) (d) requires building work to be carried out in
4 accordance with approved plans (which may have to comply
5 with this Act in relation to asbestos); and
- 6 (b) approved plans are plans that relate to building work for which
7 a building approval is in effect.
- 8 (2) Section 42 provides that building work must not be carried out
9 except in accordance with the requirements set out in the section.
- 10 (3) Not complying with section 42, for example—
- 11 (a) is an element of offences against section 42A (Contravention
12 of requirements for building work involving asbestos) and
13 section 51 (Carrying out building work in contravention of
14 s 42) ; and
- 15 (b) is a ground for giving a notice to a building licensee under
16 section 44 (2) (a) (Stage inspections); and
- 17 (c) is a ground for giving a notice to carry out building work under
18 section 62 (see s 61 (b)).

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

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

24 **25C Building approvals apply to building work**

25 To remove any doubt—

- 26 (a) a building approval only relates to building work shown on the
27 approved plans under the approval, other than building work—
- 28 (i) identified in the plans as not forming part of the approval;
29 and

1 **[1.16] New sections 26A to 26C**

2 *insert*

3 **26A Applications for building approval—certifier may require**
4 **further information**

5 (1) This section applies if—

6 (a) the owner of a parcel of land (the *applicant*) has applied to a
7 certifier for building approval for building work to be carried
8 out on the land; and

9 (b) further information is required for the certifier to be able to
10 decide the application without personally inspecting the land
11 where the building work is to be carried out; and

12 (c) the applicant and the certifier have not agreed that the certifier
13 will obtain the further information.

14 (2) The certifier may, by written notice, ask the applicant to give the
15 certifier stated further information in relation to the application if
16 the certifier believes on reasonable grounds that the information will
17 help the certifier to decide the application without personally
18 inspecting the land where the building work is to be carried out.

19 **Examples of what certifier may ask for**

20 1 photos, including ground, aerial, or satellite photos of the land or anything
21 on, over or near the land

22 2 approval, permission or tenure documents, including leases, licences,
23 permits, statutory approvals or advices

24 3 topographical information, including ground surface height contours, for the
25 land and surroundings

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

- 1 (3) To remove any doubt, this section does not entitle a certifier to
2 require—
- 3 (a) photographs to be taken by someone other than the applicant;
4 or
- 5 (b) photographs to be taken using equipment of the applicant's
6 choice at or near ground level; or
- 7 (c) further information if—
- 8 (i) the certifier has, or has reasonable access to, suitable
9 information that allows the certifier to decide the
10 application without personally inspecting the land where
11 the building work is to be carried out; or
- 12 (ii) a territory law requires the certifier to personally obtain
13 or be given the information.

14 **Examples of suitable information certifier has or has reasonable access to**

- 15 1 The internet website www.actmapl.act.gov.au provides aerial photographs
16 and topographical information including ground contours for some ACT
17 areas. If the land to which an application relates is covered by the website,
18 the photographs and contours have sufficient information, and are accurate
19 and recent enough, to decide the application in relation to tree and
20 ground-height related matters, the certifier may not require further
21 information or documents by way of photographs or topographical
22 information in relation to trees and ground heights.
- 23 2 A certifier may verify land tenure and permit and statutory approval matters
24 by contacting the statutory custodians of the information to a sufficient
25 degree to decide the application in relation to those matters. The certifier
26 may not require further information in relation to those matters.

1 3 The land to which an application relates is covered by
2 www.actmapi.act.gov.au but, because the slope of the land to be built on is
3 steeper than would be adequately shown on the website, the certifier does not
4 have suitable information to allow the certifier to decide the application
5 without personally inspecting the land. Another website has some
6 topographical information on the land, but it is not of sufficient resolution, or
7 recent enough, to be relied on by the certifier in relation to ground heights to
8 decide the application. The certifier may require further information in
9 relation to ground heights.

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

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

15 **26B Contents of request for further information**

- 16 (1) A request under section 26A must—
- 17 (a) state the period within which the further information asked for
18 must be provided; and
- 19 (b) if the further information is not a document—state that the
20 further information must be provided in writing; and
- 21 (c) state that the applicant need not provide the further
22 information, but if the applicant fails to provide some or all of
23 the information in accordance with the request, the certifier
24 may refuse to issue a building approval under section 28; and
- 25 (d) state that, despite the applicant and certifier having previously
26 not agreed that the certifier would obtain the further
27 information, the applicant and certifier may agree that the
28 certifier will obtain the information.
- 29 (2) The request may require the applicant to verify all or part of any
30 information provided by statutory declaration.

- 1 (3) The period stated under subsection (1) (a) must be at least
2 20 working days or, if a shorter period is prescribed by regulation,
3 the shorter period.
- 4 (4) The certifier may, on application before the end of the period stated
5 under subsection (1) (a), extend the period within which the further
6 information must be provided once only, for a period not longer
7 than 20 working days.
- 8 *Note* The certifier may extend the period within which further information
9 must be provided after the end of the period being extended (see
10 Legislation Act, s 151C (3)).

11 **26C Applications for building approval—effect of failure to**
12 **provide further information**

- 13 (1) This section applies if—
- 14 (a) a certifier has asked for further information under section 26A
15 in relation to an application; and
- 16 (b) the applicant has not provided some or all of the information in
17 accordance with the request; and
- 18 (c) the applicant and the certifier have not agreed that the certifier
19 will obtain the further information.
- 20 (2) The certifier may refuse to issue a building approval under
21 section 28.

22 **[1.17] Section 27 (1) (b)**

- 23 *substitute*
- 24 (b) if a regulation requires the advice of an entity to be sought on
25 the application—the entity’s advice has been sought as
26 prescribed by regulation; and

1 **[1.18] Section 28 (1) (c)**

2 *substitute*

3 (c) section 30 (When building approvals not to be issued—
4 general) and section 30A (When building approvals not to be
5 issued—advice on referral) do not prevent the issue of the
6 approval; and

7 (d) if there is a written agreement between the certifier and
8 applicant for the payment of an amount for deciding the
9 application and the agreement states that the amount is to be
10 paid before the application is decided—the amount has been
11 paid.

