



AUSTRALIAN CAPITAL TERRITORY

## Building (Amendment) Act (No. 2) 1998

No. 52 of 1998

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AUSTRALIAN CAPITAL TERRITORY

## **Building (Amendment) Act (No. 2) 1998**

No. 52 of 1998

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### **An Act to amend the *Building Act 1972* and for related purposes**

*[Notified in ACT Gazette S205: 16 November 1998]*

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

**1. Short title**

This Act may be cited as the *Building (Amendment) Act (No. 2) 1998*.

**2. Commencement**

(1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

**3. Principal Act**

In this Act, “Principal Act” means the *Building Act 1972*.<sup>1</sup>

**4. Interpretation**

Section 5 of the Principal Act is amended—

- (a) by omitting from subsection (1) the definition of “building permit”;
- (b) by inserting in subsection (1) the following definitions:

“ ‘approved plans’ means plans, including amended plans, that relate to building work in relation to which a building approval is in effect;

‘building approval’ means a building approval under Part III;

‘certifier’, in relation to building work, means a person appointed to act as certifier under section 31 in relation to the work, being a person whose appointment is in effect;

‘owner-builder’s licence’ means a licence under section 23A;

‘plans’, in relation to building work, includes specifications;”;

and

- (c) by omitting subsection (3).

**5. Application**

Section 6 of the Principal Act is amended by omitting from subsection (2) “permit” and substituting “approval”.

**6. Position of Crown**

Section 6A of the Principal Act is amended by omitting from paragraph (2) (b) “29” and substituting “40A”.

**7. Inspection**

Section 9 of the Principal Act is amended—

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) A building inspector may from time to time inspect building work in relation to which a building approval is in effect for the purpose of ascertaining whether the building work is being or has been carried out in accordance with this Act, the regulations and the Building Code.”;

- (b) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) building work is being or has been carried out and—

- (i) a building approval has not been obtained in respect of that building work; or
- (ii) the work is not being or has not been carried out in accordance with the approved plans or a notice under Part IV;”; and

(c) by omitting subsection (5A).

#### **8. Classes of builder’s licences**

Section 14 of the Principal Act is amended by omitting paragraph (6B) (c) and substituting the following paragraph:

“(c) the number of building projects that may be undertaken by the builder concurrently; and”.

#### **9. Variation, suspension or cancellation of licences**

Section 18 of the Principal Act is amended by omitting subsections (6) and (7) and substituting the following subsections:

“(6) The Building Controller may cause a copy of a notice under subsection (1) to be served on the owner of any land on which building work is being carried out by the licensee on whom the notice has been served.

“(7) The owner of land on which building work is being carried out by a licensee on whom a notice under subsection (1) has been served may make representations to the Building Controller concerning the proposed variation, suspension or cancellation—

- (a) if a copy of a notice under subsection (1) has been served on that owner—within the period of time specified in that notice or any extension of that period granted by the Building Controller; or
- (b) in any other case—before the time fixed under paragraph (8) (a) for an inquiry.”.

#### **10. Insertion**

After section 23 of the Principal Act the following Division is inserted in Part II:

#### ***“Division 3A—Owner-builders’ licences***

##### **“23A. Grants of licences**

“(1) A natural person who—

- (a) is the owner of a parcel of land; and

- (b) personally or under his or her own supervision, intends to carry out building work on the land;

may apply to the Building Controller, in accordance with this section, for the grant of an owner-builder's licence.

“(2) An application for an owner-builder's licence shall be in writing, signed by the applicant and accompanied by—

- (a) a copy of the building approval and approved plans in relation to the proposed work;
- (b) particulars of the applicant's skills and experience in relation to the proposed building work;
- (c) the determined fee; and
- (d) such other information and documents as are prescribed.

“(3) Subject to this section, the Building Controller may grant an owner-builder's licence if satisfied that the application complies with subsection (2) and the proposed building work—

- (a) involves the erection or alteration of the principal place of residence of the applicant; or
- (b) is of such a nature that it can be carried out in accordance with this Act by a person who is not the holder of a builder's licence.

