

1991

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

BUILDING (AMENDMENT) BILL 1991

EXPLANATORY MEMORANDUM

**Circulated by Authority of the Minister for Finance and
Urban Services**

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BUILDING (AMENDMENT) BILL 1991

The *Building Act 1972* ("the Principal Act") regulates standards for the erection, alteration, demolition and occupancy of buildings, and makes particular provision for the inspection and control of buildings which are found to contain, or suspected of containing, loose asbestos. However, the Principal Act does not provide for circumstances in which a building is found to contain, or suspected of containing, *Legionella* bacteria.

The Building (Amendment) Bill 1991 ("the Bill") expands the powers of the Building Controller to authorise inspections of buildings to include inspections for the presence of "a hazardous substance", a term which is defined in the Bill to include loose asbestos or unacceptable *Legionella* levels. Other provisions of the Principal Act are amended consistently with the expansion of the scope of the Building Controller's powers in respect of hazardous substances.

The Bill also amends the Principal Act to regulate the powers and duties of the Building Controller in relation to the inspection of a building for the presence of *Legionella* bacteria.

In new Part IIIA the Bill establishes a licensing regime to apply to operators of specialised systems. The term "specialised system" is defined in the Bill and refers to "a warm water system" or "a mechanical ventilation system". All operators of specialised systems, with certain exceptions, are required to be licensed by the Building Controller, and all systems installed, operated, maintained and cleaned in accordance with the applicable standard. The "applicable standard" is defined in Clause 3 of the Bill. The provisions of the Bill will mean that Australian Standard 3666, relating to microbial control in air-handling and water systems of buildings, is the applicable standard, unless and until the Minister, by instrument, amends the standard in its application to the Territory.

Part IVA of the Principal Act, as amended by the Bill, provides the Building Controller with new powers to deal with the removal of *Legionella* bacteria from a building. The Building Controller is able to issue a shutdown notice in respect of a building found to contain unacceptable *Legionella* levels, with such notices to apply until the Building Controller issues a clearance certificate.

The Bill amends the Principal Act to provide a right of appeal to the ACT Administrative Appeals Tribunal in respect of certain decisions made by the Building Controller regarding the issue, renewal, transfer or suspension of a system licence, exemption of a specialised system, or issue of a clearance certificate.

It is expected that the Bill will be finance neutral with licence fees covering enforcement costs.

Details of the Bill are included in the Attachment.

ATTACHMENT

BUILDING (AMENDMENT) BILL 1991

Clause 1 provides that the Bill, once enacted, may be cited as the *Building (Amendment) Act 1991*.

Clause 2 provides that any references in the Bill to the "Principal Act" are to be read as references to the *Building Act 1972*.

Clause 3 amends section 5 of the Principal Act to substitute a new definition of the term "building work", which is expressed to include work in connection with the installation, structural modification, removal, maintenance or cleaning of a specialised system. Clause 3 further provides for the interpretation of terms used in the Bill, to be inserted into section 5 of the Principal Act.

Clause 4 inserts new section 6A into Part I of the Principal Act. New section 6A provides that the Crown in right of the Territory will be bound by the following provisions of the Act: the provisions relating to inspection for *Legionella* bacteria; provisions requiring operators of specialised systems to be licensed; provisions by which operators of specialised systems may be required to carry out specified building work; and the provisions relating to control of buildings where a specialised system is installed and the building is a known or suspected source of *Legionella* bacteria.

Clause 5 amends subsection 9(5) of the Principal Act dealing with the Minister's power to authorise a building inspector to enter upon land and carry out the requirements of a stop or demolition notice issued under Part IV of the Principal Act. The application of subsection 9(5) is expanded to include circumstances where work which should have been carried out in accordance with the requirements of a notice issued under Part IV of the Principal Act has not been carried out. Clause 5 also amends subsection 9(8) of the Principal Act to increase the penalty, in accordance with current criminal law policy, for obstructing a building inspector who is acting pursuant to section 9. The penalty is increased from, in the case of a natural person, a maximum fine of \$1000, or imprisonment for six months, or both, to \$5000 or imprisonment for six months, or both. A maximum fine of \$25000 is provided for a body corporate.

Clause 6 amends section 9A of the Principal Act dealing with the inspection of premises for the presence of a hazardous substance. The term "hazardous substance" is defined in clause 3 of the Bill to mean "loose asbestos" or "a substance containing unacceptable *Legionella* levels".