12 **[1.19] Section 28 (2)**

13 *substitute*

14 (2) As soon as practicable after receiving the application for building
15 approval, the certifier must—

16 (a) take all reasonable steps to get the information the certifier
17 reasonably needs to decide the application; and

18 (b) if satisfied on reasonable grounds that the plans meet each
19 applicable approval requirement under section 29 and is not
20 prevented from being issued under section 30 or section 30A—

21 (i) prepare a notice (the *building approval certificate*)
22 certifying what approval requirements apply to the
23 application and why the building approval is not
24 prevented from being issued; and

25 (ii) issue the building approval and give the building
26 approval certificate to the applicant.

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

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

1 (2A) To remove any doubt, a certifier is not required to decide an
2 application for building approval if the applicant has asked the
3 certifier to delay making the decision, whether to allow the applicant
4 to negotiate with an entity to which the application has been referred
5 or for any other reason.

6 **[1.20] Section 28 (3) to (7)**

7 *substitute*

8 **28A Marking building approval**

- 9 (1) If a certifier issues a building approval under section 28—
- 10 (a) the approval must be marked on, attached to or partly marked
11 on and partly attached to, each page of the plans it relates to;
12 and
- 13 (b) the certifier must—
- 14 (i) initial, date and mark the certifier's licence number on
15 each page of the plans; and
- 16 (ii) attach each accompanying document to the plans; and
- 17 (iii) if the accompanying documents do not include an
18 asbestos assessment report—attach an asbestos advice to
19 the plans.

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

- 22 (2) However, if, because of the size of the plans, it is impractical to
23 mark the building approval on each page of the plans, the certifier
24 may, instead of marking the approval under subsection (1) (a), mark
25 each page of the plans with—
- 26 (a) the certifier's initials and licence number and the date; and
- 27 (b) an indication that the approval, or part of the approval, is in a
28 separate document.

- 1 (3) Also, if, because of the size of 1 or more of the accompanying
2 documents (the *relevant documents*), it is impractical to attach the
3 relevant documents to the plans, the certifier may, instead of
4 attaching the relevant documents under subsection (1) (b) (ii), mark
5 each page of the plans with an indication that the relevant
6 documents are separate.
- 7 (4) If the certifier issues the building approval, the certifier must—
- 8 (a) give to the person who applied for the approval a copy of—
- 9 (i) the approval; and
- 10 (ii) the relevant plans; and
- 11 (iii) if 1 or more of the accompanying documents are not
12 attached to the plans—the accompanying documents that
13 are not attached; and
- 14 (b) not later than 7 days after the day of issue, give to the
15 construction occupations registrar—
- 16 (i) a copy of the approval; and
- 17 (ii) the building approval certificate; and
- 18 (iii) a copy of the relevant plans; and
- 19 (iv) if 1 or more of the accompanying documents are not
20 attached to the plans—a copy of the accompanying
21 documents that are not attached; and
- 22 (v) if notification of the certifier's appointment has not
23 previously been given to the registrar—notification of the
24 appointment.
- 25 *Note 1* If a form is approved under s 151 for a notification of appointment, the
26 form must be used.
- 27 *Note 2* A fee may be determined under s 150 for this section.

1 (5) In this section:

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

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

8 **[1.21] Section 29 (1) (b)**

9 *substitute*

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

13 (ba) if the plans are for the demolition of a building—demolition in
14 accordance with the plans will comply with this Act;

15 **[1.22] New section 29 (1) (f)**

16 *insert*

17 (f) if the plans show site work that, if carried out in accordance
18 with the plans, might be exempt under the *Planning and*
19 *Development Act 2006* from requiring development approval—

20 (i) the plans show all the information necessary to establish
21 that the site work will be exempt; or

22 (ii) development approval for the site work is attached.

23 **Example**

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

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

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

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

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

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

19 **[1.23] Sections 30 and 31**

20 *substitute*

21 **30 When building approvals not to be issued—general**

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

26 (a) the design or siting of a proposed building or a building as
27 proposed to be altered; or

28 (b) the material used in the building; or

29 (c) the proposed use of the building as determined by the class of
30 building; or

1 (d) the number of buildings on the land.

2 **Example**

3 Under the *Planning and Development Act 2006*, s 240 leased land must not be
4 used for a purpose other than a purpose authorised by the lease. A lease provides
5 that the leased land may be used only for a single residence.

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

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

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

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

20 *Note 3* See the sustainability guidelines made under s 143.

21 *Note 4* An example is part of the Act, is not exhaustive and may extend, but
22 does not limit, the meaning of the provision in which it appears (see
23 Legislation Act, s 126 and s 132).

24 (2) A regulation may prescribe when, apart from this section, a building
25 approval must not be issued.

26 (3) In this section:

27 *design*, of a building, includes anything affecting the appearance of
28 the building.

-
- 1 **30A When building approvals not to be issued—advice on**
2 **referral**
- 3 (1) This section applies to an application to a certifier for building
4 approval if—
- 5 (a) a regulation requires the advice of an entity to be sought on the
6 application; and
- 7 (b) the entity’s advice has been sought as prescribed by regulation;
8 and
- 9 (c) issuing the approval or carrying out work in accordance with
10 the approval would be inconsistent with the advice; and
- 11 (d) the entity has not—
- 12 (i) withdrawn the advice; or
- 13 (ii) changed or added to the advice so that issuing the
14 approval or carrying out work in accordance with the
15 approval would not be inconsistent with the advice as
16 changed or added to.
- 17 (2) The certifier must not issue the building approval unless satisfied on
18 reasonable grounds that—
- 19 (a) further information or amendments of the application address
20 the advice of the entity; or
- 21 (b) the advice relates to an area other than an area that the entity
22 giving the advice is authorised by regulation to give advice on.
- 23 (3) A regulation may prescribe the following:
- 24 (a) when the advice of an entity must be sought on an application
25 to a certifier for building approval;
- 26 (b) anything else in relation to the advice.