“(4) The Building Controller shall not grant an owner-builder's licence unless he or she is satisfied that the applicant possesses the skills and experience required to carry out the work in respect of which the application has been made.

“(5) The Building Controller may, by notice in writing, request an applicant for an owner-builder's licence to provide such further information or documents as the Building Controller may reasonably require in order to make a decision under subsection (3).

“(6) Where a request under subsection (5) is not complied with within 14 days of the date of the notice or such longer period as is stated in the notice or the Building Controller allows, the Building Controller may refuse the application.

“(7) An application for an owner-builder's licence shall not be granted in respect of proposed building work that involves the erection or alteration of the principal place of residence of the applicant if, during the period of 5 years immediately preceding the lodgment of the application, the Building Controller has granted to the applicant a specified permission.

“(8) In subsection (7)—

‘specified permission’ means—

- (a) an owner-builder’s licence; or
- (b) a building permit under section 39 as in force immediately before the commencement of this section;

in relation to building work for the erection or alteration of the applicant’s principal place of residence on land other than the land in relation to which the application under subsection (1) has been made.

“(9) An owner-builder’s licence does not entitle the licensee to carry out any building work other than the work in relation to which it has been granted.

**“23B. Period for which owner-builder’s licence is in effect**

An owner-builder’s licence lapses when—

- (a) the certifier in relation to the building work gives to the Building Controller a certificate under paragraph 40 (1) (g) in relation to the work; or
- (b) the relevant building approval lapses otherwise than by virtue of section 35A;

whichever sooner happens.”.

**11. Substitution**

Part III of the Principal Act is repealed and the following Part substituted:

**“PART III—BUILDING WORK**

*“Division 1—Preliminary*

**“29. Interpretation**

In this Part—

‘stage’, in relation to building work, means a stage prescribed under subsection 38A (1).

*“Division 2—Certifiers*

**“30. Eligibility for appointment as certifier**

“(1) The regulations may specify the categories of building work in relation to which a registered construction practitioner is qualified to be appointed certifier.

“(2) A registered construction practitioner is eligible to be appointed certifier in relation to building work if he or she—

- (a) is entitled under the *Construction Practitioners Registration Act 1998* to perform services as certifier in relation to the work; and
- (b) is qualified to be appointed in accordance with the regulations in relation to the work.

“(3) The appointment of a certifier who, after being appointed, ceases to be eligible to be appointed in relation to the relevant building work, ceases to be in effect, by virtue of this subsection, when the certifier ceases to be so eligible.

“(4) In this section—

‘registered construction practitioner’ means a person who is registered under the *Construction Practitioners Registration Act 1998*.

**“31. Appointment of certifiers**

“(1) The owner of a parcel of land on which it is proposed to carry out building work may, in writing, appoint to act as certifier in relation to the work a person who is eligible under section 30 to act as certifier in relation to it.

“(2) Subject to subsection 30 (3), an appointment under subsection (1) ceases to be in effect if—

- (a) the owner of the parcel of land revokes the appointment by notice in writing given to the certifier; or
- (b) the certifier relinquishes the appointment by notice in writing given to the owner of the parcel of land.

**“32. Notification of appointment or cessation of appointment of certifier**

Where, after the issue of a building approval in relation to building work—

- (a) a person is appointed certifier in relation to that work;
- (b) a person’s appointment as certifier in relation to that work ceases to be in effect by virtue of subsection 30 (3) or is revoked; or
- (c) a person relinquishes his or her appointment as certifier in relation to that work;

the person shall, within 7 days of the appointment, cessation, revocation or relinquishment (as the case requires), notify the Building Controller of the occurrence by lodging an approved form.



Penalty: 1 penalty unit.

**“33. Prohibition against contracting out**

A provision in a contract or agreement that limits or modifies, or purports to limit or modify, the operation of this Part, including this section, in relation to a certifier or building work, is void.

**“Division 3—Grant of building approvals**

**“33A. Application**

“(1) The owner of a parcel of land may apply, in accordance with this section, to the certifier for a building approval in relation to building work to be carried out on the land.