Subsection 9A(1) is amended by omitting "loose asbestos" and substituting "a hazardous substance" to provide that the Building Controller may authorise the inspection of a building to determine whether it contains a hazardous substance.

Subsection 9A(2) is amended consequentially by omitting "loose asbestos" and substituting "a hazardous substance" in paragraphs (c), (d) and (e). Subsection 9A(2) is further amended to provide that where an inspection is conducted in connection with a substance containing *Legionella* bacteria, the authorised building inspector may examine, copy or remove for the purposes of copying, records related to the maintenance and cleaning of any specialised system installed in the building. The building inspector may also require the owner of the building to provide such information in relation to the system as the inspector thinks necessary and reasonable for the purposes of inspection in connection with a substance containing *Legionella* bacteria.

Subsection 9A(3) is amended to substitute "to determine whether it contains loose asbestos" for "under this section". This amendment is made to preserve the requirements of the Principal Act relating to notification of inspections for loose asbestos.

Subsection 9A(9) which provides that a building inspector who gains access to a roof cavity by lifting or moving roofing material is required, as soon as practicable after completion of the inspection, to restore the building to the condition in which it was prior to the inspection, is omitted and a new subsection 9A(9) substituted to extend that requirement to circumstances where a building inspector gains access to any other part of a building by lifting or moving roofing or other material.

Subsection 9A(13) is amended to extend the requirement to notify the occupier of the results of an inspection under section 9A to the notification of *Legionella* bacteria.

Paragraph 9A(14)(a) is consequentially amended by omitting "asbestos" and substituting "a hazardous substance".

Subsection 9A(17) is amended in accordance with current criminal law policy to increase the maximum penalty which can be imposed upon a person who, without reasonable excuse, obstructs or hinders a building inspector from a maximum fine of \$1000 to a maximum fine of \$5000 or imprisonment for 6 months, or both, for a natural person, and a maximum fine of \$25000 for a body corporate.

Clause 7 inserts new sections 9B and 9C into Division 1 of Part II of the Principal Act. New section 9B provides standard provisions for the inspection of buildings for *Legionella* bacteria where an inspection is conducted with the consent of the occupier.

New subsection 9B(1) provides that a building inspector may, with the consent of the occupier of a building, inspect the building for the presence of unacceptable *Legionella* levels and exercise any power in the course of that inspection that the inspector would have under section 9A.

New subsection 9B(2) requires the building inspector, prior to seeking the consent of an occupier to the inspection, to inform the occupier that he or she may refuse to give such consent.

New subsection 9B(3) provides that where an occupier gives his or her consent to an inspection, the building inspector is required to ask the occupier to sign a written acknowledgment that the occupier has given the inspector his or her consent. The acknowledgment is to include details of the day on which, and time at which, consent was given.

New subsection 9B(4) provides that in any court proceedings, where it is material for the court to be satisfied that an occupier has consented to an inspection in accordance with subsection 9B(1), failure to produce in evidence an acknowledgment in accordance with subsection 9B(3) shall

raise the rebuttable presumption that the occupier did not consent to the inspection.

New section 9C deals with the inspection of buildings during an outbreak of Legionnaires' disease.

New subsection 9C(1) provides that where the Medical Officer of Health gives written notice to the Building Controller of an outbreak, or suspected outbreak, of Legionnaires' disease and the Medical Officer of Health has reasonable grounds to believe that a source of the outbreak or suspected outbreak is a particular building, the Building Controller is required to authorise an inspection of the building to determine whether it contains unacceptable *Legionella* levels.

New subsection 9C(2) empowers a building inspector, at any time of the day, to enter the land on which the building is situated, inspect the building and remove from the building, for testing, samples found in or about the building, which the building inspector has reasonable grounds to suspect may contain *Legionella* bacteria.

New subsection 9C(3) provides that for the purposes of inspecting the building and removing samples for testing, the building inspector may open any part of the building.

New subsection 9C(4) requires the building inspector to enter the building as soon as it is practicable to do so, after receiving authorisation. The subsection further provides that the building inspector may enter with such assistance and such force as is necessary and reasonable for the purposes of performing the inspection.

New subsection 9C(5) requires a building inspector who enters a building to cause as little damage as practicable to the building in entering the building and in exercising his or her powers, to respect the privacy of users of the building and, where the building was closed immediately prior to the building inspector's entry into the building, to close the building securely on leaving it on completion of the inspection.