1 **31 Application for approval of amended plans**

- 2 (1) This section applies if—
- 3 (a) a building approval has been issued for building work; and
- 4 (b) the owner of the parcel of land where the building work is
- 5 being, or is to be, done has amended the plans for the work.
- 6 (2) The owner may apply, in writing, to a certifier to approve the
- 7 amended plans.

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

9 used.

10 **[1.24] Section 32 (2)**

11 *omit*

12 plans as amended

13 *substitute*

14 amended plans

15 **[1.25] Section 32 (2) (b)**

16 *substitute*

17 (b) the application would not be refused because of section 30

18 (When building approvals not to be issued—general) or

19 section 30A (When building approvals not to be issued—

20 advice on referral) if it were an application for a building

21 approval; and

22 **[1.26] Section 32 (3)**

23 *omit*

24 plans as amended

25 *substitute*

26 amended plans

1 **[1.27] New sections 32A to 32C**

2 *insert*

3 **32A Application for approved plans amendment—certifier**
4 **may require further information**

- 5 (1) This section applies if—
- 6 (a) the owner of a parcel of land (the *applicant*) has applied to a
7 certifier under section 31 to approve amended plans; and
- 8 (b) further information is required for the certifier to be able to
9 decide the application without personally inspecting the land
10 where the building work is being, or is to be, carried out; and
- 11 (c) the applicant and the certifier have not agreed that the certifier
12 will obtain the further information.
- 13 (2) The certifier may, by written notice, ask the applicant to give the
14 certifier stated further information in relation to the application if
15 the certifier believes on reasonable grounds that the information will
16 help the certifier to decide the application without personally
17 inspecting the land where the building work is being, or is to be,
18 carried out.
- 19 (3) To remove any doubt, this section does not entitle a certifier to
20 require—
- 21 (a) photographs to be taken by someone other than the applicant;
22 or
- 23 (b) photographs to be taken using equipment of the applicant's
24 choice at or near ground level; or
- 25 (c) further information if—
- 26 (i) the certifier has, or has reasonable access to, suitable
27 information that allows the certifier to decide the
28 application without personally inspecting the land where
29 the building work is to be carried out; or

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

3 *Note* For examples of suitable information a certifier has or has reasonable
4 access to, see s 26A (Applications for building approval—certifier may
5 require further information).

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

8 **32B Contents of request for further information**

9 (1) A request under section 32A must—

10 (a) state the period within which the further information asked for
11 must be provided; and

12 (b) if the further information is not a document—state that the
13 further information must be provided in writing; and

14 (c) state that the applicant need not provide the further
15 information, but if the applicant fails to provide some or all of
16 the information in accordance with the request, the certifier
17 may refuse to approve the amended plans to which the
18 application relates; and

19 (d) state that, despite the applicant and certifier having previously
20 not agreed that the certifier would obtain the further
21 information, the applicant and certifier may agree that the
22 certifier will obtain the information.

23 (2) The request may require the applicant to verify all or part of any
24 information provided by statutory declaration.

25 (3) The period stated under subsection (1) (a) must be at least
26 20 working days or, if a shorter period is prescribed by regulation,
27 the shorter period.

- 1 (4) The certifier may, on application before the end of the period stated
2 under subsection (1) (a), extend the period within which the further
3 information must be provided once only, for a period not longer
4 than 20 working days.

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

8 **32C Approved plans amendment—effect of failure to provide**
9 **further information**

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

19 **[1.28] Section 33 (1)**

20 *omit*

21 plans as amended

22 *substitute*

23 amended plans

24 **[1.29] Section 33 (1) (b)**

25 *substitute*

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

1 **[1.30] Section 33 (2)**

2 *substitute*

3 (2) However, if, because of the size of the plans, it is impractical to
4 mark the amended building approval on each page of the plans, the
5 certifier may, instead of marking the approval under
6 subsection (1) (a), mark each page of the plans with—

7 (a) the certifier's initials and licence number and the date; and

8 (b) an indication that the approval, or part of the approval, is in a
9 separate document.

10 **[1.31] Section 35**

11 *substitute*

12 **35 Land to be used in accordance with lease and**
13 **development approval**

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

16 (a) for land leased from the Commonwealth—use of the land for a
17 purpose other than that for which the lease was granted; or

18 (b) use of the land contrary to a provision, covenant or condition
19 of any lease on the parcel; or

20 (c) development on the land for which development approval is
21 required unless there is the required development approval; or

22 (d) if development on the land requires development approval—
23 development on the land contrary to a required development
24 approval.

25 **[1.32] Section 36 (1) (b)**

26 *substitute*

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

1 **[1.33] New section 36 (3A)**

2 *insert*

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

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

7 **[1.34] New section 36A**

8 *in division 3.3, insert*

9 **36A Requirement to give advice in relation to proposed**
10 **building work**

11 (1) This section applies if—

12 (a) an entity's advice on an application for building approval has
13 been sought as prescribed under section 27 (1) (b); and

14 (b) either—

15 (i) the entity has given advice on the application; or

16 (ii) has not given advice within the time prescribed for giving
17 the advice; and

18 (c) the certifier is required under section 28 to issue a building
19 approval on the application; and

20 (d) the certifier issues the building approval; and

21 (e) the approved plans for the building approval are substantially
22 consistent with the advice.

23 (2) For this section, if an entity fails to give advice sought under
24 section 27 (1) (b) within the time prescribed by regulation in relation
25 to an application for building approval referred to the entity, the
26 entity is taken to have given advice that the entity supports the
27 application.