“(2) An application under subsection (1) may be made by an agent of the owner of the parcel of land on the owner’s behalf.

“(3) An application under subsection (1)—

- (a) shall be in writing;
- (b) shall specify—
  - (i) the name of the owner of the parcel of land; and
  - (ii) the block, section, division and district (within the meaning of the *Districts Act 1966*) of the parcel of land;
- (c) shall be accompanied by the prescribed number of copies of the plans relating to the proposed work; and
- (d) shall comply with the prescribed requirements.

**“34. Issue of building approvals**

“(1) Subject to section 34A, the certifier to whom application for a building approval is made shall issue the approval if he or she is satisfied that—

- (a) the application complies with subsection 33A (3);
- (b) where the application is made on behalf of the owner of the parcel of land—it is made by an agent authorised in writing by the owner;
- (c) the plans that accompany the application comply with the prescribed requirements;
- (d) the prescribed requirements relating to consultation with, or obtaining the consent or approval of, any person, body or authority, have been satisfied;

- (e) subject to subsection (2), where the plans are for the erection of a building—the building as erected will comply with this Act, the regulations and the Building Code;
- (f) subject to subsection (2), where the plans are for the substantial alteration of a building—the building as altered will comply with the Building Code; and
- (g) the building as proposed to be erected or altered (as the case requires) will be structurally sufficient, safe and stable.

“(2) Paragraph (1) (e) does not require compliance with the Building Code and paragraph (1) (f) does not apply in so far as the plans contain matter the acceptable requirements for which are not dealt with in the Building Code.

“(3) For the purposes of paragraph (1) (f), plans are for the substantial alteration of a building if the aggregate volume (measured in accordance with subsection (4)) of the proposed alteration and any other alteration made to the building during the period of 3 years immediately preceding the making of the application for the building approval is more than 50% of the volume of the original building.

“(4) For the purposes of subsection (3), the volume of a building shall be measured by reference to roof and outer walls.

“(5) A building approval—

- (a) shall be in the prescribed form; and
- (b) shall be—
  - (i) marked on;
  - (ii) attached to; or
  - (iii) partly marked on and partly attached to;the plans in respect of which it has been issued.

“(6) Where a building approval is not, or not entirely, marked on the plans, the certifier shall annotate the plans with an indication that the approval, or part of the approval (as the case requires), is in a separate document.

“(7) A certifier who issues a building approval shall—

- (a) give a copy of the approval and the relevant plans as soon as practicable to the person who has applied for the approval; and
- (b) within 7 days after the issue give to the Building Controller—
  - (i) a copy of the approval;

- (ii) a copy of the relevant plans;
- (iii) if notification of his or her appointment as certifier has not previously been given to the Building Controller—notification of the appointment in the approved form; and
- (iv) the determined fee.

**“34A. External design and siting considerations**

“(1) An application for a building approval shall not be granted if the certifier is satisfied that, by reason of the external design or siting of a proposed building, or of a building as proposed to be altered, the carrying out of the building work to which the application relates would result in the contravention of this Act or any other law.

“(2) Subsection (1) does not apply where the building work forms part of a development that is not required to be approved under Division 2 of Part VI of the Land Act.

**“35. Amendment of approved plans**

“(1) This section applies where, after the issue of a building approval in relation to building work, it is desired to amend the plans that relate to that work.

“(2) Where this section applies, the owner of the parcel of land to which the building approval relates may apply, in accordance with this section, to the certifier for approval of the amendment to the plans.

“(3) An application under subsection (1) shall comply with the prescribed requirements.

“(4) A certifier to whom an application under subsection (2) has been made—

- (a) shall, if satisfied that the nature or extensiveness of the proposed amendments requires reconsideration of the building approval, refuse the application; or
- (b) may, if—
  - (i) the requirements of subsection 34 (1) and the regulations, in so far as they apply to plans, are satisfied in relation to the plans as amended;
  - (ii) if the application were an application for a building approval, it would not be refused by reason of section 34A; and

- (iii) in his or her view, reconsideration of the building approval is not required;

approve the amendment to the approved plan and amend the building approval accordingly.

