Australian Capital Territory

Building Act 2004

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Effective: 9 July 2013 – 26 August 2013

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(republication for expiry of transitional provisions (pt 15))

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Building Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 July 2013. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 9 July 2013.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register (www.legislation.act.gov.au). For more information, see the home page for this law on the register.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the *Legislation Act 2001*, section 95.

Penalties

At the republication date, the value of a penalty unit for an offence against this law is $110 for an individual and $550 for a corporation (see *Legislation Act 2001*, s 133).

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Building Act 2004

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Australian Capital Territory

Building Act 2004

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

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Part 1 Preliminary

1 Name of Act

This Act is the *Building Act 2004*.

3 Dictionary

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

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

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

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

4 Notes

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

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

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5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

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

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

Note 2 *Penalty units*

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

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Part 2 Important concepts

6 Meaning of *building work*

(1) In this Act:

building work means—

(a) work in relation to the erection, alteration or demolition of a building, and includes disposal of waste materials generated—

(i) by the alteration of a building other than a building excluded under the regulations; or

(ii) by the demolition of a building (but not part of the building); or

(b) work in relation to repairs of a structural nature to a building.

(2) The regulations may—

(a) exempt a kind of work from the definition of ***building work***; or

(b) include a kind of work in the definition of ***building work***.

7 Meaning of *building*

(1) In this Act:

building includes—

(a) a structure on or attached to land; and

(b) an addition to a building; and

(c) a structure attached to a building; and

(d) fixtures; and

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

Example of part of building

footings poured for a building that is being built

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

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

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

(b) a transportable building, mobile home, caravan or similar that—

(i) is not used for long-term habitation; and

(ii) is readily transportable without being disassembled or removed from associated components including a footing, pier, stump, rigid annexe or an attached building or similar; or

(c) if on the ground and not inside a building—paving, a driveway or a road; or

(d) a surface-level carpark that is not inside a building; or

(e) a ground treatment; or

(f) vegetation; or

(g) ground excavations or fillings; or

(h) fittings, other than fittings included in a building—

(i) to make the building comply with the building code; or

(ii) that cause the building to not comply with the building code; or

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(i) fixtures that are not integral to the building, but are fixed to the building to prevent theft or for some other reason not related to the building; or

(j) something exempted under the regulations.

Examples—par (h)

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

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

2 Some light fittings in an office building are fitted with energy efficient lamps to comply with the energy efficiency provisions of the building code. The lamps are part of the building. However, other lamps that are not relied on to comply with the building code are not part of the building unless another provision brings them within the definition of ***building*** for the Act.

3 An office building has cubicles that are not fixed to the building. The cubicles have partition walls, are part of the fit-out for the building and are shown in the building approval. Some cubicles are placed where they obstruct a fire evacuation path in a way that prevents compliance with the building code. Those cubicles are part of the building. The others are not unless another provision brings them within the definition of ***building*** for the Act.

4 A warehouse is being extended. The warehouse stores furniture. Some partitions for cubicles stored in the warehouse impede fire evacuation paths relied on for the extension to comply with the fire evacuation provisions of the building code. The partitions cause the extension to not comply with the building code. The partitions are stored goods and not fittings, so they are not part of the building unless another provision of the Act brings them within the definition of ***building*** for the Act.

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5 An apartment building has a surface-level carpark, part of which is below the apartments and part of which is adjacent to the building with no building above, below or within it. The part of the surface-level carpark below the apartments is part of the building or a separate building, depending on the building code. The other part of the carpark is not part of the building unless another provision of the Act brings it within the definition of ***building*** for the Act.

6 A concrete floor slab for a home is being poured together with a floor slab for a garage and a surface-level driveway to the garage. The floor slabs are parts of the building. The surface-level driveway is not part of the building unless another provision of the Act brings it within the definition of ***building*** for the Act.

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

Example

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

7A Meaning of *site work*

In this Act:

site work is development that is—

(a) building work; and

(b) work other than building work that—

(i) physically affects the place (the ***building site***) where the building work is being carried out; and

(ii) if not carried out at the building site, is carried out near, and connected with, the building site.

Examples of site work

1 putting up temporary fencing to protect trees growing on a road verge

2 building a house

3 damaging or removing a significant tree

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4 laying paving for driveways and parking areas

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

8 Meaning of *structure*

(1) In this Act:

structure includes—

(a) a fence, retaining wall, swimming pool, ornamental pond, mast, antenna, aerial, advertising device, notice or sign; and

(b) a thing prescribed under the regulations as a ***structure***.

(2) However, ***structure*** does not include something that is part of a machine or mechanical plant unless it is—

(a) part of something classified as a building or structure by the building code; or

(b) prescribed under the regulations for this section.

9 Meaning of *specialist building work*

In this Act:

specialist building work—

(a) means—

(i) the installation of a swimming pool; or

(ii) the demolition of a building; and

(b) includes building work prescribed under the regulations as specialist building work.

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10 Meaning of *basic building work*

(1) In this Act:

basic building work—

(a) means the following building work:

(i) erecting a prefabricated class 10a building;

(ii) erecting a class 10a outbuilding;

(iii) installing fireplaces or solid-fuel heaters;

(iv) non-structural work; but

(b) does not include specialist building work.

(2) In subsection (1):

non-structural work—

(a) means work on a part of a building that does not, or is not intended to, carry a structural load imposed or transmitted by another part of a building; and

(b) includes work on non-load bearing walls, doors, partitioning, reticulated pipework, ventilation ductwork and building fit-out items; but

(c) does not include the following work:

(i) work that may affect the structural integrity of a structural element of a building, or weaken or remove, completely or partly, the structural element, if the element is installed in a way that it carries, or can carry, a load of part of a building;

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(ii) work that involves the use of a structural element to carry, or to possibly carry, a structural load of part of a building.

Example for par (c) (i)

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

Examples for par (c) (ii)

1 the installation of a new storey on a building

2 underpinning a subsiding building

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

(3) The regulations may—

(a) exempt a kind of work from the definition of ***basic building work***; or

(b) include a kind of work in the definition of ***basic building work***.

10B Meaning of *disturbs* friable asbestos

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

11 Act does not affect other ACT laws

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

Example of related laws not affected

Electricity Safety Act 1971

Scaffolding and Lifts Act 1912

Utilities Act 2000

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Water and Sewerage Act 2000

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

12 Exempt buildings

In this Act:

exempt building means a building prescribed under the regulations.

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

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

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Part 2A Exemption assessments

13 Purpose of exemption assessment B notices

(1) An exemption assessment may relate to building work that is to be done or has been done.

(2) An exemption assessment B notice in relation to building work that is to be done certifies that the work is, or is not, exempt from all or part of this Act.

Note If an exemption assessment B notice certifies that building work is exempt from all or part of this Act, it must also state what provisions of this Act the building work is exempt from and why, and anything else prescribed by regulation (see s 14B (2)).

(3) An exemption assessment B notice in relation to building work that has been done certifies that the work is, or is not, exempt from all or part of this Act based on whether the work was exempt at the time it was done, or is currently exempt.

14 Exemption assessment applications

(1) The owner of a parcel of land may apply, in writing, to a building surveyor for an assessment (an ***exemption assessment***) of whether building work to be carried out, or carried out, on the parcel of land is exempt from all or part of this Act.

Note 1 Building work may be exempt from all or part of this Act if the work is exempt from this Act, or part of this Act. For exempt buildings and building works, see the *Building (General) Regulation 2008*, s 6, s 7 and sch 1.

Note 2 Applying for an exemption assessment is not a requirement of the building approval or development approval process (see s 14A and *Planning and Development Act 2007*, s 138C). If a person believes that building work is exempt, the person need not apply for an exemption assessment from a building surveyor.

(2) The application must be accompanied by the number of copies of the plans relating to the development work prescribed by regulation.

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(3) The application must contain, or be accompanied by, any other details or material prescribed by regulation.

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

(4) A regulation may prescribe—

(a) information required to be shown in plans under subsection (2); and

(b) requirements with which the plans must comply.

14A Exemption assessment not required for building approval

(1) An exemption assessment is not a requirement of the building approval process.

(2) A building surveyor may issue an exemption assessment B notice to the owner of a parcel of land only if the owner has applied to the building surveyor for an exemption assessment.

(3) A building surveyor must not refuse to issue a building approval on the ground that the applicant for the approval has not applied for an exemption assessment B notice.

14B Exemption assessments and notices

(1) This section applies if—

(a) the owner of a parcel of land applies to a building surveyor for an exemption assessment under section 14; and

(b) the building surveyor agrees to provide the exemption assessment.

(2) The building surveyor must—

(a) undertake the exemption assessment; and

(b) issue a notice (an ***exemption assessment B notice***) stating—

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(i) if any building work is exempt from all or part of this Act—

(A) the building work that is exempt; and

(B) the provisions of this Act that the building work is exempt from and why; and

Note For building work that is completed, see also s (4).

(ii) any building work that is not exempt from any part of this Act; and

(iii) anything else prescribed by regulation; and

Note The building surveyor may refuse to issue a notice if the building surveyor does not have enough information (see s 14E).

(c) give the exemption assessment B notice to the owner; and

(d) within 5 days after the day the building surveyor issues the notice—give a copy of the notice to the construction occupations registrar.

(3) A regulation may prescribe—

(a) any document that must be attached to the exemption assessment B notice; and

(b) information required to be shown in the document.

(4) If the building work that is the subject of the application has been completed and the building surveyor certifies that the building work is exempt because the building work was exempt when carried out, the exemption assessment B notice must also include the dates on which the building surveyor has based the assessment that the building work was exempt.

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(5) If, after taking reasonable steps, the owner cannot find a building surveyor who will agree to provide an exemption assessment, the owner may apply to the construction occupations registrar to appoint a building surveyor to undertake the exemption assessment and issue an exemption assessment B notice to the owner.

14C Exemption assessment applications—request for further information

(1) This section applies if—

(a) a building surveyor requires further information for an exemption assessment under section 14B; and

(b) the owner of the parcel of land and the building surveyor have not agreed that the building surveyor will obtain the further information; and

(c) the building surveyor believes on reasonable grounds that the further information will help the building surveyor to prepare the assessment.