- 1 (3) The entity must not act inconsistently with the advice in relation to
2 the application for building approval unless—
- 3 (a) further information in relation to the building work proposed in
4 the application comes to the entity's attention (other than
5 information mentioned in subsection (4)); and
- 6 (b) the entity did not have the further information when the entity
7 gave the advice; and
- 8 (c) the further information is relevant to the advice the entity gave;
9 and
- 10 (d) the entity would have given different advice if the entity had
11 the further information before giving the advice.
- 12 (4) Subsection (3) (a) does not apply to further information in relation
13 to building work proposed in the application for building approval if
14 the information—
- 15 (a) was not required in the building approval application; and
- 16 (b) is required by the entity after the application is approved; and
- 17 (c) is consistent in all significant respects with information already
18 provided by the applicant, except that it is more detailed.
- 19 (5) For this section, an entity *acts inconsistently* with advice in relation
20 to an application for building approval if—
- 21 (a) the advice is that the entity will issue or give an approval or
22 other thing in relation to the building work; and
- 23 (b) the application is approved; and
- 24 (c) the entity—
- 25 (i) does not issue or give the approval or other thing
26 consistent with the advice; or

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

4 **Example of advice**

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

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

- 9 (6) Also for this section, an entity *acts inconsistently* with advice in
10 relation to an application if—

11 (a) the advice is that an activity to which the application relates
12 does not require a particular authorisation (however described);
13 and

14 (b) the entity prosecutes someone, or takes other compliance
15 action, in relation to the activity because the activity is carried
16 out without the particular authorisation.

17 **Example of acting inconsistently**

18 An Act prohibits activity A without an approval. The entity responsible for
19 administering the Act gives advice sought under s 27 (1) (b) that the activity
20 (activity B) in the application does not fall within the description of activity A.
21 The application is approved consistent with the advice. The entity can not
22 prosecute a person for carrying out activity B in accordance with the approved
23 application because activity B does fall within the description of activity A and
24 the person did not have approval.

- 25 (7) For this section, an entity *acts inconsistently* with advice in relation
26 to an application if the entity—

27 (a) refuses to do something required to be done by the entity to
28 allow the applicant to undertake the development approved in
29 the application; or

30 (b) does something in a way, or subject to a condition, that
31 prevents the applicant from undertaking the development
32 approved in the application.

1 **[1.35] Section 42 (1) (e)**

2 *substitute*

3 (e) for building work required to be done only by a licensed
4 builder—

5 (i) the building work must be carried out by or under the
6 supervision of the builder mentioned in the building
7 commencement notice; and

8 (ii) the builder's licence must authorise the doing of the
9 building work;

10 **[1.36] Sections 43 and 44**

11 *substitute*

12 **43 Stages of building work**

13 (1) The regulations may prescribe—

14 (a) stages of building work; and

15 (b) for building work done beyond a stage in contravention of this
16 section—

17 (i) when further building work is exempted from
18 subsection (2) or (3) to allow building work to proceed
19 beyond the stage; and

20 (ii) how the building work may proceed beyond the stage.

21 **Example of regulations with s 43 (3)**

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

- 1 If the licensee does further building work on the house, that work would be
2 beyond the structural framework stage.
- 3 A regulation under section 43 (1) (b) may prescribe to the effect that—
- 4 (a) further building work is exempt if the further work is to undo all or part
5 of the building work that was done beyond the stage, so that the certifier
6 can inspect the building work for the stage (and give permission for
7 building work to proceed beyond the stage); and
- 8 (b) the building work may proceed if it is otherwise done in accordance
9 with the Act.
- 10 Under the possible regulation, if all or some of the plasterboard sheets are
11 removed so that the certifier can inspect the structural framework, and the sheets
12 are removed in accordance with the Act, the removal of the sheets would not
13 contravene section 43 (3).
- 14 *Note* An example is part of the Act, is not exhaustive and may extend, but
15 does not limit, the meaning of the provision in which it appears (see
16 Legislation Act, s 126 and s 132).
- 17 (2) A building licensee in charge of building work must not do building
18 work above dampcourse level (other than further building work
19 exempted under subsection (1) (b)) unless—
- 20 (a) the certifier has received—
- 21 (i) a plan (a *survey plan*) signed by a registered surveyor
22 stating the position of the building in relation to the
23 boundaries of the parcel of land where the building is to
24 be erected and stating the level that the floor or floors of
25 the building will have in relation to a level stated in the
26 approved plans; or
- 27 (ii) another document prescribed under the regulations; and
- 28 (b) the certifier is satisfied that the position of the building and the
29 level of the floor or floors are in accordance with—
- 30 (i) the approved plans; and

1 (ii) the conditions to which any consent or approval
2 mentioned in section 27 (1) (b) is subject.

3 Maximum penalty: 50 penalty units.

4 (3) A building licensee in charge of building work that has reached a
5 stage must not do building work beyond the stage (other than further
6 building work exempted under subsection (1) (b)) unless—

7 (a) the licensee has given to the certifier notice that the stage has
8 been reached; and

9 (b) the certifier has inspected the building work and given written
10 permission for the work to proceed.

11 Maximum penalty: 50 penalty units.

12 (4) If a building licensee in charge of building work is required under
13 section 44 (6) to conduct a test, the licensee must, as soon as
14 practicable after the test is completed, give the person who made the
15 requirement the written results of the test.

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

17 **44 Stage inspections**

18 (1) If a certifier receives a notice under section 43 (3) (a) for building
19 work, the certifier must inspect the building work as soon as
20 practicable.