“(5) A certifier who amends a building approval shall comply with subsections 34 (5), (6) and (7) (other than subparagraph (b) (iv)) in respect of the amended plans as if a reference in those subsections to plans were a reference to the plans as amended.

**“35A. Effect of issue of further building approval**

Upon the issue of a building approval in relation to building work in respect of which a building approval is already in effect, the previously issued building approval is superseded and ceases, by virtue of this section, to be in effect.

**“36. Land to be used in accordance with lease**

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

- (a) if the parcel of land is held under a lease from the Commonwealth—its use for a purpose other than that for which the lease was granted; or
- (b) the use of the parcel of land contrary to a provision, covenant or condition of the lease.

**“36A. Period for which approvals are in force**

“(1) Subject to section 35A and this section, a building approval is valid until the expiry of—

- (a) the period of 3 years commencing on the day of its issue; or
- (b) the development period applicable to the building work;

whichever sooner occurs.

“(2) Where the development period applicable to the building work is extended, the certifier may, subject to subsection (3), extend the period of validity of the building approval to a day that is no later than the day on which the extended development period expires.

“(3) Nothing in subsection (2) authorises the extension of the period of validity of a building approval to a day that is more than 3 years after the day on which the approval was issued.

“(4) In this section—

‘development period’ means a period of time within which, under another law or a condition of the relevant lease, the building work is required to be completed.

**“Division 4—Carrying out building work**

**“37. Requirements for carrying out building work**

Building work shall not be carried out otherwise than in accordance with the following requirements:

- (a) the materials used in the building work shall conform to the standards for those materials set out in the Building Code;
- (b) the methods of use of those materials in the building work shall conform to the acceptable methods of use set out in the Building Code;
- (c) the building work shall be carried out in a proper and skilful manner;
- (d) the building work shall be carried out in accordance with the approved plans;
- (e) where an owner-builder’s licence has not been granted in relation to the building work—the building work shall be carried out by a person who is the holder of a builder’s licence of a class that authorises the carrying out of the building work;
- (f) where an owner-builder’s licence has been granted in relation to the building work—the building work will be carried out by the person to whom the licence has been granted;
- (g) the licensee in charge of the building work shall take—
  - (i) all the safety precautions specified in or with the application for the building approval; and
  - (ii) any other safety precautions that a certifier or a building inspector may from time to time specify.

**“37A. Notifications by owner of land in relation to building work**

“(1) Subject to subsection (3), the owner of a parcel of land shall not authorise the carrying out of building work on that land unless he or she, or his or her agent, has notified in writing the certifier of the name and licence number of the licensee who is to carry out the building work.

Penalty:

- (a) in the case of a natural person—20 penalty units;

(b) in the case of a body corporate—100 penalty units.

“(2) Where—

- (a) a notification under subsection (1) has been given; and
- (b) the work is to be continued by a person other than the person last notified under subsection (1) or this subsection;

the owner of the parcel of land on which the building work is, or is to be, carried out shall not authorise the continuation of the work unless he or she, or his or her agent, has notified in writing the certifier of the name and licence number of the licensee who is to continue to carry out the building work.

Penalty:

- (a) in the case of a natural person—20 penalty units;
- (b) in the case of a body corporate—100 penalty units.

“(3) A person to whom an owner-builder’s licence has been granted in relation to building work shall not commence to carry out the work until he or she has notified in writing the certifier of the number of the licence.

Penalty: 20 penalty units.

“38. **Notifications by certifier in relation to building work**

“(1) A certifier who receives a notification under section 37A shall, within 7 days of receiving it, notify the Building Controller by means of the approved form of—

- (a) the name of the person who is to carry out the building work; and
- (b) the number of that person’s licence and whether or not, in the certifier’s opinion, the licence authorises the carrying out of the relevant building work.

“(2) Where—

- (a) the building work is building work within the meaning of Part VA; and
- (b) Part VA applies to that work by virtue of section 58B;

a certifier who receives a notification under section 37A shall, within 7 days of receiving it—

- (c) advise the Building Controller by means of the approved form whether or not, in the certifier’s opinion, there is in effect an insurance policy in respect of the building work that complies with section 58E; and

- (d) if the certifier is of the opinion that an insurance policy that complies with section 58E is in effect—give to the Building Controller sufficient particulars to identify the policy.