(2) The building surveyor may, by written notice, ask the owner to give the building surveyor stated further information in relation to the application.

(3) This section does not entitle a building surveyor to require—

(a) photographs to be taken by someone other than the owner of the parcel of land; or

(b) photographs to be taken using equipment other than equipment of the owner's choice; or

(c) further information if—

(i) the building surveyor has, or has reasonable access to, suitable information that allows the building surveyor to decide the application without personally inspecting the land where the building work is to be carried out; or

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

Examples—suitable information building surveyor has or has reasonable access to

1 The website www.actmapi.act.gov.au provides aerial photographs and topographical information including ground contours for some ACT areas. If the land to which an application relates is covered by the website, the photographs and contours have sufficient information, and are accurate and recent enough, to decide the application in relation to tree and ground-height related matters, the building surveyor may not require further information or documents by way of photographs or topographical information in relation to trees and ground heights.

2 A building surveyor may verify land tenure and permit and statutory approval matters by contacting the statutory custodians of the information to a sufficient degree to decide the application in relation to those matters. The building surveyor may not require further information in relation to those matters.

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

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

(4) For this section, a building surveyor that is a partnership inspects land personally if any partner inspects the land.

14D Exemption assessment applications—contents of request for further information

(1) A request under section 14C must—

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

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

(c) state that the owner need not provide the further information, but if the owner fails to provide some or all of the information in accordance with the request, the building surveyor may refuse under section 14E to issue an exemption assessment B notice; and

(d) state that, despite the owner and building surveyor having previously not agreed that the building surveyor would obtain the further information, the owner and building surveyor may agree that the building surveyor will obtain the information.

(2) The request may require the owner to confirm all or part of any information provided by statutory declaration.

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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

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

14E Exemption assessment applications—effect of failure to provide further information

(1) This section applies if—

(a) a building surveyor has asked for further information under section 14C in relation to an exemption assessment application; and

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(b) the owner has not provided some or all of the information by—

(i) the end of the period stated in the request; or

(ii) if the building surveyor has extended the period within which the further information must be provided—the end of that period; and

(c) the owner and the building surveyor have not agreed that the building surveyor will obtain the further information.

(2) The building surveyor may refuse to issue an exemption assessment B notice under section 14B.

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Part 3 Building work

Division 3.1 Preliminary

15 Application of pt 3 to building work

(1) This part does not apply to—

(a) building work in relation to an exempt building; or

(b) building work that is exempt under a regulation.

(2) However, this part applies to building work mentioned in subsection (1) if—

(a) the work involves—

(i) handling asbestos; or

(ii) disturbing friable asbestos; and

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

Note The owner of a parcel of land may apply to a building surveyor for an assessment about whether building work is exempt from all or part of the Act (see pt 2A).

Division 3.2 Certifiers and government certifiers

Note This division applies to building work and other site work.

17 Definitions for div 3.2

In this division:

certifier does not include government certifier.

eligible entity, for building work—see section 18.

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

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18 Eligibility for appointment—certifiers and government certifiers

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

(a) is entitled under the *Construction Occupations (Licensing) Act 2004* to perform services as certifier for the work; and

(b) is qualified under the regulations to be appointed for the work.

19 Appointment of certifiers—work not begun

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

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

19A Appointment of certifiers—work begun

(1) This section applies if—

(a) building work has begun on a parcel of land; and

(b) the building work has been carried out in accordance with this part.

(2) The owner of land may appoint an eligible entity as certifier for the building work.

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

19B Automatic suspension

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

19C Ending suspensions

(1) This section applies if an entity's appointment as certifier is suspended.

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(2) The entity's suspension ends when—

(a) the entity becomes an eligible entity; or

(b) the entity's appointment as a certifier ends.

19D Ending appointments

(1) An entity's appointment as certifier for building work on land ends if—

(a) the owner of the land revokes the appointment by written notice given to the entity; or

(b) the entity resigns the appointment; or

(c) the entity's appointment has been suspended for a single period of 3 months or longer; or

(d) each of the following apply:

(i) a certificate under part 5 (Building occupancy) is issued for the building work;

(ii) the certificate is not subject to a condition that requires building work to be done;

(iii) there is no part of the building work for which a certificate under part 5 has not been issued; or

(e) it has been 5 years since the certifier was last appointed as certifier for the building work.

(2) An entity may resign an appointment as certifier only—

(a) with the written approval of the construction occupations registrar; and

(b) by written notice given to the owner of the land.

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(3) The construction occupations registrar may approve the resignation of the entity as certifier only if satisfied that—

(a) the entity can not exercise the entity's functions as a certifier in relation to the building work because of mental or physical incapacity; or

(b) the entity has arranged for another certifier to take over the entity's functions as a certifier in relation to the building work; or

(c) it is otherwise appropriate to approve the resignation.

(4) An appointment that ends under subsection (1) (c) ends—

(a) for a suspension for a single period of 3 months—on the day after the end of the 3-month period; or

(b) for a suspension for a single period of longer than 3 months—on the day after the end of the first 3 months of the period.

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

(1) This section applies if an eligible entity's appointment as certifier for building work on land (the ***first appointment***) ends under section 19D (1) (e).

(2) The owner of the land may appoint the entity as certifier for the building work (the ***second appointment***).

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

(3) If the certifier is an eligible entity during all of the relevant period, the second appointment is taken—

(a) to begin on the day after the day the first appointment ends; and

(b) to be a continuation of the first appointment, not a new appointment.

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(4) However, for section 19D (1) (e), the second appointment is taken to be the last appointment if no appointment has been made after it.

(5) In this section:

relevant period means the period that—

(a) begins on the day after the day the first appointment ends; and

(b) ends on the day before the day the second appointment is made.

20 Appointment of government certifiers

(1) This section applies to building work if the last certifier appointed for the work is no longer the certifier for the work.

(2) A certifier is ***no longer the certifier*** for building work if—

(a) the certifier's licence is suspended for longer than 3 months; or

(b) the certifier's licence has been cancelled; or

(c) the certifier has resigned the appointment under section 19D (Ending appointments); or

(d) the certifier is dead; or

(e) for a building certifier in the same occupation class as the certifier—the certifier is not covered by insurance required under the *Construction Occupations (Licensing) Act 2004*.

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

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

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(4) The construction occupations registrar may appoint a government certifier for the building work if satisfied that the criteria prescribed under the regulations are satisfied.

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

(5) The regulations may prescribe what must accompany the application.

(6) In this section:

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

21 Power to require building documents

(1) A government certifier appointed for building work may, by written notice, require the entity that was the certifier (or last certifier) for the building work to give the government certifier any building document the entity has in relation to the work within the period stated in the notice.

(2) The period stated in the notice must not be less than 2 weeks after the day the notice is given.

(3) A person commits an offence if the person contravenes a notice given to the person under subsection (1).

Maximum penalty: 50 penalty units.

(4) Each partner commits an offence if the partnership contravenes a notice given to the partnership under subsection (1).

Maximum penalty: 50 penalty units.

(5) It is a defence to a prosecution for an offence against subsection (4) if the partner proves—

(a) that—

(i) the partner did not know about the contravention of the subsection involved in the offence; and

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(ii) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or

(b) that the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

(6) An offence against subsection (3) or (4) is a strict liability offence.

(7) In this section:

building document means a document mentioned in section 48 (3) (Completion of building work).

22 Protection of government certifiers from liability

(1) A government certifier does not incur civil or criminal liability for an act or omission done honestly as a government certifier.

(2) A civil liability that would, apart from this section, attach to the government certifier attaches instead to the Territory.

23 Entitlement to act as certifier

(1) A licensed construction practitioner is not entitled to perform services as a certifier in relation to building work if he or she has an interest in the work.

(2) For this section, a licensed construction practitioner has an ***interest*** in building work if the practitioner, or a person related to the practitioner—

(a) has a legal or equitable interest in the land where the building work is, or is to be, carried out; or

(b) has prepared, or intends to prepare, drawings intended to be used in relation to the construction of the building work; or

(c) has carried out, or intends to carry out, any of the building work; or

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(d) has a financial interest in the construction or completion of the building work.

(3) For this section, a person is ***related to*** a licensed construction practitioner if the person is—

(a) a person with whom the practitioner has a personal, professional, commercial or financial relationship; or

(b) an employer or employee of the practitioner; or

(c) a company of which the practitioner is a director or in which the practitioner holds a share.

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

24 Notice of certifier's appointment or end of appointment

(1) This section applies if—

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

(b) after the issue, either—

(i) an entity is appointed certifier for the work; or

(ii) an entity's appointment as certifier for the work ends under section 19D (1) (a) or (b).

(2) Within 7 days after the day the entity is appointed or the appointment ends, the entity must give the construction occupations registrar written notice of the appointment or end.

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

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25 Prohibition against contracting out of pt 3

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

Division 3.3 Building approvals

25A Overview—div 3.3

(1) This division deals with building approvals for building work carried out on land and how the owner of the land may apply for building approval.

(2) Section 27 to section 30A affect the issue of building approvals as follows:

(a) section 27 provides that a certifier must not consider an application for building approval unless, among other things, the accompanying plans comply with the requirements prescribed by regulation;

(b) section 28 provides that an application for building approval must be approved if the plans meet each approval requirement under section 29, and deals with how the approval is given;

(c) section 28A sets out how a building approval is marked on plans;

(d) section 29 sets out the approval requirements for the plans;

(e) section 30 and section 30A set out when an application for building approval must be refused.

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25B Why are building approvals necessary?

(1) A building approval is necessary because—

(a) section 42 (1) (d) requires building work to be carried out in accordance with approved plans (which may have to comply with this Act in relation to asbestos); and

(b) approved plans are plans that relate to building work for which a building approval is in effect.

(2) Section 42 provides that building work must not be carried out except in accordance with the requirements set out in the section.

(3) Not complying with section 42, for example—

(a) is an element of offences against section 42A (Contravention of requirements for building work involving asbestos) and section 51 (Carrying out building work in contravention of s 42); and

(b) is a ground for giving a notice to a building licensee under section 44 (2) (a) (Stage inspections); and

(c) is a ground for giving a notice to carry out building work under section 62 (see s 61 (b)).