21 (2) On, or as soon as practicable (but in any case within 2 working
22 days), after inspection, the certifier must—

23 (a) if satisfied on reasonable grounds that the building work does
24 not comply with section 42 (Requirements for carrying out
25 building work), give the building licensee in charge of the
26 building work written notice that—

27 (i) the work does not comply with section 42; and

-
- 1 (ii) includes directions that are reasonable and appropriate for
2 achieving compliance; and
- 3 (iii) states a reasonable date by which to achieve compliance.
- 4 (b) if satisfied on reasonable grounds that building work complies
5 with section 42—certify that the work complies and give the
6 certificate to the building licensee in charge of the building
7 work.
- 8 (3) A certifier commits an offence if the certifier contravenes
9 subsection (1) or (2).
- 10 Maximum penalty: 10 penalty units.
- 11 (4) An offence against subsection (3) is a strict liability offence.
- 12 (5) A certifier must certify that building work complies with section 42
13 and give the certificate to the building licensee in charge of the
14 building work if the certifier—
- 15 (a) has given a notice mentioned in subsection (2) (a) to the
16 licensee; and
- 17 (b) is satisfied on reasonable grounds that—
- 18 (i) the building licensee in charge of the building work has
19 done what is reasonable and appropriate to achieve
20 compliance (even if what is done is not in accordance
21 with the directions in the notice); and
- 22 (ii) the building work otherwise complies with section 42;
23 and
- 24 (c) if a regulation prescribes a procedure to be followed in relation
25 to the certification—follows the procedure.
- 26 (6) A certifier may, by written notice, require the building licensee in
27 charge of the building work to conduct, on the materials used or to
28 be used in the work, on the structure of the building, or in relation to
29 anything else connected with the work, the tests stated in the notice.

- 1 **[1.37] Section 45 (1) (c)**
- 2 *substitute*
- 3 (c) tests under section 44 (6).
- 4 **[1.38] Section 48 (1)**
- 5 *substitute*
- 6 (1) This section applies if—
- 7 (a) building work appears to have been completed; and
- 8 (b) either—
- 9 (i) the certifier is satisfied on reasonable grounds that the
- 10 work has been completed—
- 11 (A) in accordance with this Act; and
- 12 (B) in accordance with, or substantially in accordance
- 13 with, the approved plans; or
- 14 (ii) the certifier is satisfied on reasonable grounds that—
- 15 (A) the work has not been completed in accordance with
- 16 this Act; and
- 17 (B) the work has been completed in accordance with, or
- 18 substantially in accordance with, the approved plans
- 19 or plans that have been approved plans for the work,
- 20 but are no longer approved plans in the
- 21 circumstances prescribed by regulation; and
- 22 (c) the building as erected or altered is structurally sufficient,
- 23 sound and stable for the purposes for which it is to be occupied
- 24 or used.
- 25 (1A) A regulation may prescribe when work is or is not substantially in
- 26 accordance with approved plans.

1 **[1.39] Section 48 (2) (b) and (c)**

2 *substitute*

3 (b) a copy of the plan or document mentioned in
4 section 43 (2) (a) (i);

5 (c) a copy of each certificate issued for the building work under
6 section 44 (2) (b) or (5);

7 **[1.40] Section 48 (2) (e)**

8 *substitute*

9 (e) either—

10 (i) a certificate by the certifier that the building work has
11 been completed in accordance with this Act and in
12 accordance with, or substantially in accordance with, the
13 approved plans; or

14 (ii) if subsection (1) (b) (ii) applies—a certificate prescribed
15 by regulation;

16 **[1.41] Section 48 (2) (h)**

17 *substitute*

18 (h) if, in the certifier's view, the requirements of section 69 (1), (2)
19 or (3) (Certificates of occupancy) have been satisfied—written
20 advice that the registrar would be justified in issuing a
21 certificate of occupancy for the building under the section;

22 (ha) if, in the certifier's view, section 69 (2B) applies—written
23 advice to that effect;

1 **[1.42] Section 50**

2 *substitute*

3 **50 Notification by certifier of contraventions of building and**
4 **development approvals—building work**

- 5 (1) A certifier commits an offence if—
- 6 (a) building work in contravention of a building approval or
7 development approval comes to the certifier’s attention; and
- 8 (b) the certifier is certifier for the building work; and
- 9 (c) the certifier does not tell the construction occupations registrar
10 about the contravention—
- 11 (i) if the building work is fundamentally noncompliant—not
12 later than the next working day after the day the
13 contravention comes to the certifier’s attention; or
- 14 (ii) in any other case—within 5 days after the day the
15 contravention comes to the certifier’s attention.

16 Maximum penalty: 5 penalty units.

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

- 20 (2) Subsection (1) applies whether or not a notice under
21 section 44 (2) (a) (Stage inspections) has been given in relation to
22 the matter.
- 23 (3) However, subsection (1) does not apply to building work only
24 because the work does not comply with section 42 (Requirements
25 for carrying out building work) if—
- 26 (a) the building work is not fundamentally noncompliant; and

- 1 (b) the certifier gives the building licensee in charge of the
2 building work written notice that—
- 3 (i) the work does not comply with section 42; and
- 4 (ii) includes directions that are reasonable and appropriate for
5 achieving compliance; and
- 6 (iii) states a reasonable date by which to achieve compliance.
- 7 (c) the certifier is satisfied on reasonable grounds that the building
8 licensee in charge of the building work has done what is
9 reasonable and appropriate to achieve compliance (even if
10 what is done is not in accordance with the directions in the
11 notice).
- 12 **Example—s (3)**
- 13 It comes to a certifier’s attention that a builder has done building work above the
14 dampcourse level without a plan or document mentioned in s 43 (2) (a). That
15 contravention of this Act must be reported under s (1). Subsection (3) does not
16 have an effect because the contravention relates to s 43, not s 42.
- 17 *Note 1* The certifier has the evidentiary burden of establishing the matters
18 mentioned in s (3) (see Criminal Code, s 58).
- 19 *Note 2* An example is part of the Act, is not exhaustive and may extend, but
20 does not limit, the meaning of the provision in which it appears (see
21 Legislation Act, s 126 and s 132).
- 22 (4) A regulation may prescribe when building work is fundamentally
23 noncompliant.
- 24 (5) An offence against this section is a strict liability offence.