New subsection 9C(6) provides that where damage is caused to a building by a building inspector, in the exercise of his or her powers, the building inspector is required to leave at the building a report addressed to the owner, giving particulars of the damage.

New subsection 9C(7) requires a building inspector who takes a sample of a substance from a building for testing to arrange promptly for the sample to be tested for the presence of *Legionella* bacteria, and to arrange for a written report of the test results to be promptly provided to the occupier of the building.

New subsection 9C(8) provides that it is an offence for a person, without reasonable excuse, to obstruct or hinder a building inspector, acting pursuant to section 9C and provides a penalty of a maximum fine of \$5000 or imprisonment for 6 months, or both, for a natural person, and a maximum fine of \$25000 for a body corporate.

Clause 8 makes certain formal amendments to section 24 of the Principal Act, which deals with the Building Standards Committee and the Building Manual, in accordance with current drafting practice and to correct an outdated reference.

Clause 9 amends section 25 of the Principal Act which deals with the matters in respect of which the Standards Committee may, in the Building Manual, specify requirements and acceptable standards. Subparagraph 25 (2)(b)(v) is omitted and new subparagraph (iva) and substituted subparagraph (v) are inserted to add "warm water systems" and "ventilation, (including mechanical ventilation)" to those matters. Section 25 of the Principal Act is further amended by inserting paragraph (f) to include procedures for the maintenance and cleaning of specialised systems among those matters in respect of which the Standards Committee may specify requirements and acceptable standards.

Clause 10 amends section 30 of the Principal Act to exempt building work that is maintenance or cleaning of a specialised system from the building permit requirements under subsection 30(1) of the Act. Clause 10 also makes certain formal amendments to paragraph (1)(b) and subsections (3) and (4) of section 30 in accordance with current drafting practice.

Clause 11 amends subsection 33(2) of the Principal Act which requires that the Building Controller consider, in relation to the structural sufficiency, safety and stability of a building proposed to be erected or altered, whether adequate provision has been made in respect of certain matters. Subparagraph 32(2)(b)(iv) is omitted and new subparagraph 32(2)(b)(iia) and substituted subparagraph 32(2)(b)(iv) inserted to add "warm water systems" and "ventilation (including mechanical ventilation)" to those matters.

Clause 12 makes certain formal amendments to section 36 of the Principal Act, which deals with stages of building work for inspection purposes, in accordance with current drafting practice.

Clause 13 inserts new Part IIIA, consisting of new sections 42, 42A, 42B, 42C, 42D, 42E, 42F, 42G, 42H, 42J, 42K, 42L, 42M, 42N, 42P, 42Q and 42R, after Part III of the Principal Act. The provisions of new Part IIIA establish and regulate a licensing regime for operators of specialised systems.

New section 42 is an interpretation provision for the purposes of new Part IIIA of the Act.

New section 42A provides that Part IIIA applies to all specialised systems except those which are, or are proposed to be, installed in a building referred to in Class I (relating to single occupancy dwellings) or Class X (relating to outbuildings) of the classifications of buildings in part 6.1 of the Building Manual or which are exempt under Division 5 of Part IIIA of the Act.

New section 42B provides that a person shall not, without reasonable excuse, operate a specialised system, except in accordance with a system licence and provides a penalty of \$2000 and \$10000 for contravention of this provision by a natural person and a body corporate respectively.

New section 42C deals with applications for a system licence.

New subsection 42C(1) provides that the owner of a building in which a specialised system is, or is proposed to be, installed or the owner of a parcel of land on which such a building is, or is proposed to be, erected is entitled to apply for a system licence.

New subsection 42C(2) requires that an application for a licence be in a form approved by the Building Controller and include the relevant details in respect of the applicant, his or her agent, the building and the specialised system. The application is required to specify the period (not exceeding 5 years) for which the licence is sought and such other information, in respect of the building, as the Building Controller thinks necessary. Subsection 42C(2) includes a requirement that the application be accompanied by a statement from a practising mechanical engineer specifying the extent to which the design, installation and operation of, and maintenance and cleaning procedures for, the system, or proposed system, complies or would comply with the applicable standard. The "applicable standard" is defined in section 5 of the Principal Act, as amended, to mean "the initial standard as amended from time to time by instrument under section 42N". The "initial standard" is defined in section 5 to mean "Australian Standard 3666-1989", a standard for microbial control in relation to the installation, operation and maintenance of air-handling and water systems of buildings. The application is also required to be accompanied by the determined fee.