“(3) A certifier shall not, without reasonable excuse, fail to comply with subsection (1) or (2).

Penalty: 5 penalty units.

**“38A. Stages of building work**

“(1) There shall be such stages of building work as are prescribed.

“(2) A licensee in charge of building work shall not proceed with any building work above damp course level unless—

- (a) the certifier has received a plan signed by a surveyor registered under the *Surveyors Act 1967* specifying the position of the building in relation to the boundaries of the parcel of land on which the building is to be erected and specifying the level that the floor or floors of the building will have in relation to a level specified in the approved plans; and
- (b) the certifier is satisfied that the position of the building and the level of the floor or floors are in accordance with—
  - (i) the approved plans; and
  - (ii) the conditions to which any compulsory consent is subject.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

“(3) In subparagraph (2) (b) (ii)—

‘compulsory consent’ means a consent or approval required to be obtained under paragraph 34 (1) (d) or any other law of the Territory.

“(4) A licensee in charge of building work who has reached a stage shall not proceed beyond that stage unless—

- (a) he or she has given to the certifier notice that the stage has been reached; and
- (b) the certifier has inspected the building work and has given written permission for the work to proceed.

Penalty:

- (a) in the case of a natural person—50 penalty units;

(b) in the case of a body corporate—250 penalty units.

“(5) A certifier who has received a notice under paragraph (4) (a) shall inspect the building work to which the notice refers as soon as practicable.

“(6) Where, in the course of an inspection under this section, a certifier forms the opinion on reasonable grounds that the building work is not in compliance with section 37, the certifier shall give to the licensee in charge of the building work such written directions as are reasonable and appropriate for achieving compliance.

“(7) A certifier who is satisfied, after an inspection under this section, that building work complies with section 37, shall certify accordingly and give the certificate to the licensee in charge of the building work.

“(8) A certifier shall not fail, without reasonable excuse, to comply with subsection (5), (6) or (7).

Penalty: 10 penalty units.

“(9) A licensee in charge of building work shall keep records of—

- (a) test borings, test loadings or other investigations made for the purpose of determining the permissible loadings on piles used in the building work, pile-driving operations, calculations of allowable loadings and details of the location of the piles;
- (b) tests loadings and excavations made for the purpose of determining the bearing capacity of the foundation for the building or proposed building or building as proposed to be altered; and
- (c) tests referred to in subsection (10);

until a certificate in respect of the building work is issued under section 53, and, when the certificate is issued, the licensee in charge of the building work shall deliver those records to the certifier.

“(10) A certifier may, by notice in writing, require the licensee in charge of the building work to conduct, on the materials used or to be used in the work, on the structure of the building, or in relation to any other matter concerned with the work, such tests as are specified in the notice.

“(11) A licensee in charge of building work who is required under subsection (10) to conduct a test shall, as soon as practicable after the test is completed, submit to the person who requested it, in writing, the results of that test.

“39. **Building inspector may specify safety precautions**

“(1) Where—



- (a) building work in respect of which a building approval has been granted is being carried out at or near to a street or place that is open to or used by the public; and
- (b) a building inspector finds, on inspection, that inadequate safety precautions in connection with the building work are being taken to protect the safety of persons using that street or place;

the building inspector may direct that such safety precautions as the inspector specifies and are reasonable in the circumstances be taken in respect of that building work.

“(2) Subsection (1) applies—

- (a) whether or not safety precautions were submitted to the certifier who issued the building approval; and
- (b) where safety precautions were submitted—those precautions are being observed.

“(3) The licensee in charge of the building work shall comply with a direction under subsection (1).