- 1 **50A Notification by certifier of possible noncompliant site**
2 **work**
- 3 (1) A certifier must tell the planning and land authority if—
- 4 (a) the certifier suspects that—
- 5 (i) site work does not comply with, or is likely to produce a
6 building that does not comply with, approved building
7 plans; and
- 8 (ii) the site work is development requiring development
9 approval; and
- 10 (b) either—
- 11 (i) there is no development approval for the site work; or
- 12 (ii) if there is development approval in relation to the site
13 work—the site work has been done, or is likely to be
14 done, in a way that will not comply with, or is likely to
15 produce a result that will not comply with, the
16 development approval; and
- 17 (c) the certifier is certifier for building work at the land where the
18 site work has been carried out.

19 **Examples**

- 20 1 The certifier for building work for a residence on land notices that a large
21 tree on the land has been removed to build the residence. The approved
22 plans for the building work indicate that the tree exists and do not indicate
23 that the tree is to be removed. The certifier suspects that removal of the tree
24 required development approval and suspects that there is no development
25 approval for the tree's removal. The certifier must report the suspicion.

1 2 The certifier for building work on a parcel of land notices that formwork is
2 being set up for a proposed concrete driveway on the same parcel. The
3 driveway requires development approval because of its location. The
4 certifier suspects there is no development approval for the driveway. The
5 certifier must report the suspicion.

6 *Note 1* Notice of a suspicion of noncompliant site work given under this section
7 is taken to be a complaint made under the *Planning and Development*
8 *Act 2006*, s 333.

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

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

15 (3) To remove any doubt, for this section, a certifier is not required to—

16 (a) inspect or investigate anything not associated with working out
17 if a building or building work for which the certifier has been
18 appointed certifier complies with this Act; and

19 (b) work out if something complies, or does not comply, with a
20 law other than this Act (unless this Act requires something to
21 comply with another law); and

22 (c) find out whether there is development approval for building
23 work.

24 **50B Site work without adequate development approval—**
25 **people**

26 (1) A certifier who is a person commits an offence if—

27 (a) the certifier issues a building approval or approves amended
28 plans; and

29 (b) the site work proposed in the approved plans requires
30 development approval; and

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

- 1 (c) when the building approval is issued or the amended plans are
2 approved, there is no development approval for the site work if
3 carried out in accordance with the plans.

4 Maximum penalty: 60 penalty units.

5 **Example**

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

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

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

20 (2) A certifier who is a person commits an offence if—

21 (a) the certifier issues a building approval or approves amended
22 plans; and

23 (b) the approved plans are defective because they—

24 (i) contain information that is false or inaccurate in a
25 material respect; or

26 (ii) omit information required to be shown in the plans; and

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

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

30 Maximum penalty: 60 penalty units.

- 1 (3) It is a defence to a prosecution for an offence against subsection (1)
2 or (2) if the defendant proves that the defendant—
- 3 (a) took all reasonable steps to find out whether the site work, if
4 carried out in accordance with the approved plans, required
5 development approval; and
- 6 (b) was satisfied on reasonable grounds that the development did
7 not require development approval.
- 8 (4) It is a defence to a prosecution for an offence against subsection (2)
9 if the defendant proves that the defendant—
- 10 (a) took all reasonable steps to find out if the approved plans were
11 defective; and
- 12 (b) was satisfied on reasonable grounds that the plans were not
13 defective.
- 14 (5) To remove any doubt, if a building approval indicates that
15 something is not to have work done in relation to it, or is not part of
16 the building approval, the certifier does not commit an offence
17 under this section in relation to the thing.
- 18 (6) An offence against subsection (1) or (2) is a strict liability offence.

19 **50C Site work without adequate development approval—**
20 **partners**

- 21 (1) Each partner commits an offence if—
- 22 (a) the partnership is a certifier; and
- 23 (b) the certifier issues a building approval or approves amended
24 plans; and
- 25 (c) the site work proposed in the approved plans requires
26 development approval; and

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

- 1 (4) It is a defence to a prosecution for an offence against subsection (1)
2 or (2) if the partner proves—
3 (a) that—
4 (i) the partner did not know about the contravention of the
5 subsection involved in the offence; and
6 (ii) the partner took reasonable precautions and exercised
7 appropriate diligence to avoid the contravention; or
8 (b) that the partner was not in a position to influence the
9 partnership in relation to the conduct involved in the
10 contravention.
- 11 (5) It is a defence to a prosecution for an offence against subsection (2)
12 if the partnership proves that the partnership—
13 (a) took all reasonable steps to find out if the approved plans were
14 defective; and
15 (b) was satisfied on reasonable grounds that the plans were not
16 defective.
- 17 (6) To remove any doubt, if a building approval indicates that
18 something is not to have work done in relation to it, or is not part of
19 the building approval, the certifier does not commit an offence
20 under this section in relation to the thing.
- 21 (7) An offence against subsection (1) or (2) is a strict liability offence.

22 **[1.43] New section 53 (1) (ba)**

23 *insert*

- 24 (ba) in accordance with a building approval that is, or part of which
25 is, defective because it contains information that—
26 (i) is false, misleading or inaccurate in a material respect; or

- 1 (ii) conflicts with other information in the approval so that
2 carrying out building work, or site work that materially
3 affects the building work, in accordance with the
4 approval or part—
- 5 (A) is not physically possible; or
- 6 (B) is unlikely to be physically possible without
7 amending the building approval; or
- 8 (C) is likely to contravene this Act, another territory law
9 or a condition of a consent that applies to the
10 building work or a lease, licence, permit or other
11 authority that applies to the land where the building
12 work is being carried out; or

13 **[1.44] Section 53 (1) (e) and (f)**

14 *substitute*

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

20 **[1.45] New section 53 (2A)**

21 *insert*

- 22 (2A) A stop notice in relation to building work under a building approval
23 suspends the operation of the building approval—
- 24 (a) if the stop notice prohibits the carrying out of any further
25 building work—in relation to all building work under the
26 approval; or
- 27 (b) if the stop notice prohibits the carrying out of stated building
28 work—in relation to the stated building work.