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

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

25C Building approvals apply to building work

To remove any doubt—

(a) a building approval only relates to building work shown on the approved plans under the approval, other than building work—

(i) identified in the plans as not forming part of the approval; and

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(ii) on a parcel of land other than a parcel to which the application for approval relates; and

(b) the issue of a building approval does not indicate that carrying out work other than building work identified in the plans is consistent with the law or lease provisions applying to carrying out the work.

Example of work other than building work shown in approved plans

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

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

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

2 Approved plans show proposed demolition of a fence and a party wall. The wall and fence straddle a common boundary shared by 2 land parcels. The building approval can not operate in relation to only 1 of the parcels. If building approval is required for the demolition, it must relate to both parcels of land.

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

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26 Building approval applications

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

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

(2) The application must—

(a) be accompanied by the number of copies of the plans relating to the proposed work prescribed under the regulations; and

(b) be accompanied by a waste management plan if the building work involves—

(i) the demolition of a building; or

(ii) the alteration of a building other than a class 1, class 2 or class 10a building; and

(c) be accompanied by an asbestos removal control plan if a building to which the building work relates—

(i) is a class 1, class 2, class 3 or class 4 building, or a class 10 building associated with a class 1, class 2, class 3 or class 4 building; and

(ii) was erected before, or the erection of which started before, 1985; and

(d) if there is an asbestos assessment report for premises to which the building work relates—be accompanied by a copy of the asbestos assessment report unless the applicant cannot obtain the report after taking reasonable steps; and

(e) if there is development approval for development to which the building work relates—be accompanied by a copy of the development approval, unless the applicant cannot obtain a copy of the approval after taking reasonable steps; and

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(f) if there is an exemption assessment D notice for development to which the building work relates—be accompanied by a copy of the exemption assessment D notice; and

(g) if required under an energy efficiency provision—be accompanied by an energy efficiency certificate.

(h) if the development to which the building work relates is a development proposal to which the *Planning and Development Regulation 2008*, schedule 1, section 1.19 applies—be accompanied by a written notice that the section has been complied with within 2 years before the day the application is made.

Example—written notice

a copy of any form prepared for s 1.19 under the *Planning and Development Act 2007*, s 425 and a statement about how and when it was given

Note 1 ***Exemption assessment D notice***—see the *Planning and Development Act 2007*, s 138D.

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

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

(4) In this section:

energy efficiency provision—see section 139C (4).

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

(1) This section applies if—

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

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

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

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

Examples of what certifier may ask for

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

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

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

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

(3) To remove any doubt, this section does not entitle a certifier to require—

(a) photographs to be taken by someone other than the applicant; or

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(b) photographs to be taken using equipment other than equipment of the applicant's choice; or

(c) further information if—

(i) the certifier has, or has reasonable access to, suitable information that allows the certifier to decide the application without personally inspecting the land where the building work is to be carried out; or

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

Examples of suitable information certifier has or has reasonable access to

1 The internet website www.actmapi.act.gov.au provides aerial photographs and topographical information including ground contours for some ACT areas. If the land to which an application relates is covered by the website, the photographs and contours have sufficient information, and are accurate and recent enough, to decide the application in relation to tree and ground-height related matters, the certifier may not require further information or documents by way of photographs or topographical information in relation to trees and ground heights.

2 A certifier may verify land tenure and permit and statutory approval matters by contacting the statutory custodians of the information to a sufficient degree to decide the application in relation to those matters. The certifier may not require further information in relation to those matters.

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

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

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

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26B Contents of request for further information

(1) A request under section 26A must—

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

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

(c) state that the applicant need not provide the further information, but if the applicant fails to provide some or all of the information in accordance with the request, the certifier may refuse to issue a building approval under section 28; and

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

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

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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

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

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

(1) This section applies if—

(a) a certifier has asked for further information under section 26A in relation to an application; and

(b) the applicant has not provided some or all of the information in accordance with the request; and

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

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

27 Certifier not to consider certain applications

(1) A certifier must not consider an application under section 26 unless—

(a) the plans that accompany the application comply with any requirements prescribed under the regulations; and

(b) if—

(i) a regulation prescribes that an entity's advice on the application must be sought—the entity's advice has been sought; or

(ii) a regulation prescribes that an entity must be consulted about the application—the entity has been consulted; or

(iii) a regulation prescribes that an entity's consent to, or approval of, the application is required—the entity has consented to, or approved, the application; or

(iv) a consent or approval prescribed by regulation contains a condition that must be complied with—the certifier is

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satisfied on reasonable grounds that the condition has been complied with; and

(c) if the application is made on behalf of the owner of the parcel of land—it is made by an agent authorised in writing by the owner; and

(d) the training levy has been paid.

(2) In this section:

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

27A Notice if building approval not issued

(1) This section applies if—

(a) an application for a building approval is made to the certifier under section 26; and

(b) the certifier does not issue the building approval for all or part of the building work that is the subject of the application because the certifier—

(i) refuses to issue the approval under section 26C; or

(ii) must not consider the application under section 27; or

(iii) must not issue the approval under section 30 or section 30A; or

(iv) decides that the approval is not required for all or part of the building work for which the application is made.

(2) The certifier must give the applicant written notice stating that building approval is not issued for the building work mentioned in subsection (1) (b) and the reason why the approval is not issued.

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28 Issue of building approvals

(1) This section applies if—

(a) an application for a building approval is made to the certifier under section 26; and

(b) the certifier may consider the application; and

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

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

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

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

Note This may include deciding whether the building work requires development approval under the *Planning and Development Act 2007* (see s 29 (1) (g)).

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

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

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

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

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

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

28A Marking building approval

(1) If a certifier issues a building approval under section 28—

(a) the approval must be marked on, attached to or partly marked on and partly attached to, each page of the plans it relates to; and

(b) the certifier must—

(i) initial, date and mark the certifier's licence number on each page of the plans; and

(ii) attach each accompanying document to the plans; and

(iii) if the accompanying documents do not include an asbestos assessment report—attach an asbestos advice to the plans.

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

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

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

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

(3) Also, if, because of the size of 1 or more of the accompanying documents (the ***relevant documents***), it is impractical to attach the relevant documents to the plans, the certifier may, instead of attaching the relevant documents under subsection (1) (b) (ii), mark each page of the plans with an indication that the relevant documents are separate.

(4) If the certifier issues the building approval, the certifier must—

(a) give to the person who applied for the approval a copy of—

(i) the approval; and

(ii) the relevant plans; and

(iii) if 1 or more of the accompanying documents are not attached to the plans—the accompanying documents that are not attached; and

(b) not later than 7 days after the day of issue, give to the construction occupations registrar—

(i) a copy of the approval; and

(ii) the building approval certificate; and

(iii) a copy of the relevant plans; and

(iv) if 1 or more of the accompanying documents are not attached to the plans—a copy of the accompanying documents that are not attached; and

(v) if notification of the certifier's appointment has not previously been given to the registrar—notification of the appointment.

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

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

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(5) In this section:

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

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

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

29 Approval requirements

(1) Each of the following is an ***approval requirement*** for plans:

(a) if the plans are for the substantial alteration of a building—the building as altered will comply with this Act and the building code;

Note 1 ***Substantial alteration***—see s (2).

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

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

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

(d) if a waste management plan is required to accompany the application—the plan is adequate;

(e) if an asbestos removal control plan is required to accompany the application—the plan complies with the asbestos code;

(f) the building as proposed to be erected or altered will be structurally sufficient, safe and stable.

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(g) if the plans show site work that, if carried out in accordance with the plans, might be exempt under the *Planning and Development Act 2007* from requiring development approval—

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

(ii) a copy of an exemption assessment D notice for the site work stating that the site work is an exempt development is attached; or

Note 1 If site work is an exempt development, it does not require development approval (see *Planning and Development Act 2007*, s 133).

Note 2 Applying for an exemption assessment is not a requirement of the development approval or building approval process. If a person believes that a development is an exempt development, the person need not apply for an exemption assessment from a works assessor or building surveyor (see *Planning and Development Act 2007*, div 7.3.1A).

(iii) development approval for the site work is attached.

Example

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

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

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

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

If an exemption assessment D notice for the proposed residence and garage indicates the residence and garage are exempt from requiring development approval, then the plans do not need to include any additional information to establish that the proposed residence and garage are an exempt development.

Note 1 This provision does not give a certifier power to require an applicant to provide either development approval, or an exemption assessment D notice, under the *Planning and Development Act 2007*.

Note 2 Section 30 and s 30A prevent building approval from being given in some cases.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(2) A regulation may declare that—

(a) an alteration of a building is or is not a substantial alteration; or

(b) a part of a building (the ***unaltered part***) that has not been altered need not comply with the building code despite subsection (1) (a).

(3) For subsection (1)—

(a) a building or a building as altered does not fail to comply with this Act only because the plans for the building or alteration contain something to which the building code does not apply; and

(b) a building product, construction method, design, component or system connected with a building is taken to comply with the building code if the product, method, design, component or system complies with a recognised standard.

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(4) For subsection (1) (d), a waste management plan is ***adequate*** if—

(a) the plan satisfies any requirements prescribed under the regulations; and

(b) there is a recycling facility for the reuse or recycling of material mentioned in the plan and the plan states that the material will be disposed of, if practicable, at the facility.

(5) The Minister may declare that a facility outside the ACT is suitable to reuse or recycle stated material.

(6) A declaration is a notifiable instrument.

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

(7) For subsection (1) (g) (ii), the certifier must be satisfied that the exemption assessment D notice—

(a) is for the site work to which the application relates; and

(b) was issued by a works assessor or building surveyor not more than 3 months before the day the application for building approval was made.

Note There is no obligation on the certifier to confirm the exemption assessment D notice in any other way, such as for accuracy or completeness.

(8) In this section:

recycling facility, for material, means—

(a) a facility in the ACT where the material is reused or recycled; or

(b) a facility outside the ACT that the Minister has declared is suitable to reuse or recycle the material under subsection (5).

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30 When building approvals not to be issued—general

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

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

(b) the material used in the building; or

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

(d) the number of buildings on the land.

Example

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

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

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

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

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

Note 3 See the sustainability guidelines made under s 143.