New section 42D deals with the issue of system licences.

New subsection 42D(1) provides that on receipt of an application in accordance with section 42C, the Building Controller, where he or she is satisfied that the specialised system complies or would comply with the applicable standard, is required to issue a system licence in respect of that system to the applicant.

New subsection 42D(2) provides that in circumstances where the Building Controller is not satisfied that a system complies, or would comply, with the applicable standard and where the system in respect of which the application is made was installed before the commencement of Part IIIA, then the Building Controller may issue a system licence, notwithstanding that the system does not comply with the applicable standard. The subsection further provides that the Building Controller may issue a system licence subject to such conditions as the Building Controller considers necessary. Paragraph 42D(2)(b) provides that such conditions may include the making of modifications to the design, installation or operation of, or maintenance or cleaning procedure for, the specialised

system by a specified date or, that a notice under section 46 (1) be complied with.

New subsection 42D(3) provides that in considering whether to issue a system licence the Building Controller must have regard to the extent to which the system does not comply with the applicable standard and the likely effect that this would have on the health of persons using the building.

New subsection 42D(4) provides that a system licence shall specify the relevant details in respect of the licensee, the building in which the specialised system is, or is proposed to be, installed, the licensee's agent (if any) and particulars of the system licensed, including the issue and expiry dates of the licence and any conditions to which the licence is subject.

New section 42E requires that a licensee provide written notification to the Building Controller, within one month, of any change in the information specified in the licence. The penalty provided for failure to do so is \$500 in the case of a natural person and \$2500 for a body corporate.

New section 42F deals with renewal of a system licence.

New subsection 42F(1) provides that a licensee may, before the expiration of the system licence, apply to the Building Controller for its renewal.

New subsection 42F(2) requires a renewal application to be in a form approved by the Building Controller. The subsection further requires that the renewal application provide the relevant details in respect of the licensee and the licence, the period (not exceeding 5 years) for which renewal is sought and any change in the particulars included in the previous application for a licence, or renewal of a licence. The renewal application is required to be accompanied by the determined fee.

New subsection 42F(3) provides that on receipt of an application in accordance with this section where the Building Controller is satisfied that the system complies with the applicable standard, then the Building Controller is required to renew the licence. Where the Building Controller is not satisfied that the system complies or would comply with

the applicable standard he or she may, where the system was installed before the commencement of Part IIIA, renew the licence notwithstanding that he or she is not so satisfied. The subsection further provides that the Building Controller may renew the licence subject to a condition of the kind referred to in subparagraph 42D(2)(b).

New subsection 42F(4) provides that in considering whether to renew a system licence notwithstanding that it does not comply with the applicable standard the Building Controller shall have regard to the extent of the non-compliance and the likely effect that this will have on the health of persons using the building.

New section 42G deals with transfer of a system licence.

New subsection 42G(1) provides that, where the ownership of a building to which a system licence relates changes, the new owner is required within one month of the change to apply for a transfer of the licence.

New subsection 42G(2) requires an application for such a transfer to be in a form approved by the Building Controller. The application must specify the relevant details in respect of the the licence, the previous owner, and the new owner and it must be signed by the new owner and the previous owner and be accompanied by the determined fee.

Subsection 42G(3) requires that where the Building Controller receives an application in accordance with this section he or she shall transfer the licence to the new owner.

Subsection 42G(4) provides that section 42B (operation of a specialised system except in accordance with a system licence) does not apply to the new owner of a building until after the expiration of a period of 1 month from the date on which the building changed hands.

New section 42H provides that the statement of a practising mechanical engineer as to the compliance of a specialised system with the applicable standard is evidence of that fact. This provision is similar to subsection 53(9) of the Principal Act and is intended to assist the Building Controller in making decisions without verifying every detail independently.

New section 42J deals with suspension of a system licence.

Subsection 42J(1) provides that the Building Controller may by written notice to the licensee, require the licensee to show cause why the licence should not be suspended on one or more of the following grounds: failure to comply with a notice to do building work under subsection 46(1); failure to comply with a condition of the licence; failure to operate the specialised system in accordance with the Principal Act or another law of the Territory; failure to maintain records relating to the maintenance and cleaning carried out in respect of the system; attempted deception of the Building Controller or a building inspector in relation to the specialised system; and failure to otherwise comply with the provisions of the Principal Act in so far as they relate to substances containing *Legionella* bacteria.