#### ***“Division 5—Completion of building work***

##### **“39A. Structural engineer’s certificate**

At any time before or after the completion of building work, the certifier, if satisfied on reasonable grounds that it is desirable to do so in the interests of persons who occupy or use, or are likely to occupy or use, a building or part of a building that is being, or has been, erected or altered, may require the owner of the parcel of land on which the building work is being, or has been, carried out, to furnish to the certifier such certificates by professional engineers as will reasonably satisfy the certifier that the building or part of the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used.

##### **“40. Completion of building work**

“(1) Where building work appears to have been completed, the certifier shall, within 7 days of being satisfied that—

- (a) the work has been completed in accordance with the requirements of this Act and substantially in accordance with the approved plans; and
- (b) the building or part of the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used;

give to the Building Controller—

- (c) written evidence of the obtaining of any consents and approvals required to have been obtained under paragraph 34 (1) (d);
- (d) a copy of the plan referred to in paragraph 38A (2) (a);
- (e) a copy of all certificates issued under subsection 38A (7) in relation to the building work;
- (f) where the regulations require that, upon completion of the building work, the consent or approval of any person, body or authority is to be obtained—written evidence of the obtaining of that consent or approval;
- (g) a certificate that the building work has been completed in accordance with the requirements of this Act and substantially in accordance with the approved plans;
- (h) any certificate obtained under section 39A or, if no certificate under that section has been obtained, a written statement to the effect that—
  - (i) the certifier is satisfied that the building or part of the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used; and
  - (ii) no certificate under section 39A is required;
- (i) where, in the certifier's view, the requirements of a specified subsection of section 53 have been satisfied—written advice that the Building Controller would be justified in issuing a certificate in respect of the building work under that subsection; and
- (j) subject to subsection (3), a copy of the following documents and papers relating to the building work:
  - (i) any application to the certifier under this Act and any accompanying document;
  - (ii) all plans or drawings;
  - (iii) any approval, certificate, determination, notification or permission issued, granted or given;
  - (iv) any certificate or other document given or prepared by another person that the certifier has relied on for the purpose of issuing, granting or giving a document referred to in subparagraph (iii);

- (v) the certifier's working papers and calculations that are relevant to the decision to issue, grant or give a document referred to in subparagraph (iii).

“(2) The Building Controller may, in writing, exempt a certifier from compliance, in whole or in part, with any subparagraph of paragraph (1) (j) in respect of building work specified in the exemption.

“(3) A certifier is not required to give to the Building Controller a copy of a document or paper referred to in paragraph (1) (j) if—

- (a) he or she has already given to the Building Controller, in pursuance of this Act, the document or paper, or a copy of the document or paper; or
- (b) the Building Controller has exempted the certifier under subsection (2) from giving the copy.

#### ***“Division 6—Offences***

##### **“40A. Compliance with Building Code**

A person shall not, without reasonable excuse, carry out building work except in accordance with the Building Code.

Penalty:

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

##### **“41. Notification of breaches**

“(1) Subject to subsection (3), a certifier shall, as soon as practicable, notify the Building Controller of any contravention of this Act, the regulations or the Building Code that has come to the certifier's attention.

Penalty:

- (a) in the case of a natural person—5 penalty units;
- (b) in the case of a body corporate—25 penalty units.

“(2) For the purposes of subsection (1), where building work is not in compliance with section 37, no contravention of this Act shall be taken to have occurred if the licensee in charge of the building work rectifies the matter to the satisfaction of the certifier within a reasonable time of the matter being brought to the notice of the licensee.

“(3) Subsection (1) applies whether or not a direction under subsection 38A (6) has been given in relation to the matter that constitutes the contravention.

**“41A. Carrying out building work in breach of section 37**

“(1) Building work (other than maintenance or cleaning of a specialised system) shall not be commenced or carried out except in compliance with section 37.

“(2) Where building work is commenced or carried out in contravention of subsection (1), the owner of the parcel of land on which the building work is carried out and a person who carries out the building work are each guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

“(3) Where building work that involves the handling of asbestos is commenced or carried out in contravention of subsection (1), the owner of the parcel of land on which the building work is carried out and a person who carries out the building work are each guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—50 penalty units;
- (b) in the case of a body corporate—250 penalty units.