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

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

(3) In this section:

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

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

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

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

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

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

(d) the entity has not—

(i) withdrawn the advice; or

(ii) changed or added to the advice so that issuing the approval or carrying out work in accordance with the approval would not be inconsistent with the advice as changed or added to.

(2) The certifier must not issue the building approval unless satisfied on reasonable grounds that—

(a) further information or amendments of the application address the advice of the entity; or

(b) the advice relates to an area other than an area that the entity giving the advice is authorised by regulation to give advice on.

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(3) A regulation may prescribe the following:

(a) when the advice of an entity must be sought on an application to a certifier for building approval;

(b) if an entity's advice must be sought on an application to a certifier for building approval—the advice the entity may give;

(c) anything else in relation to the advice.

31 Application for approval of amended plans

(1) This section applies if—

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

(b) the owner of the parcel of land where the building work is being, or is to be, done has amended the plans for the work.

(2) The owner may apply, in writing, to a certifier to approve the amended plans.

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

32 Amendment of approved plans

(1) This section applies if an application under section 31 for the amendment of plans has been made to a certifier.

(2) The certifier must approve the amended plans and amend the building approval only if—

(a) the approval requirements, so far as they apply to plans, are satisfied in relation to the plans as amended; and

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

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(c) a building built to the amended plans would not be significantly different from a building built to the unamended plans.

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

(3) If the certifier cannot approve the amended plans, the certifier must tell the applicant in writing that the application is refused.

(4) The regulations may prescribe when a building built to amended plans is significantly different from a building built to unamended plans.

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

(1) This section applies if—

(a) the owner of a parcel of land (the ***applicant***) has applied to a certifier under section 31 to approve amended plans; and

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

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

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

(3) To remove any doubt, this section does not entitle a certifier to require—

(a) photographs to be taken by someone other than the applicant; or

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(b) photographs to be taken using equipment of the applicant's choice at or near ground level; or

(c) further information if—

(i) the certifier has, or has reasonable access to, suitable information that allows the certifier to decide the application without personally inspecting the land where the building work is to be carried out; or

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

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

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

32B Contents of request for further information

(1) A request under section 32A must—

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

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

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

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

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

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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

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

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

(1) This section applies if—

(a) a certifier has asked for further information under section 32A in relation to an application; and

(b) the applicant has not provided some or all of the information in accordance with the request; and

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

(2) The certifier may refuse to approve the amended plans to which the application relates.

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33 Marking approval of amendment

(1) If a certifier approves amended plans under section 32—

(a) the amended building approval must be marked on, attached to or partly marked on and partly attached to, each page of the plans; and

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

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

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

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

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

(3) The certifier must—

(a) give a copy of the amended approval and the amended plans as soon as practicable to the person who applied for the approval; and

(b) within 7 days after the day of issue, give to the construction occupations registrar—

(i) a copy of the amended approval; and

(ii) a copy of the amended plans; and

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(iii) if notification of the certifier's appointment has not previously been given to the registrar—notification of the appointment.

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

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

34 Effect of issue of further building approval

(1) This section applies if—

(a) a building approval is in force for building work; and

(b) another building approval is issued for the building work (whether or not the approval also relates to other building work).

(2) The first building approval ends because of this section.

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

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

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

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

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

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

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36 Period for which approvals operate

(1) A building approval operates until the end of the earliest of the following:

(a) 3 years beginning on the day of its issue;

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

Note A building approval ends if a further approval is issued for the same building work (see s 34).

(2) If the development period applying to the building work is extended, the certifier may extend the period of operation of the building approval to a day that is no later than the day the extended development period ends.

(3) However, subsection (2) does not authorise the extension of the period of validity of a building approval to a day that is more than 3 years after the day the approval was issued.

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

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

(5) In this section:

development period means a period within which, under another law in force in the ACT or a condition of the relevant lease, the building work must be completed.

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

(1) This section applies if—

(a) an entity's advice on an application for building approval has been sought as prescribed by regulation; and

Note See s 30A (3) (When building approvals not to be issued—advice on referral).

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(b) either—

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

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

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

(d) the certifier issues the building approval; and

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

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

(3) The entity must not act inconsistently with the advice in relation to the application for building approval unless—

(a) further information in relation to the building work proposed in the application comes to the entity's attention (other than information mentioned in subsection (4)); and

(b) the entity did not have the further information when the entity gave the advice; and

(c) the further information is relevant to the advice the entity gave; and

(d) the entity would have given different advice if the entity had the further information before giving the advice.

(4) Subsection (3) (a) does not apply to further information in relation to building work proposed in the application for building approval if the information—

(a) was not required in the building approval application; and

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(b) is required by the entity after the application is approved; and

(c) is consistent in all significant respects with information already provided by the applicant, except that it is more detailed.

(5) For this section, an entity ***acts inconsistently*** with advice in relation to an application for building approval if—

(a) the advice is that the entity will issue or give an approval or other thing in relation to the building work; and

(b) the application is approved; and

(c) the entity—

(i) does not issue or give the approval or other thing consistent with the advice; or

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

Example of advice

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

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

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

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

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

Example of acting inconsistently

An Act prohibits activity A without an approval. The entity responsible for administering the Act gives advice sought as prescribed by regulation (see

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s 30A (3)) that the activity (activity B) in the application does not fall within the description of activity A. The application is approved consistent with the advice. The entity can not prosecute a person for carrying out activity B in accordance with the approved application because activity B does fall within the description of activity A and the person did not have approval.

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

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

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

Division 3.4 Building commencement notices and building work signs

37 Building commencement notice issue

(1) This section applies if—

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

(b) under the *Construction Occupations (Licensing) Act 2004*, any of the work must be done by a licensed builder; and

(c) a licensed builder has been engaged to do the work.

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

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

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

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(3) If, under section 37B, a sign must be displayed on the parcel of land before the application is made, the licensed builder must state in the application that the builder—

(a) erected the sign, and displayed the sign for the required period; or

(b) is reasonably satisfied that the sign was erected by a licensed builder and displayed for the required period.

Note Knowingly or recklessly giving someone information in relation to a construction service that is false or misleading is a ground for occupational discipline (see *Construction Occupations (Licensing) Act 2004*, s 55 (1) (b)).

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

(a) a residential building insurance policy for the work; or

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

(c) a fidelity certificate for the work issued by the trustees of a scheme approved under division 6.4 (Approved fidelity fund schemes).

(5) On receiving the application, the certifier must issue a building commencement notice for the building work if satisfied on reasonable grounds that the builder's licence authorises the work in the building approval.

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

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

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

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(7) In this section:

approved insurer means an authorised insurer who—

(a) has had a form of residential building insurance policy approved by the construction occupations registrar; and

(b) has not given to the registrar a notice under section 95 (Duties of insurers).

residential building work—see section 84.

37A Sign to be displayed for certain building work

(1) This section applies to building work that is required to be done only by a licensed builder.

Note This section does not apply to exempt building work (see s 15 (Application of pt 3 to building work)).

(2) A licensed builder who carries out or supervises the building work on a parcel of land must display a sign on the parcel—

(a) while the work is being carried out; or

(b) if the work is prescribed by regulation—for the period prescribed by regulation for the work.

(3) However, if the building work must be carried out urgently to address a risk of death or injury to a person, serious harm to the environment or significant damage to property, the licensed builder who carries out or supervises the work must display a sign as soon as practicable after the work is begun.

(4) A sign under this section must comply with any requirement prescribed by regulation.

(5) If a sign under this section is removed or damaged, the person who must display the sign must replace or repair it—

(a) within 2 days after the day it is removed or damaged; or

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(b) if another period is prescribed by regulation—within that period.

(6) A person commits an offence if—

(a) a sign is displayed under subsection (2); and

(b) the person moves, alters, damages, defaces, covers or prevents access to the sign.

Maximum penalty: 5 penalty units.

(7) An offence against subsection (6) is a strict liability offence.

37B Sign to be displayed for building work in prescribed development

(1) This section applies to building work that—

(a) is in relation to prescribed development; and

(b) is required to be done only by a licensed builder.

Note This section does not apply to exempt building work (see s 15 (Application of pt 3 to building work)).

(2) A licensed builder engaged to carry out the building work on a parcel of land must display a sign on the parcel—

(a) that complies with the requirements prescribed by regulation; and

(b) for the period prescribed by regulation.

Note Power to make a statutory instrument (including a regulation) includes power to make different provision for different categories (see Legislation Act, s 48).

(3) If a sign under this section is removed or damaged, the person who must display the sign must replace or repair it—

(a) within 2 days after the day it is removed or damaged; or

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(b) if another period is prescribed by regulation—within that period.

(4) A person commits an offence if—

(a) a sign is displayed under subsection (2); and

(b) the person moves, alters, damages, defaces, covers or prevents access to the sign.

Maximum penalty: 5 penalty units.

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

38 Automatic end of building commencement notices

(1) A building commencement notice for building work ends if—

(a) for residential building work—the work is no longer insured; or

(b) the building approval for the work ends.

(2) In this section:

insured, for building work, means—

(a) the work is insured under a residential building insurance policy; or

(b) a fidelity certificate is in force for the work by the trustees of a scheme approved under division 6.4 (Approved fidelity fund schemes).

39 Application for cancellation of building commencement notice

(1) This section applies if a building commencement notice is in force for building work.

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(2) The licensed builder mentioned in the building commencement notice—

(a) may apply, in writing, for cancellation of the building commencement notice; and

(b) if the builder does apply for its cancellation—must give to the owner of the parcel of the land where the work is being, or is to be, done—

(i) a copy of the application; and

(ii) a notice that states that the owner has 2 weeks (the ***representation time***) to make representations to the construction occupations registrar about whether the building commencement notice should be cancelled.

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

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

40 Decision on building commencement notice application

(1) This section applies if—

(a) the construction occupations registrar receives an application under section 39 for the cancellation of a building commencement notice; and

(b) either—

(i) the representation time for the application has ended; or

(ii) the owner of the land where the building work is being, or is to be, done agrees in writing to the cancellation.

(2) If the representation time has ended without the owner of the land agreeing to the cancellation, the construction occupations registrar must consider any representation made by the owner within the representation time.