New subsection 42J(2) requires that a notice issued under this section contain full particulars of the facts or circumstances on which the Building Controller has formed his or her opinion that the ground specified in the notice exists. The notice is further required to specify a period of not less than 14 days and not more than 28 days after the date of service of the notice within which the licensee may show cause to the Building Controller why the licence should not be suspended.

New subsection 42J(3) provides that a licensee who receives a notice may apply for an extension of the period within which the licensee is required to show cause. Such an application may be made notwithstanding the expiration of the period the extension of which is sought.

New subsection 42J(4) provides that the Building Controller may, on receipt of an application in accordance with subsection 42J(3), extend the period by not more than 28 days.

New subsection 42J(5) provides that once the period specified in the notice, or any extension of that period, has expired, the Building Controller may: fix a time and place for an inquiry into the proposed suspension, giving written notice of the time and place of the inquiry to the licensee; remove any suspension imposed under section 42K and

make a decision not to suspend a licence; or where no cause to the contrary has been shown - suspend the licence.

New subsection 42J(6) provides that if, on holding an inquiry in accordance with subsection 42J(5), the Controller is satisfied that the ground specified in the notice exists he or she may suspend the licence.

New subsection 42J(7) provides that where the ground specified in the notice is a ground specified in paragraph 42J(1)(a), (b) or (c) the Building Controller may suspend the licence until he or she is satisfied that the ground no longer exists. In any other case the Building Controller may suspend the licence for such period as he or she thinks fit having regard to the circumstances of the case.

New subsection 42J(8) provides that for the purposes of subsection 42J(1) notification to the licensee's agent shall be sufficient.

New section 42K deals with preliminary suspension of a system licence.

New subsection 42K(1) provides the Building Controller with a discretion to suspend a system licence, the subject of a notice under subsection 42J(1), before the licensee shows cause. The subsection provides that this discretion is to be exercised having regard to the circumstances leading to the giving of the notice and the grounds specified in the notice.

New subsection 42K(2) requires that where the Building Controller has suspended a licence under subsection 42K(1) he or she must deal with the matter as soon as practicable in accordance with section 42J.

New subsection 42K(3) provides that for the purposes of subsection 42K(2), paragraph 42J(2)(b), dealing with the period within which a licensee may show cause to the Building Controller why a licence should not be suspended, shall be read as referring to a period of not less than 7 days and not more than 14 days from the day after the date of service of the notice.

New section 42L provides that a system licence shall not be in force during a period for which it is suspended.

New section 42M deals with the public notification, by the Building Controller, of a decision to suspend a system licence.

New subsection 42M(1) requires the Building Controller to notify particulars of a decision to suspend a system licence in a daily newspaper, printed, published and circulating in the Territory and include in such notification the relevant details in respect of the licensee, the building and the decision.

New subsection 42M(2) provides that a notice shall not be published unless the period, or extension of any period, within which an application to review the decision to suspend the licence may be made, has expired. The subsection provides that where an application for review of the decision has been made and the decision affirmed or varied, unless the period of time within which an appeal may be instituted from that decision, or from any decision following such an appeal has expired, or an appeal from such a decision has been instituted but has been withdrawn or dismissed, a notice shall not be published.

New section 42N provides that the Minister may, by instrument, amend the applicable standard.

New section 42P provides that an instrument made under section 42N is a disallowable instrument for the purposes of the *Subordinate Laws Act 1989*. This means that the instrument will be of no effect if it fails to satisfy the notification, tabling and retrospectivity requirements under section 10 of the *Subordinate Laws Act 1989* and that it is subject to scrutiny and disallowance by the Legislative Assembly.

New section 42Q deals with the entitlement of an owner referred to in paragraph 42C(1)(a) or (b), that is, the owner of a building in which a specialised system is, or is proposed to be, installed, or the owner of a parcel of land on which such a building is proposed to be erected, to apply for an exemption from the licensing requirements for that system.

New subsection 42Q(1) provides that such an owner is entitled to apply for an exemption.

New subsection 42Q(2) provides that an application for an exemption shall be in a form approved by the Building Controller.