“(4) It is a defence to a prosecution against an owner of a parcel of land for an offence against this section if the owner satisfies the Court that he or she—

- (a) believed on reasonable grounds that section 37 had been complied with; or
- (b) was not aware, and could not reasonably have been aware, that the building work had commenced or had been carried out, as the case requires.

“(5) It is a defence to a prosecution against a person other than the owner of a parcel of land if the person satisfies the Court that—

- (a) he or she had carried out the building work in pursuance of a contract entered into by him or her with another person or at the request and on the instructions of another person; and
- (b) that he or she believed on reasonable grounds that—
  - (i) a building approval had been issued in relation to the building work; and
  - (ii) the work has been carried out in compliance with section 37.

“(6) A person who carries out building work that involves the handling of asbestos is not guilty of an offence against subsection (3) if the person satisfies the court that—

- (a) he or she did not know that the building work involved the handling of asbestos; and
- (b) he or she was not recklessly indifferent to whether the building work involved the handling of asbestos.”.

## **12. Stop notices**

Section 43 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:
  - “(a) without a building approval having been issued in relation to the work;”;
- (b) by omitting paragraph (1) (c);
- (c) by omitting from subsection (2) “, (b) and (c)” and substituting “and (b)”;
- (d) by omitting from paragraph (3) (ba) “36 (3)—when the plan referred to in that subsection is received by the Building Controller” and substituting “39 (2)—when the certifier notifies the Building Controller that the certifier has received the plan referred to in paragraph 39 (2) (a)”;
- (e) by omitting from subsection (4) “43”;
- (f) by omitting from paragraph (4) (a) “permit” and substituting “approval”; and
- (g) by omitting paragraph (4) (b) and substituting the following paragraph:
  - “(b) the application is granted;”.

## **13. Further notices relating to stop notices**

Section 44 of the Principal Act is amended—

- (a) by omitting from subsection (1) “permit” (first occurring) and substituting “approval”;
- (b) by omitting from subsection (1) “, the provisions of this Act and any conditions subject to which the building permit was issued” and substituting “and the provisions of this Act”; and

- (c) by omitting from paragraph (3) (a) “permit” and substituting “approval”.

**14. Notice to produce survey plan**

Section 45A of the Principal Act is amended—

- (a) by omitting “permit has been granted under this Act” and substituting “approval has been issued”;
- (b) by omitting “36 (3)” (first occurring) and substituting “38A (2)”;  
and
- (c) by omitting “subsection 36 (3)” (last occurring) and substituting “paragraph 38A (2) (a)”.

**15. Certificate of occupancy or use**

Section 53 of the Principal Act is amended—

- (a) by omitting subsections (1), (1A) and (1B) and substituting the following subsection:
  - “(1) In this section—
    - ‘prescribed requirements’, in relation to building work, means—
      - (a) the requirements of this Act, the regulations or the Building Code; or
      - (b) the approved plans.”;
- (b) by omitting from subsection (2) “Subject to subsection (2A), where” and substituting “Where”;
- (c) by omitting subsection (2A);
- (d) by omitting subsections (4), (4A) and (5);
- (e) by omitting subsection (8);
- (f) by omitting paragraph (9) (a);
- (g) by omitting from paragraph (9) (b) “signed by the engineer appointed”;
- (h) by omitting from paragraph (9) (b) “or by a person appointed by the engineer,”;
- (i) by adding at the end of paragraph (9) (b) “and”;
- (j) by omitting from paragraph (9) (c) “an engineer” and substituting “a person”;
- (k) by omitting paragraphs (9) (d) and (e); and

- (l) by adding at the end the following subsection:

“(12) For the purposes of determining, for the purposes of this section, whether building work has been completed in accordance with the prescribed requirements, the Building Controller may have regard to the certificates and other documents given to him or her by the certifier under section 40.”.

**16. Repeal**

Section 53A of the Principal Act is repealed.

**17. Interpretation**

Section 58A of the Principal Act is amended by omitting the definition of “builder” and substituting the following definition:

“ ‘builder’, in relation to residential building work or a residential building, means the person whose name is notified to the relevant certifier under section 37A;”.