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(3) The construction occupations registrar may cancel the building commencement notice if satisfied—

(a) that the builder mentioned in the notice cannot do the building work; or

(b) it is otherwise appropriate to cancel the notice.

41 Multiple or part building commencement notice

(1) Two or more building commencement notices for the same building work may be in force at the same time.

(2) A building commencement notice continues to operate for building work even if the building work being done is only part of the building work for which the commencement notice was issued.

Division 3.5 Carrying out building work

42 Requirements for carrying out building work

(1) Building work must not be carried out except in accordance with the following requirements:

(a) the materials used in the building work must comply with the standards under the building code for the materials in buildings of the kind being built or altered;

(b) the way the materials are used in the building work must comply with their acceptable use under the building code for buildings of the kind being built or altered;

(c) the building work must be carried out in a proper and skilful way;

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

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(d) building work must be carried out—

(i) in accordance with approved plans; or

(ii) if the building work involves handling asbestos or disturbing friable asbestos—in accordance with approved plans that comply with this Act in relation to the asbestos;

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

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

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

(f) the building licensee in charge of the building work must take—

(i) all the safety precautions stated in or with the application for the building approval; and

(ii) any other safety precaution that a certifier or building inspector may require the building licensee to take under section 46.

(2) The regulations may prescribe considerations to be taken into account to decide whether building work is carried out in a proper and skilful way.

42A Contravention of requirements for building work involving asbestos

(1) This section applies to building work that involves handling asbestos or disturbing friable asbestos.

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(2) The person who carries out the building work commits an offence if the carrying out of the work contravenes section 42.

Maximum penalty: 50 penalty units.

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

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

(a) the carrying out of the building work contravened section 42 only because friable asbestos was disturbed in carrying out the work; and

(b) either—

(i) the defendant took reasonable steps to minimise the risk of friable asbestos being disturbed; or

(ii) the disturbing of the friable asbestos happened in the defendant taking reasonable steps to minimise the risks resulting from the disturbance of the friable asbestos.

(5) The owner of the parcel of land where the building work is carried out commits an offence if—

(a) the work is carried out in contravention of section 42; and

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

Maximum penalty: 50 penalty units.

(6) The owner of the parcel of land where the building work is carried out commits an offence if—

(a) the work is carried out in contravention of section 42; and

(b) the owner is reckless about whether the work is carried out in contravention of that section.

Maximum penalty: 20 penalty units.

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43 Stages of building work

(1) The regulations may prescribe—

(a) stages of building work; and

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

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

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

Example of regulations with s 43 (3)

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

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

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

(a) further building work is exempt if the further work is to undo all or part of the building work that was done beyond the stage, so that the certifier can inspect the building work for the stage (and give permission for building work to proceed beyond the stage); and

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(b) the building work may proceed if it is otherwise done in accordance with the Act.

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

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

(2) A building licensee in charge of building work must not do building work above dampcourse level (other than further building work exempted under subsection (1) (b)) unless—

(a) the certifier has received—

(i) a plan (a ***survey plan***) signed by a registered surveyor stating the position of the building in relation to the boundaries of the parcel of land where the building is to be erected and stating the level that the floor or floors of the building will have in relation to a level stated in the approved plans; or

(ii) another document prescribed under the regulations; and

(b) the certifier is satisfied that the position of the building and the level of the floor or floors are in accordance with—

(i) the approved plans; and

(ii) any condition of the following:

(A) an advice mentioned in section 27 (1) (b) (i);

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

Maximum penalty: 50 penalty units.

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

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

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

Maximum penalty: 50 penalty units.

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

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

44 Stage inspections

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

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

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

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

(ii) includes directions that are reasonable and appropriate for achieving compliance; and

(iii) states the date that the noncompliance came to the certifier's attention; or

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(b) if satisfied on reasonable grounds that building work complies with section 42—certify that the work complies and give the certificate to the building licensee in charge of the building work.

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

Maximum penalty: 10 penalty units.

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

(5) A certifier must certify that building work complies with section 42 and give the certificate to the building licensee in charge of the building work if the certifier—

(a) has given a notice mentioned in subsection (2) (a) to the licensee; and

(b) is satisfied on reasonable grounds that—

(i) the building licensee in charge of the building work has done what is reasonable and appropriate to achieve compliance (even if what is done is not in accordance with the directions in the notice); and

(ii) the building work otherwise complies with section 42; and

(c) if a regulation prescribes a procedure to be followed in relation to the certification—follows the procedure.

(6) A certifier may, by written notice, require the building licensee in charge of the building work to conduct, on the materials used or to be used in the work, on the structure of the building, or in relation to anything else connected with the work, the tests stated in the notice.

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45 Records of tests

(1) A building licensee in charge of building work must keep records of—

(a) any test borings, test loadings or other investigations made to work out the permissible loadings on piles used in the building work, pile-driving operations, calculations of allowable loadings and details of the location of the piles; and

(b) any test loadings and excavations made to work out the bearing capacity of the foundation for the building or proposed building, or building as proposed to be altered; and

(c) tests under section 44 (6).

(2) A record under subsection (1)—

(a) must be kept until a certificate of occupancy for the building work is issued; and

(b) must be given to the certifier when the certificate of occupancy is issued.

46 Safety precaution directions

(1) This section applies if—

(a) building work for which a building approval has been issued is being carried out at or near a street or place that is open to or used by the public; and

(b) a building inspector or certifier finds, on inspection, that inadequate safety precautions in relation to the building work are being taken to protect the safety of people using the street or place.

Examples

1 George is building a swimming pool on his property, but the property is not yet fenced and is open to the street.

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2 Building work is being done on an area of the ground floor of a building in Civic to which the public have access.

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

(2) The building inspector or certifier may, in writing, give the building licensee in charge of the building work directions about the safety precautions that the inspector or certifier believes on reasonable grounds are necessary to protect the safety of people using the street or place.

(3) Subsection (2) applies—

(a) whether or not safety precautions were submitted to the certifier who issued the building approval; and

(b) if safety precautions were submitted—whether or not those precautions are being complied with.

(4) The building licensee in charge of the building work must comply with a direction under subsection (2).

Division 3.6 Completion of building work

47 Structural engineer's certificate

(1) A certifier may require the owner of a parcel of land where building work is being, or has been, carried out to give the certifier the certificates by professional engineers about the structural sufficiency, soundness and stability of the building as erected or altered for the purposes for which the building is to be occupied or used.

(2) The certifier may require the certificates only if satisfied on reasonable grounds that it is desirable to do so in the interests of people who occupy or use, or are likely to occupy or use, the building or part of the building that is being, or has been, erected or altered.

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(3) The certifier may require the certificate at any time before or after the completion of building work.

48 Completion of building work

(1) This section applies if—

(a) building work appears to have been completed; and

(b) either—

(i) the certifier is satisfied on reasonable grounds that the work has been completed—

(A) in accordance with this Act; and

(B) in accordance with, or substantially in accordance with, the approved plans; or

(ii) the certifier is satisfied on reasonable grounds that—

(A) the work has not been completed in accordance with this Act; and

(B) the work has been completed in accordance with, or substantially in accordance with, the approved plans or plans that have been approved plans for the work, but are no longer approved plans in the circumstances prescribed by regulation; and

(c) the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used.

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

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(3) Within 7 days after the day the certifier is satisfied, the certifier must give to the construction occupations registrar the following:

(a) if advice mentioned in section 27 (1) (b) was sought—

(i) written evidence of the advice; or

(ii) if the advice was not given within the time prescribed by regulation for giving it—a written statement by the certifier to the effect that the certifier is satisfied the advice was not given within the time;

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

(b) if consultation mentioned in section 27 (1) (b) was required—

(i) written evidence of the response to the consultation; or

(ii) if there has been no response to the consultation within the time prescribed by regulation for giving a response—a written statement by the certifier to the effect that the certifier is satisfied no response was given within the time;

(c) if a consent or approval mentioned in section 27 (1) (b) was required to be obtained—written evidence of the consent or approval;

(d) if compliance with a condition of a consent or approval prescribed by regulation was required—a written statement by the certifier to the effect that the certifier is satisfied on reasonable grounds that the condition has been complied with;

(e) a copy of the plan or document mentioned in section 43 (2) (a);

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

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(g) if the regulations require that, on completion of the building work, the consent or approval of anyone is to be obtained—written evidence of the obtaining of the consent or approval;

(h) either—

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

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

(i) if a certificate has been obtained under section 47 (Structural engineer's certificate)—the certificate;

(j) if no certificate under section 47 has been obtained—a written statement to the effect that—

(i) the certifier is satisfied that the building as erected or altered is structurally sufficient, sound and stable for the purposes for which it is to be occupied or used; and

(ii) no certificate under section 47 is required;

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

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

(m) if, in the certifier's view, building work involving the erection of a structure on or attached to land or a building has been completed in accordance with the prescribed requirements under division 5.1 for the building work—written advice that

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the registrar would be justified in issuing a certificate for the building work under section 72;

(n) a copy of the following documents and papers relating to the building work:

(i) any application to the certifier under this Act and any accompanying document;

(ii) all plans or drawings;

(iii) any approval, certificate, determination, notification or permission issued or given (a ***relevant document***);

(iv) any certificate or other document given or prepared by someone else that the certifier has relied on for the purpose of issuing or giving a relevant document;

(v) the certifier's working papers and calculations that are relevant to the issuing or giving of a relevant document.

(4) The construction occupations registrar may, in writing, exempt a certifier from complying, completely or partly, with anything mentioned in subsection (3) (i) in relation to building work stated in the exemption.

(5) A certifier is not required to give the construction occupations registrar a copy of a document or paper mentioned in subsection (3) (i) if—

(a) the certifier has already given to the registrar, under this Act, the document or paper, or a copy of the document or paper; or

(b) the registrar has exempted the certifier under subsection (4) from giving the copy.

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(6) If the certifier is required to give the constructions occupations registrar written evidence of something under this section—

(a) the registrar may ask for further information relevant to the thing in relation to anything not dealt with, or not adequately dealt with, in the written evidence; and

(b) the certifier must give the registrar the further information not later than 7 days after the day the registrar asked for it.