1 **[1.46] Section 53 (3) (a)**

2 *substitute*

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

5 **[1.47] Section 53 (4)**

6 *substitute*

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

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

13 *Note* A stop work notice automatically suspends a building approval (see
14 s (2A)).

15 **[1.48] Section 54 (2), note**

16 *substitute*

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

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

1 **[1.49] New section 57 (4)**

2 *insert*

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

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

8 **[1.50] Section 59 (b) and (c)**

9 *substitute*

- 10 (b) the person by whom the building work mentioned in the notice
11 is being, or is to be, carried out or, if the building work is being
12 carried out by a partnership, any partner; or

- 13 (c) for a stop notice—

14 (i) any person carrying out building work mentioned in the
15 notice; or

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

18 **[1.51] Section 60 (2)**

19 *substitute*

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

1 **[1.52] Section 61 (e) and (f)**

2 *substitute*

3 (e) building work forming part of a development requiring
4 development approval has been carried out without
5 development approval;

6 (f) building work forming part of a development with
7 development approval has been carried out contrary to the
8 approval, or a condition of the approval;

9 **[1.53] Section 64**

10 *substitute*

11 **64 Compliance with notices under pt 4**

12 (1) A person commits an offence if the person—

13 (a) is given a notice under this part; and

14 (b) contravenes the notice.

15 Maximum penalty: 50 penalty units.

16 (2) Each partner commits an offence if the partnership—

17 (a) is given a notice under this part; and

18 (b) contravenes the notice.

19 Maximum penalty: 50 penalty units.

20 (3) An offence against this section is a strict liability offence.

21 (4) It is a defence to a prosecution for an offence against subsection (1)
22 or (2) if the defendant proves that the defendant—

23 (a) paid a reasonable amount to have the work done by someone
24 else who was licensed to do the work; and

25 (b) believed on reasonable grounds that the other person would do
26 the work.

- 1 (5) It is a defence to a prosecution for an offence against subsection (2)
2 if the partner proves—
- 3 (a) that—
- 4 (i) the partner did not know about the contravention of the
5 notice involved in the offence; and
- 6 (ii) the partner took reasonable precautions and exercised
7 appropriate diligence to avoid the contravention; or
- 8 (b) that the partner was not in a position to influence the
9 partnership in relation to the conduct involved in the
10 contravention.

11 **[1.54] Section 65 (2) (b)**

12 *substitute*

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

14 **[1.55] Section 66**

15 *substitute*

16 **66 Meaning of *prescribed requirements*—div 5.1**

17 In this division:

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

- 19 (a) if the building work involves handling asbestos or disturbing
20 friable asbestos—the requirements of this Act; or
- 21 (b) for any other building work—
- 22 (i) the requirements of this Act; or
- 23 (ii) the approved plans for the work.

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

1 **66A Prescribed requirements and contraventions of s 43—**
2 **div 5.1**

3 (1) This section applies to building work undertaken in contravention of
4 section 43 (Stages of building work).

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

10 **[1.56] New section 67 (2)**

11 *insert*

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

14 **[1.57] Section 68**

15 *omit*

16 relating

17 *substitute*

18 in relation

19 **[1.58] New section 69 (2A) to (2C)**

20 *insert*

21 (2A) The owner of a parcel of land where building work was carried out
22 may apply for a certificate under subsection (2B).

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

25 (2B) The construction occupations registrar may issue a certificate in
26 relation to a building that the building as erected or altered is fit for
27 occupation and use as a building of the class stated in the certificate
28 if—

- 1 (a) the registrar is not satisfied on reasonable grounds that building
2 work involving the erection or alteration of the building has
3 been completed in accordance, or substantially in accordance,
4 with the prescribed requirements for the building work; and
- 5 *Note* **Prescribed requirements**—see s 66.
- 6 (b) the applicant has completed any certification process
7 prescribed by regulation in relation to the building or building
8 work; and
- 9 (c) the building, or building work, is not excluded by regulation
10 from this subsection.
- 11 (2C) A certificate mentioned in subsection (2B) in relation to a building
12 must include a statement to the effect that—
- 13 (a) the construction occupations registrar is not satisfied on
14 reasonable grounds that building work involving the erection
15 or alteration of the building has been completed in accordance,
16 or substantially in accordance, with the prescribed
17 requirements for the building work; and
- 18 *Note* **Prescribed requirements**—see s 66.
- 19 (b) the giving of the certificate does not affect the liability of
20 anyone to comply with the provisions of a territory law
21 (including this Act) in relation to the building; and
- 22 *Note* See s 68 (Effect of certificates under div 5.1).
- 23 (c) part 6 (Residential buildings—statutory warranties, insurance
24 and fidelity certificates) may not apply to the building work.

25 **[1.59] Section 73**

- 26 *omit*
- 27 Residential building
- 28 *substitute*
- 29 Residential buildings

- 1 **[1.60] Section 75 (4), definition of *qualified licensed***
2 ***construction practitioner***
3 *omit everything before paragraph (a), substitute*
4 (4) In this section:
5 *qualified licensed construction practitioner* means an entity that—
- 6 **[1.61] Section 80 (3)**
7 *omit*
8 69 (1) or (3)
9 *substitute*
10 69
- 11 **[1.62] Section 83 (2) (b)**
12 *substitute*
13 (b) the work is not exempt from this subsection under a regulation.
- 14 **[1.63] Section 84, definition of *builder***
15 *substitute*
16 *builder*, in relation to residential building work or a residential
17 building, means the entity stated to be the builder in the
18 commencement notice for the building work or building.
- 19 **[1.64] Section 146 (2)**
20 *omit everything before paragraph (a), substitute*
21 (2) The administrative appeals tribunal must not, in relation to a
22 proposed building, or a building as proposed to be altered, forming
23 part of a development—

1 **[1.65] Section 146 (3)**

2 *substitute*

- 3 (3) If the construction occupations registrar or another entity makes an
4 appealable decision, the registrar or other entity must give written
5 notice of the decision to the relevant entity in relation to the
6 decision.