New section 42R provides the Building Controller, on receipt of an application in accordance with section 42Q, has a discretion to exempt a specialised system from the operation of Part IIIA of the Principal Act where the Building Controller is satisfied that the system is of a type and size ordinarily used for domestic purposes. This would cover, for example, individual domestic size air-conditioning units being used in hotels. The section provides that the exemption is to be by instrument.

Clause 14 makes a formal amendment to section 43 of the Principal Act, which deals with stop notices, in accordance with current drafting practice.

Clause 15 amends section 46 of the Principal Act which deals with circumstances in which the Building Controller may serve a notice requiring the owner of a parcel of land on which building work has been carried out, or on which a building has been erected, to carry out such building work as specified in the notice.

Subsection 46(1) is amended by omitting paragraph (g) and substituting a new paragraph (g) which provides that, where the Building Controller finds upon inspection that a building to which Part IIIA applies has a specialised system that is not being operated, maintained or cleaned in accordance with the applicable standard, or where the Building Controller finds that a building contains a hazardous substance, the Building Controller may serve on the owner a notice requiring him or her to carry out such building work as is specified in the notice. Such a notice may direct the owner to submit plans for approval and require the person carrying out the work to obtain a building permit, with respect to the work specified in the notice, except where the building work is the maintenance or cleaning of a specialised system.

Subsection 46(4) is amended by omitting paragraph (a) and substituting new paragraph (a) to provide that where the owner of a parcel of land is directed by a notice under subsection 46(1) to carry out or cause to be carried out building work, being building work that is demolition or that is the maintenance or cleaning of a specialised system, and the notice

contains no requirements relating to the approval of plans or the obtaining of a building permit, that owner is exempted from the requirement to pay to the Building Controller those fees that would have been payable if he or she had been required to submit plans for approval and that would have been payable by an applicant for a building permit in respect of that building work.

Clause 16 amends Part IVA of the Principal Act by omitting the heading "REMOVAL OF LOOSE ASBESTOS" and substituting the new heading - "PART IVA - REMOVAL OF HAZARDOUS SUBSTANCES". Part IVA is further amended to provide for two divisions - "Division 1 - Loose Asbestos" comprises existing sections 51A, 51B, 51C, 51D, 51E, 51F, 51G and 51H.

Clause 17 inserts new "Division 2 - *Legionella* bacteria", comprising new sections 51J, 51K, 51L, 51M, 51N and 51P into Part IVA of the Principal Act.

New section 51J deals with the duties of building owners.

New subsection 51J(1) requires the owner of a building to take all reasonably practicable steps to ensure that a specialised system installed in the building does not contain unacceptable levels of *Legionella* bacteria. There is a penalty of \$5000 for a natural person, and \$25000 for a body corporate, for contravening this requirement.

New subsection 51J(2) provides that without limiting the generality of subsection (1) an owner will not be regarded as having contravened that subsection if the owner operates, maintains and cleans the specialised system in accordance with the applicable standard.

New section 51K deals with the duty of building owners to notify the Building Controller where an owner knows that his or her building contains unacceptable *Legionella* levels.

New subsection 51K (1) requires the owner of a building to notify the Building Controller within 24 hours where he or she becomes aware that the building contains unacceptable *Legionella* levels.

New subsection 51K(2) provides that an owner who, without reasonable excuse, contravenes subsection (1) is guilty of an offence. The penalty provided for the offence is \$5000 in the case of a natural person and \$25000 in the case of a body corporate.

New section 51L deals with the issue and effect of shutdown notices.

New subsection 51L(1) provides that where a building is inspected under section 9A, 9B or 9C and is found to have unacceptable *Legionella* levels, and the Medical Officer of Health, having considered the results of the inspection advises the Building Controller to shut down all specialised systems installed in the building or evacuate the building, the Building Controller is required to issue a shutdown notice to the person who is responsible for the day-to-day management of the building. The subsection further provides that if that person is not, to the knowledge of the Building Controller, the owner of the building, the Building Controller must also provide a copy of the shutdown notice to the owner of the building.

New subsection 51L(2) provides that for the purposes of notifying the owner of the building, where the owner is not the person responsible for the day-to-day management of the building, it shall be sufficient if the copy is given to the owner's agent.