(7) This section applies in relation to a part of a building in the same way as it applies to a building.

Division 3.7 Offences

49 Complying with building code

(1) A person must carry out building work only in a way that will, or is likely to, result in a building that complies with the building code.

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is a strict liability offence.

(3) For subsection (1), building work is taken not to result in a building that complies with the building code if, for each provision of the building code with which the building must comply—

(a) the building will not comply with the deemed-to-satisfy provision of the building code; and

(b) the approved plans for the building work do not state an alternative solution under the building code.

(4) For this section, building work is taken to result in a building that complies with the building code if the building complies with the building code as in force at the time the approved plans for the building work were approved.

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

(1) A certifier commits an offence if—

(a) building work in contravention of a building approval or development approval comes to the certifier's attention; and

(b) the certifier is certifier for the building work; and

(c) the certifier does not tell the construction occupations registrar about the contravention—

(i) if the building work is fundamentally noncompliant—not later than the next working day after the day the contravention comes to the certifier's attention; or

(ii) in any other case—within 21 days after the day the contravention comes to the certifier's attention.

Maximum penalty: 5 penalty units.

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

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

(3) However, subsection (1) does not apply to building work only because the work does not comply with section 42 (Requirements for carrying out building work) if—

(a) the building work is not fundamentally noncompliant; and

(b) the certifier gives the building licensee in charge of the building work written notice that—

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

(ii) includes directions that are reasonable and appropriate for achieving compliance; and

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(iii) states the date that the noncompliance came to the certifier's attention; and

(c) the certifier is satisfied on reasonable grounds that—

(i) the building licensee in charge of the building work has done what is reasonable and appropriate to achieve compliance (even if what is done is not in accordance with the directions in the notice); and

(ii) the licensee achieved compliance within 14 days after the date mentioned in paragraph (b) (iii).

Example—s (3)

It comes to a certifier's attention that a builder has done building work above the dampcourse level without a plan or document mentioned in s 43 (2) (a). That contravention of this Act must be reported under s (1). Subsection (3) does not have an effect because the contravention relates to s 43, not s 42.

Note 1 The certifier has the evidentiary burden of establishing the matters mentioned in s (3) (see Criminal Code, s 58).

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

(4) A regulation may prescribe when building work is fundamentally noncompliant.

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

50A Notification by certifier of possible noncompliant site work

(1) A certifier must tell the planning and land authority if—

(a) the certifier suspects that—

(i) site work does not comply with, or is likely to produce a building that does not comply with, approved building plans; and

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(ii) the site work is development requiring development approval; and

(b) either—

(i) there is no development approval for the site work; or

(ii) if there is development approval in relation to the site work—the site work has been done, or is likely to be done, in a way that will not comply with, or is likely to produce a result that will not comply with, the development approval; and

(c) the certifier is certifier for building work at the land where the site work has been carried out.

Examples

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

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

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

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

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

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(3) For subsection (1) (a) (ii), a certifier may rely on an exemption assessment D notice issued not more than 3 months earlier.

Note An exemption assessment D notice states whether a development is exempt from requiring development approval (see *Planning and Development Act 2007*, s 138D).

(4) Subsection (3) applies whether or not the exemption assessment D notice was incorrect if the certifier was not aware, and could not reasonably have been aware, that the notice was incorrect.

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

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

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

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

50B Site work without adequate development approval—people

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

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

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

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

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

Maximum penalty: 60 penalty units.

Example

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

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

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

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

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

(b) the approved plans are defective because they—

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

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

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

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

Maximum penalty: 60 penalty units.

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

(a) took all reasonable steps to find out whether the site work, if carried out in accordance with the approved plans, required development approval; and

(b) was satisfied on reasonable grounds that the development did not require development approval.

(4) For subsection (3) (b), a defendant is taken to be satisfied on reasonable grounds if the defendant proves that the defendant relied on an exemption assessment D notice, issued not more than 3 months before the day the application for building approval was made, stating that the development did not require development approval.

(5) Subsection (4) applies whether or not the exemption assessment D notice was incorrect, unless the prosecution establishes that the defendant knew, or could reasonably be expected to have known, that the notice was incorrect.

(6) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that the defendant—

(a) took all reasonable steps to find out if the approved plans were defective; and

(b) was satisfied on reasonable grounds that the plans were not defective.

(7) To remove any doubt, if a building approval indicates that something is not to have work done in relation to it, or is not part of the building approval, the certifier does not commit an offence under this section in relation to the thing.

(8) An offence against subsection (1) or (2) is a strict liability offence.

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50C Site work without adequate development approval—partners

(1) Each partner commits an offence if—

(a) the partnership is a certifier; and

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

(c) the site work proposed in the approved plans requires development approval; and

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

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

Maximum penalty: 60 penalty units.

Example

See example for s 50B (1).

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

(2) Each partner commits an offence if—

(a) the partnership is a certifier; and

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

(c) the approved plans are defective because they—

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

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

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

Maximum penalty: 60 penalty units.

(3) It is a defence to a prosecution for an offence against subsection (1) or (2) if a partner proves that the partnership—

(a) took all reasonable steps to find out whether the site work, if carried out in accordance with the approved plans, required development approval; and

(b) was satisfied on reasonable grounds that the development did not require development approval.

(4) For subsection (3) (b), a partnership is taken to be satisfied on reasonable grounds if a partner proves that the partnership relied on an exemption assessment D notice, issued not more than 3 months before the day the application for building approval was made, stating that the development did not require development approval.

(5) Subsection (4) applies whether or not the exemption assessment D notice was incorrect, unless the prosecution establishes that at least 1 of the partners knew, or could reasonably be expected to have known, that the notice was incorrect.

(6) It is a defence to a prosecution for an offence against subsection (1) or (2) if the partner proves—

(a) that—

(i) the partner did not know about the contravention of the subsection involved in the offence; and

(ii) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or

(b) that the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

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(7) It is a defence to a prosecution for an offence against subsection (2) if a partner proves that the partnership—

(a) took all reasonable steps to find out if the approved plans were defective; and

(b) was satisfied on reasonable grounds that the plans were not defective.

(8) To remove any doubt, if a building approval indicates that something is not to have work done in relation to it, or is not part of the building approval, the certifier does not commit an offence under this section in relation to the thing.

(9) An offence against subsection (1) or (2) is a strict liability offence.

51 Carrying out building work in contravention of s 42

(1) Building work must not be begun or carried out except in compliance with section 42 (Requirements for carrying out building work).

(2) A person commits an offence if—

(a) building work is begun or carried out on a parcel of land in contravention of subsection (1); and

(b) the person is the owner of the parcel of land or the person who carries out the building work.

Maximum penalty: 50 penalty units.

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

(4) It is a defence to a prosecution against the owner of the parcel of land for an offence against subsection (2) if the owner satisfies the court—

(a) that the owner—

(i) believed on reasonable grounds that section 42 had been complied with; or

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(ii) was not aware, and could not reasonably have been aware, that the building work had begun or been carried out; or

(b) that—

(i) an exemption assessment B notice stating that the building work was exempt from all or part of this Act had been issued before, but not more than 3 months before, the day the building work began; and

(ii) the owner was not aware, and could not reasonably have been aware, that the notice was incorrect; or

(c) that—

(i) a building approval, or approval of amended plans, for the building work had been issued; and

(ii) the building work was carried out when the building approval, or approval of amended plans, was in force; and

(iii) the owner was not aware, and could not reasonably have been aware, that the approval, or the approval of the amended plans, should not have been issued.

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

(a) the person carried out the building work under a contract entered into by the person with someone else or at the request and on the instructions of someone else; and

(b) the person believed on reasonable grounds that—

(i) a building approval had been issued for the building work; and

(ii) the work had been carried out in compliance with section 42.

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(6) It is a defence to a prosecution against a person other than the owner of the parcel of land if the person satisfies the court—

(a) that an exemption assessment B notice stating that the building work was exempt from requiring building approval had been issued not more than 3 months before the day the building work began, unless the prosecution establishes that the person knew, or could reasonably be expected to have known, that the notice was incorrect; or

(b) that—

(i) a building approval, or approval of amended plans, had been issued for the building work; and

(ii) the person was not aware, and could not reasonably have been aware, that the approval, or the approval of the amended plans, should not have been issued.

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Part 4 Stop and demolition notices

52 Meaning of *easement* for pt 4

In this part:

easement includes an area of land identified as an easement for electricity, telecommunication, water, drainage and sewerage services in, on or over the land on—

(a) a certificate of title; or

(b) a deposited plan under the *Districts Act 2002*.

53 Stop notices

(1) This section applies if building work is being, or is to be, carried out—

(a) without a building approval having been issued for the work; or

(b) otherwise than in accordance with the approved plans for the building work; or

(c) in accordance with a building approval that is, or part of which is, defective because it contains information that—

(i) is false, misleading or inaccurate in a material respect; or

(ii) conflicts with other information in the approval so that carrying out building work, or site work that materially affects the building work, in accordance with the approval or part—

(A) is not physically possible; or

(B) is unlikely to be physically possible without amending the building approval; or

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(C) is likely to contravene this Act, another territory law or a condition of a consent that applies to the building work or a lease, licence, permit or other authority that applies to the land where the building work is being carried out; or

(d) contrary to a provision of this Act relating to the building work; or

(e) if the building work is being carried out on a parcel of land held under lease from the Commonwealth—contrary to a provision, covenant or condition of the lease; or

(f) for building work forming part of a development requiring development approval—without development approval; or

(g) for building work forming part of a development with development approval—contrary to the approval, or a condition of the approval; or

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

Examples of building work

1 The footings of a building have been poured and are setting. The footings are on an easement. A stop notice can be issued for the building work continuing on top of the footings.

2 A concrete truck is about to deliver concrete to a building site for which there needs to be an approved plan, although there is no plan. A stop notice can be issued for the building work to be done.

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

(2) The construction occupations registrar, a building inspector or a certifier may, by written notice (a ***stop notice***), prohibit the carrying out of any further building work or of stated building work.

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(3) A stop notice in relation to building work under a building approval suspends the operation of the building approval—

(a) if the stop notice prohibits the carrying out of any further building work—in relation to all building work under the approval; or

(b) if the stop notice prohibits the carrying out of stated building work—in relation to the stated building work.