**18. Application**

Section 58B of the Principal Act is amended by omitting paragraph (1) (b) and substituting the following paragraph:

“(b) in relation to which an owner-builder’s licence has been granted;”.

**19. Residential building work insurance**

Section 58E of the Principal Act is amended by omitting from paragraph (1) (c) “a building permit is granted for the work” and substituting “the certifier in relation to the work receives a notification under subsection 37A (1) or (2) in relation to the builder”.

**20. Review by Administrative Appeals Tribunal**

Section 60 of the Principal Act is amended—

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

“(g) refusing to grant an owner-builder’s licence under subsection 23A (3);”;

- (b) by omitting from paragraph (1) (i) “33A (2)” and substituting “36A (2)”;

- (c) by omitting paragraphs (1) (j) to (p) (inclusive);

- (d) by omitting paragraph (3) (c) and substituting the following paragraph:

“(c) in the case of a decision referred to in paragraph (1) (g)—to the applicant for the owner-builder’s licence;”;  
and

(e) by omitting paragraphs (3) (e) to (k) (inclusive).

**21. Recovery of costs of work carried out by an inspector**

Section 62 of the Principal Act is amended by omitting “, or in the carrying out of the requirements of a notice under section 8 of the *Building Ordinance 1964*.”.

**22. Evidence**

Section 63 of the Principal Act is amended—

(a) by inserting in subsection (3) “or approval” after “permit” (wherever occurring);

(b) by inserting in subsection (3A) “or approval” after “permit” (wherever occurring); and

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

“(6) In this section—

‘building permit’ means a building permit granted under this Act before the commencement of section 11 of the *Building (Amendment) Act (No. 2) 1998*.”.

**23. Repeal**

The Schedule to the Principal Act is repealed.

**24. Transitional**

(1) Notwithstanding the amendments made by this Act, the Principal Act as in force immediately before the commencement day continues to apply in relation to—

(a) a building permit granted before the commencement day;

(b) a building permit granted after the commencement day in relation to plans that were approved, whether before or after the commencement day, on the basis of an application lodged with the Building Controller before that day; and

(c) building work in respect of which a building permit referred to in paragraph (a) or (b) has been granted.

(2) Where an application for approval of plans for building work had been lodged with the Building Controller before the commencement day—



*Building (Amendment) Act (No 2) No. 52, 1998*

- (a) Part III of the Principal Act as in force immediately before the commencement day continues to apply in relation to it;
  - (b) if the plans are approved, a person who, before the commencement day, would have been entitled to apply for a building permit for the building work referred to in the plans may apply for such a permit after that day; and
  - (c) the Principal Act as in force immediately before the commencement day continues to apply in relation to an application referred to in paragraph (b) and to the functions of the Building Controller in relation to the grant or refusal of a building permit.
- (3) In this section—  
“commencement day” means the day on which the provisions of this Act, other than sections 1, 2 and 3, commence.

**25. Consequential amendments of other laws**

The Acts and Regulations specified in the Schedule are amended as set out in the Schedule.

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**SCHEDULE**

Section 25

**AMENDMENTS OF OTHER LAWS**

**PART I—ACTS**

***Common Boundaries Act 1981***

**Paragraph 2 (5) (b)—**

Omit the paragraph.

***Discrimination Act 1991***

**Subsection 52 (3)—**

Omit “permit”, substitute “approval”.

***Environment Protection Act 1997***

**Paragraph 149 (2) (b)—**

Omit “permit”, substitute “approval”.

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**PART II—REGULATIONS**

***Environment Protection Regulations***

**Subregulation 3 (1), definition of “building work”—**

Omit “permit”, substitute “approval”.

*Building (Amendment) Act (No 2) No. 52, 1998*

**NOTES**

**Principal Act**

1. Reprinted as at 31 January 1995. See also Acts No. 28, 1995; No. 85, 1996; Nos. 62, 70 and 96, 1997; No. 48, 1998.

**Penalty units**

See section 33AA of the *Interpretation Act 1967*.

*[Presentation speech made in Assembly on 24 September 1998]*

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