New subsection 51L(3) requires that in the shutdown notice the Building Controller direct the owner of the building to shut down all specialised systems installed in the building and to not operate those systems. The subsection further provides that where the Medical Officer of Health has advised the Building Controller to evacuate the building, the Building Controller is required to direct the owner to evacuate the building and to take necessary and reasonable steps to prevent persons (other than those authorised by the Building Controller) from entering the building.

New subsection 51L(4) provides that a direction continues in force until the Building Controller issues, in the case of a direction to shutdown and cease to operate all specialised systems, a full clearance certificate. The subsection further provides that in the case of a direction to the owner to evacuate the building and take necessary and reasonable steps to prevent

unauthorised persons from entering the building, that direction remains in force until a full or partial clearance certificate is issued in respect of the building.

New section 51M deals with clearance certificates.

New subsection 51M(1) provides that where the Building Controller, in respect of a building the subject of a shutdown notice is satisfied that a notice served under section 46(1) has been complied with in respect of any specialised systems installed in a building and, having regard for the opinion of the Medical Officer of Health, is satisfied that the building no longer contains unacceptable *Legionella* levels, then the Building Controller on his or her own motion or on application by the owner of the building, is required to issue a full clearance certificate in respect of that building.

New subsection 51M(2) provides that where, in respect of a building the subject of a shutdown notice, the Building Controller is satisfied that, having regard to the opinion of the Medical Officer of Health, persons entering the building are not unduly at risk of contracting Legionnaires' disease, then the Building Controller may, on an application from the owner of the building, issue a partial clearance certificate in respect of the building.

New section 51N deals with compliance with shutdown notices and provides that failure to comply is an offence.

New subsection 51N(1) provides that the owner of a building shall not fail to comply with a direction under 51L(3).

New subsection 51N(2) provides that an owner who contravenes subsection 51N(1) is, in respect of each day on which a contravention occurs, including any such day on which the person is convicted of an offence under this subsection and any subsequent day, guilty of an offence. The subsection further provides that such an offence is punishable on conviction by a maximum fine of \$500 for a natural person, and a maximum fine of \$2500 for a body corporate.

New section 51P deals with the burden of costs where a building is damaged in the course of an inspection under section 9A or 9B or 9C, and provides that where a building, so inspected, is found to contain unacceptable *Legionella* levels, the owner of the building shall bear the costs of any damage caused to the building in the course of the inspection. The section further provides that where unacceptable *Legionella* levels are not found in the building, the Territory shall bear the costs.

Clause 18 amends section 59A of the Principal Act which deals with penalties for persons who make a false or misleading statement to the Building Controller. The penalty is increased from a maximum fine of \$1000 or imprisonment for six months, or both, to a maximum fine of \$5000 or imprisonment for six months, or both, for a natural person, and from a maximum fine of \$5000 to a maximum fine of \$25000 for a body corporate.

Clause 19 amends section 60 of the Principal Act, dealing with appeals against decisions of the Building Controller to the Administrative Appeals Tribunal.

Subsection 60(1) is amended by omitting paragraph (f) and inserting new paragraphs (pa), (pb), (pc), (pd), (pe), (pf), (ra) and (rb), to provide a right of appeal to the ACT Administrative Appeals Tribunal in respect of certain decisions of the Building Controller, relating to the issue, renewal or suspension of a system licence, exemption of a specialised system, and issue of a full or partial clearance certificate.

Subsection 60(2) is amended by omitting "Administrative Appeals" leaving a reference to the "Tribunal", which is defined in section 5 as the "Australian Capital Territory Administrative Appeals Tribunal".

Subsection 60(3) is amended to provide that where the Building Controller makes a decision referred to in subsection (1) then he or she is required to give written notice of that decision within the period of time and to the person specified in this subsection.

New subsection 60 (3A) is inserted to provide that where the person to whom notice of a decision is required to be given in subsection 60(3) is the applicant for the system licence, the holder of the system licence, the applicant for exemption under section 42Q or the applicant for a clearance

certificate, it shall be sufficient if notice is given to the agent of the applicant for, or the holder of, the licence.

Clause 20 makes a formal amendment to section 63 of the Principal Act, which deals with evidence, to update an outdated reference.

Clause 21 provides that section 42B of the amended Principal Act only applies to a person who operates a specialised system after the expiration of 6 months from the date on which the *Building (Amendment) Act 1991* commences. This delayed commencement provision for the operative offence provision of the *Building (Amendment) Act 1991* is to give owners of specialised systems adequate time to obtain licences.