(4) A stop notice ends if—

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

(b) the grounds for giving the stop notice no longer exist; or

(c) the stop notice is cancelled under section 55 (Application by land owner for cancellation of stop notice) or section 57 (Decision on application by other than land owner).

Examples for par (b)

1 if the ground for issue of the notice was s (1) (a)—an approval has been issued for the work

2 if the ground for issue of the notice was s (1) (b)—the building work that was not in accordance with the approval has been removed so that the remaining work complies with the existing building approval or a new approval has been obtained that allows the building work

3 if the ground for issue of the notice was s (1) (d)—if the grounds of the contravention were that the building work was being carried out by a person without a builders licence, an appropriately licensed builder continues the building work

4 if the ground for issue of the notice was s (1) (e)—the building work that was not in accordance with the lease is removed or the lease varied to allow the work

5 if the ground for issue of the notice was s (1) (f)—the approval is obtained

6 if the ground for issue of the notice was s (1) (g)—the building work that was not in accordance with the approval is removed or the approval varied to allow the work

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7 if the ground for issue of the notice was s (1) (h)—the building work that was on the easement is removed or the easement is changed to allow the work

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

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

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

Note A stop notice automatically suspends a building approval (see s (3)).

54 Building work allowed under stop notice

(1) This section applies if a stop notice has been issued in relation to building work.

(2) The stop notice does not prevent building work that does not, or would not, contravene this Act apart from the stop notice if—

(a) the only purpose of the work (***rectification work***) is to fix or reverse the building work that caused the stop notice to be issued; or

(b) the work is necessary to ensure rectification work is carried out safely.

Examples

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

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

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

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

55 Application by land owner for cancellation of stop notice

(1) This section applies if a stop notice has been given in relation to building work on a parcel of land, regardless of who gave the notice.

(2) The owner of the parcel of land may apply in writing to the construction occupations registrar for cancellation of the stop notice, giving reasons why the notice should be cancelled.

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

(3) Before making a decision on the application, the construction occupations registrar must consider—

(a) the application; and

(b) the reasons why the stop notice was given; and

(c) the current state of the building work to which the notice relates.

(4) The construction occupations registrar may cancel the stop notice if satisfied that the cancellation will not endanger the public or people who will use the building on which the building work is being, or is to be, done or affect public confidence about the standard of building work in the ACT.

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

(1) This section applies if a stop notice has been given in relation to building work on a parcel of land, regardless of who gave the notice.

(2) A person other than the owner of the parcel of land may apply in writing to the construction occupations registrar for cancellation of the stop notice, giving reasons why the notice should be cancelled.

(3) On receiving an application, the construction occupations registrar must—

(a) give the owner of the parcel of land a copy of the application; and

(b) tell the owner in writing that the owner may, within 2 weeks after the day the owner is given the copy of the application—

(i) make written comments on the merits of the application; or

(ii) tell the registrar in writing that the owner does not object to cancellation of the stop notice.

57 Decision on application by other than land owner

(1) This section applies if—

(a) a person has made an application under section 56 in relation to a stop notice; and

(b) the construction occupations registrar has given the owner of the parcel of land to which the stop notice relates a copy of the application and the information required under section 56 (3) (b); and

(c) either—

(i) the owner has told the registrar in writing that the owner does not object to cancellation of the stop notice; or

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(ii) the 2-week period for making written comments on the merits of the application has ended.

(2) Before making a decision on the application, the construction occupations registrar must consider—

(a) the application; and

(b) the reasons why the stop notice was given; and

(c) any written comments from the owner given to the registrar within the 2-week period; and

(d) the current state of the building work to which the notice relates.

(3) The construction occupations registrar may cancel the stop notice if satisfied that the cancellation will not endanger the public or people who will use the building on which the building work is being, or is to be, done or affect public confidence about the standard of building work in the ACT.

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

Note A stop notice automatically suspends a building approval (see s 53 (3)).

58 Further notices relating to stop notices

(1) This section applies if a stop notice has been given on a ground other than a ground mentioned in section 53 (1) (a) (which is about building work for which there is no approval).

(2) Within 7 days after the day the stop notice is given, the construction occupations registrar may, by a further written notice, state the building work (including demolition) that is required to be carried out to ensure that the building work for which the building approval was issued will be carried out in accordance with the approved plans and the provisions of this Act.

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(3) The further notice must state the period within which the building work stated in the notice must be carried out.

(4) However, if the ground for the stop notice is mentioned in section 53 (1) (g) (which is about building work that does not comply with an approval), the construction occupations registrar may give a notice under this section to carry out the demolition of a building only if the planning and land authority recommends giving the notice.

(5) Any building work done by a person to comply with a notice under this section is taken not to contravene the stop notice.

(6) A notice issued under this section ends if the ground for the issue of the stop notice to which it relates no longer exists.

59 Service of stop notices and further notices

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

(a) the owner of the parcel of land where the building work mentioned in the notice is being, or is to be, carried out; or

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

(c) for a stop notice—

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

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

(d) any 2 or more of the people, jointly, to whom the notice may be given under paragraph (a), (b) or (c).

Note See s 144 for service of notices.

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60 Notice to produce survey plan etc

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

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

(3) The notice under subsection (2) must state the period (at least 7 days after the day the notice is given to the person) within which the person must comply with the notice.

61 Preconditions for s 62 notice

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

(a) building work has been carried out without a building approval required for the work;

(b) building work for which a building approval has been given has been carried out in contravention of section 42 (Requirements for carrying out building work), or otherwise than in accordance with section 43 (Stages of building work);

(c) building work, in relation to which a notice has been served under this part, has been carried out otherwise than in accordance with the notice;

(d) building work has been carried out on a parcel of land held under lease from the Commonwealth, contrary to a provision, covenant or condition of the lease;

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

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

(g) building work in relation to an exempt building has been carried out so that the building or part of the building is, or will, be on an easement;

(h) the construction occupations registrar is satisfied, on reasonable grounds, that—

(i) for a building if plans or plans and specifications in relation to its erection or alteration have been approved under this Act—the completed building has deteriorated, or is likely to deteriorate, so that the building is, or is likely to become, unfit for use as a building of the class stated, or for the purpose stated in the plans or plans and specifications approved for the most recent building work carried out in relation to the building; or

(ii) for a building other than a building of a kind mentioned in subparagraph (i)—the completed building has deteriorated, or is deteriorating, so that the building is, or is likely to be, unfit for any kind of use; or

(iii) building work has not been completed when the building approval for the building work ended; or

(iv) a building or part of a building is not structurally sound; or

(v) the maximum safe live load, or the load that a building was designed to carry, has been exceeded; or

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(vi) injury to people or damage to property may result from a part of a building becoming detached because of the external condition of the building; or

(vii) a building or part of a building is unsafe because of fire hazard or unfit for use because of a danger to health.

62 Notice to carry out building work

(1) If a precondition under section 61 exists in relation to building work on a parcel of land, the construction occupations registrar may give the owner of the parcel a notice directing the owner to carry out stated building work (including demolition) on the parcel within a stated period and may, in the notice, direct the owner to submit plans for approval and obtain the issue of a building approval and commencement notice.

(2) If building work has been carried out in the circumstances mentioned in section 61 (a), a notice given by the construction occupations registrar under subsection (1) is taken to have been revoked if a certifier, on application by or on behalf of the owner of the parcel of land made under this Act within 2 weeks after the day the notice is given, issues a building approval for the building work.

(3) If building work has been carried out in the circumstances mentioned in section 61 (f), the construction occupations registrar may give a notice under this section to carry out the demolition of a building only if the planning and land authority recommends the demolition.

(4) A notice given to the owner of a parcel of land by the construction occupations registrar under subsection (1) directing the person to carry out building work may state reasonable safety precautions to be taken in carrying out the building work.

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(5) If the owner of a parcel of land does not hold a builders licence that authorises the doing of building work required to be done by a notice under this section, and the building work is required to be done by a building licensee, the owner must appoint someone to do the work who has a builders licence that authorises the work.

(6) This section does not allow the construction occupations registrar to require a person doing building work in relation to an exempt building to obtain an approval for the building work.

63 Payment of fees otherwise payable

(1) This section applies if the owner of a parcel of land—

(a) is directed by a notice under section 62 (1) to carry out building work (other than demolition); and

(b) the notice contains no requirements about the approval of plans or the obtaining of a building approval.

(2) The owner of the parcel of land must give the construction occupations registrar the fees that would have been payable to the registrar if the owner had been required to submit plans for approval and that would have been payable to the registrar by the certifier for a building approval in relation to that building work.

64 Compliance with notices under pt 4

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

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

(b) contravenes the notice.

Maximum penalty: 50 penalty units.

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

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

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(b) contravenes the notice.

Maximum penalty: 50 penalty units.

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

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

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

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

(5) It is a defence to a prosecution for an offence against subsection (2) if the partner proves—

(a) that—

(i) the partner did not know about the contravention of the notice involved in the offence; and

(ii) the partner took reasonable precautions and exercised appropriate diligence to avoid the contravention; or

(b) that the partner was not in a position to influence the partnership in relation to the conduct involved in the contravention.

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Part 5 Building occupancy

Division 5.1 Certificates of occupancy and other certificates

65 Application of pt 5 to building work

(1) This part does not apply to building work in relation to an exempt building.

(2) However, this part applies to building work mentioned in subsection (1) if—

(a) the work involves—

(i) handling asbestos; or

(ii) disturbing friable asbestos; and

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

66 Meaning of *prescribed requirements*—div 5.1

In this division:

prescribed requirements, in relation to building work, means—

(a) if the building work involves handling asbestos or disturbing friable asbestos—the requirements of this Act; or

(b) for any other building work—

(i) the requirements of this Act; or

(ii) the approved plans for the work.

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

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

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

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

67 Registrar may have regard to documents given

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

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

68 Effect of certificates under div 5.1

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

69 Certificates of occupancy

(1) If building work involving the erection or alteration of a building has been completed in accordance with the prescribed requirements for the building work, the construction occupations registrar must, on application by the owner of the parcel of land where the building work was carried out, issue a certificate that the building work has been completed in accordance with the requirements and that the building as erected or as altered is fit for occupation and use as a

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building of the class stated in the approved plans for that building work.