7 **[1.66] New section 152 (1A)**

8 *insert*

- 9 (1A) A regulation may exempt a building from the application of this
10 Act, or part of the Act, whether—
11 (a) directly or by a further instrument; or
12 (b) conditionally or otherwise.

13 **[1.67] New section 152 (2) (c)**

14 *insert*

- 15 (c) if an entity's advice is required to be sought on an application
16 for building approval—the advice the entity may provide.

17 *Note* See s 27 (1) (b).

18 **[1.68] Dictionary, definition of *certifier*, paragraph (a)**

19 *substitute*

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

24 **[1.69] Dictionary, new definition of *development***

25 *insert*

26 *development*—see the *Planning and Development Act 2006*,
27 section 7.

- 1 **[1.70] Dictionary, new definition of *development approval***
2 *insert*
3 *development approval* means development approval under the
4 *Planning and Development Act 2006*, chapter 7.
- 5 **[1.71] Dictionary, definition of *eligible person***
6 *substitute*
7 *eligible entity*, for division 3.2 (Certifiers and government
8 certifiers)—see section 17.
- 9 **[1.72] Dictionary, new definition of *information***
10 *insert*
11 *information* includes documents.
- 12 **[1.73] Dictionary, new definition of *land***
13 *insert*
14 *land* includes—
15 (a) a place under, on or above the ground; and
16 (b) a place in relation to which a permit has been granted under the
17 *Roads and Public Places Act 1937*; and
18 (c) land, a building or a structure, the use of which is authorised by
19 a licence under the *Planning and Development Act 2006*,
20 part 9.11 (Licences for unleased land).
- 21 **[1.74] Dictionary, definitions of *Land Act* and *lease***
22 *substitute*
23 *lease*—see the *Planning and Development Act 2006*, section 227.

- 1 **[1.75] Dictionary, definition of *owner***
- 2 *substitute*
- 3 ***owner***, of land, means—
- 4 (a) if the land is held under a lease from the Commonwealth for a
- 5 term of years—the lessee; or
- 6 (b) if the land is subdivided under the *Unit Titles Act 2001*—
- 7 (i) if building work has been, is being or is to be carried out
- 8 on the land for the owners corporation—the owners
- 9 corporation; or
- 10 (ii) if building work has been, is being or is to be carried out
- 11 on the land for the proprietor of a unit—the proprietor; or
- 12 (iii) in any other case—the owners corporation; or
- 13 (c) if the land is occupied under a tenancy from the Territory or
- 14 the Commonwealth—the occupier; or
- 15 (d) if the land is subject to a permit under the *Roads and Public*
- 16 *Places Act 1937*—the permit-holder; or
- 17 (e) if the land is subject to a licence under the *Planning and*
- 18 *Development Act 2006*, part 9.11 (Licences for unleased
- 19 land)—the licensee; or
- 20 (f) if the Territory carries out or proposes to carry out building
- 21 work on the land—the Territory; or
- 22 (g) if the Commonwealth carries out or proposes to carry out
- 23 building work on the land—the Commonwealth.
- 24 **[1.76] Dictionary, new definition of *site work***
- 25 *insert*
- 26 ***site work***—see section 7A.

1 **[1.77] Dictionary, definition of *stage***

2 *substitute*

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

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

7 **[1.78] Section 15, definition of *exempt work*, paragraph (c), note**

8 *omit*

9 **[1.79] Section 15, definition of *exempt work*, paragraphs (d) to**
10 **(f)**

11 *substitute*

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

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

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

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

1 **Part 1.3** **Construction Occupations**
2 **(Licensing) Act 2004**

3 **[1.80] New section 34 (3)**

4 *insert*

5 (3) To remove any doubt, the registrar is not prevented from deciding
6 that it is appropriate to make a rectification order in relation to a
7 construction service only because the registrar, planning and land
8 authority, a certifier or another entity has—

9 (a) given a certificate, or approval, in relation to—

10 (i) the construction service under an operational Act; or

11 (ii) the place where, or the territory lease under which, the
12 service took place under the *Planning and Development*
13 *Act 2006*; or

14 (b) otherwise endorsed the service under an operational Act or the
15 *Planning and Development Act 2006*.

16 **[1.81] New section 36 (3)**

17 *insert*

18 (3) However, the registrar need not consider whether the registrar,
19 planning and land authority, a certifier or other entity has—

20 (a) given a certificate, or approval, in relation to—

21 (i) the construction service under an operational Act; or

22 (ii) the place where, or the territory lease under which, the
23 service took place under the *Planning and Development*
24 *Act 2006*; or

25 (b) otherwise endorsed the service under an operational Act or the
26 *Planning and Development Act 2006*.

1 **[1.82] New section 117 (2)**

2 *insert*

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

7 **[1.83] Section 118 (2)**

8 *substitute*

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

17 **[1.84] New section 120 (4)**

18 *insert*

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

23 **[1.85] New section 122 (2)**

24 *insert*

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

1 **[1.89] Schedule 2, part 2.2, item 2.2.3, column 2**

2 *omit*

3 s 28 (3) or (4)

4 *substitute*

5 s 28A (1) or (2)

6 **[1.90] Schedule 2, part 2.2, item 2.2.7, column 2**

7 *substitute*

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

12 **[1.91] Schedule 2, part 2.2, item 2.2.7, column 3**

13 *substitute*

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

16 **[1.92] Schedule 2, part 2.2, item 2.2.8, column 2**

17 *substitute*

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

22 **[1.93] Schedule 2, part 2.2, item 2.2.9, column 2**

23 *substitute*

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

1 **[1.97] New section 336 (4)**

2 *insert*

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

6 **[1.98] New section 339 (2)**

7 *insert*

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

Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 2007.

2 **Notification**

Notified under the Legislation Act on 2007.

3 **Republications of amended laws**

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