(2) If building work involving the erection or alteration of a building as completed is not strictly in accordance with the prescribed requirements for the building work but is substantially in accordance with the requirements, the construction occupations registrar may, on application made by the owner of the parcel of land where the building work has been carried out, issue a certificate that the building as erected or as altered is fit for occupation and use as a building of the class stated in the approved plans for that building work.

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

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

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

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

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

(b) the applicant has completed any certification process prescribed by regulation in relation to the building or building work; and

(c) the building, or building work, is not excluded by regulation from this subsection.

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

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

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

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

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

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

(3) If part of a building has been erected in accordance with the prescribed requirements so far as they relate to the part of the building, the construction occupations registrar may, on an application made by the owner of a parcel of land where the building is being erected, issue a certificate that the part of the building is fit for occupation and use as a part of a building of the class stated in the approved plans in relation to the building work.

(4) For this section—

(a) a certificate under the *Water and Sewerage Act 2000* that the plumbing, sewerage and drainage work carried out in building work complies with the prescribed requirements for the building work relating to plumbing, sewerage and drainage work is evidence of the fact; and

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(b) a certificate under the *Electricity Safety Act 1971* certifying that the electrical wiring work, as defined by the *Electricity Safety Act 1971*, carried out in the building work complies with the prescribed requirements for the building work relating to the electrical wiring work is evidence of the fact; and

(c) a certificate under the *Gas Safety Act 2000* that the gas fitting work carried out in building work complies with the prescribed requirements for the building work relating to gas fitting work is evidence of the fact.

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

70 Cancellation of part certificate of occupancy

(1) This section applies if—

(a) a certificate of occupancy has been issued under section 69 (3) for a part of a building; and

(b) the construction occupations registrar, on completion of the whole of the building work, issues a certificate of occupancy for the whole of the building.

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

70A Completion of building work involving demolition

(1) This section applies if—

(a) building work involving the demolition of a building appears to have been completed; and

(b) the certifier for the building work is satisfied on reasonable grounds that the work has been completed in accordance with the prescribed requirements for the work.

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(2) Within 7 days after the day the certifier is satisfied, the certifier must give the construction occupations registrar written advice that the registrar would be justified in issuing a certificate for the building work under section 71.

71 Certificate for building work involving demolition

(1) This section applies if—

(a) building work involving the demolition of a building has been completed in accordance with the prescribed requirements for the building work; and

(b) the certifier for the building work gives the construction occupations registrar the written advice mentioned in section 70A.

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

72 Certificate for building work involving erection of structure

(1) This section applies if building work involving the erection of a structure on or attached to land or a building has been completed in accordance with the prescribed requirements for the building work.

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

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73 Certificates of occupancy and use for owner-builders

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

74 Government buildings—application for fitness certificate

(1) This section applies to a building if—

(a) the building was erected on land that, when the building was erected, was held—

(i) by the Commonwealth; or

(ii) by the Territory; or

(iii) by someone else under a lease from the Commonwealth; and

(b) a certificate of occupancy or regularisation has not been issued for the building.

(2) Application for a certificate that the building is fit for occupation may be made by a person eligible to make the application under subsection (3) or (4).

(3) If, when the application is made, the building is on land held under a lease from the Commonwealth, the application may be made by the lessee.

(4) If, when the application is made, the building is not on land held under a lease from the Commonwealth, the application may be made by—

(a) if the land is held by a person, including the Territory, under a tenancy from the Commonwealth, whether or not the occupier is the tenant or a subtenant—the Commonwealth or the tenant; or

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(b) if the land is held under a tenancy from the Territory, whether or not the occupier is the tenant or a subtenant—the tenant; or

(c) for national land—the Commonwealth; or

(d) for Territory land—the Territory.

(5) The application must—

(a) be in writing signed by or on behalf of the applicant; and

(b) provide sufficient information to allow the building to be identified; and

(c) be accompanied by a copy of the plans and specifications relating to—

(i) the erection of the building and any alteration to it; or

(ii) the building when the application is made; and

(d) state the purpose for which the building or each part of the building is being used; and

(e) if it is intended that any part of the building be used for a purpose other than the purpose for which it is being used when the application is made—state the intended purpose.

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

75 Decision on s 74 application

(1) On receiving an application under section 74, the construction occupations registrar must—

(a) if satisfied that the building complies with subsection (2)—issue a certificate (***certificate of regularisation***) that the building is fit for occupation if each part of it is used only for the purpose stated in the certificate; or

(b) in any other case—refuse to issue the certificate.

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(2) The building complies with this subsection if—

(a) it is structurally sound and can withstand the loadings likely to arise from its expected use; and

(b) contains reasonable provision for—

(i) the safety of people likely to be in the building if there is a fire, including the provision of adequate facilities for leaving the building; and

(ii) the prevention and suppression of fire; and

(iii) the prevention of the spread of fire.

(3) To decide whether the building complies with subsection (2), the construction occupations registrar—

(a) may require the applicant to provide a written statement by a qualified licensed construction practitioner that deals with the matters mentioned in subsection (2) (a) and (b), or such of the matters as the registrar states; and

(b) may consider the statement.

(4) In this section:

qualified licensed construction practitioner means an entity that—

(a) is licensed under the *Construction Occupations (Licensing) Act 2004*; and

(b) in the construction occupations registrar's opinion, has sufficient expertise to provide a statement under subsection (3) that would help the registrar to decide whether the building complies with subsection (2).

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76 Occupation and use of buildings

(1) A person commits an offence if—

(a) the person occupies or uses, or allows someone else to occupy or use, a building or part of a building; and

(b) the construction occupations registrar has not issued a certificate of occupancy for the building or part of the building.

Maximum penalty: 50 penalty units.

(2) A person commits an offence if—

(a) the construction occupations registrar has issued a certificate of occupancy for only a part of a building (the ***approved part***); and

(b) the person occupies or uses, or allows someone else to occupy or use, a part of the building for which no certificate of occupancy has been issued; and

(c) the purpose of the use is not incidental to the use of the approved part.

Maximum penalty: 50 penalty units.

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

(4) In this section:

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

77 Use of buildings restricted

(1) A person commits an offence if—

(a) the person occupies or uses, or allows someone else to occupy or use, a building or part of a building—

(i) for a building in relation to the erection or alteration of which plans have been approved under this Act—as a

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building or part of a building of a class other than the class stated in the plans approved in relation to the most recent building work that has been carried out in relation to the building; or

(ii) for a building in relation to the erection or alteration of which plans have been approved only under the repealed laws—for a purpose other than that stated in the plans and specifications approved in relation to the most recent building work that has been carried out in relation to the building; and

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

Maximum penalty: 50 penalty units.

(2) An offence against subsection (1) is a strict liability offence.

(3) The construction occupations registrar must, on written application, give his or her written approval for the occupation and use of a building or part of a building as a building or a part of a building of a class stated in the application if the construction occupations registrar is satisfied that a reasonable certifier would, under this Act, approve the plans for the erection of the building or part if—

(a) the building or part had not been erected and the certifier were then and there considering the plans; and

(b) the plans required the building or part to be of the same class as that stated in the application.

(4) If a parcel of land is held under a lease from the Commonwealth, an approval given by the construction occupations registrar under subsection (3) in relation to the parcel of land does not authorise—

(a) the use of the parcel for a purpose other than the purpose for which the lease was granted; or

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(b) the use of the parcel of land contrary to a provision, covenant or condition of the lease.

(5) In this section:

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

78 Occupation and use of ex-government buildings

(1) This section applies to a building for which a certificate of regularisation has been issued that is—

(a) on land held under a lease or tenancy from the Commonwealth by a person other than the Territory; or

(b) on land held under a sublease or tenancy from the Territory.

(2) A person must not occupy or use, or allow anyone else to occupy or use, the building, or a part of the building, for a purpose other than the purpose stated in the certificate of regularisation.

Maximum penalty: 50 penalty units.

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

79 Action by registrar on unauthorised use of building etc

(1) In this section:

building occupancy offence section means any of the following sections:

- section 76 (Occupation and use of buildings);
- section 77 (Use of restricted buildings);
- section 78 (Occupation and use of ex-government buildings).

(2) This section applies if, after being convicted for an offence against a building occupancy offence section, a person continues to use or continues to allow someone else to use a building or a part of a

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building in contravention of the section for an offence against which the person has been convicted.

(3) The construction occupations registrar may, by written notice to the occupier or to the person allowing the occupation (or both)—

(a) for a conviction for an offence against section 76—require the building to be vacated within the period stated in the notice; or

(b) for a conviction for an offence against section 77 or section 78—require the occupation or use of the building or the part of the building in contravention of that section to stop within the period stated in the notice.

(4) A person to whom a notice under subsection (3) is given must not fail to comply with the notice.

(5) A person who contravenes subsection (4) commits an offence, in relation to each day the person contravenes the subsection (including any day when the person is convicted of an offence).

Maximum penalty: 50 penalty units.

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

80 Copies of certificates of occupancy and regularisation

(1) A copy of each certificate issued under this part must be kept in the construction occupations registrar's office.

(2) Anyone may inspect a certificate at the construction occupations registrar's office during the hours the office is open for business.

(3) If the construction occupations registrar issues a certificate under section 69 (Certificates of occupancy) for a building or part of a building and a copy of a certificate of occupancy for the building or part of a building is already being kept in the registrar's office, the registrar must replace the earlier certificate with a copy of the later certificate.

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81 Safe live load plates

(1) If a certificate is issued under this part on the completion of a class 5, class 6, class 7, class 8 or class 9 building or on the completion of the alteration of such a building, the owner of the building must attach, in a conspicuous place on the walls of each storey of the building, in a way approved by the construction occupations registrar, the number of metal plates of a size and form approved by the registrar showing the maximum live load for which the floor on that storey has been designed.

Maximum penalty: 5 penalty units.

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

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

(3) The owner of a building commits an offence if—

(a) the building is altered; and

(b) a later certificate is issued under this part for the altered building; and

(c) when the certificate is issued, the safe live load for a floor of the altered building is different from that shown for that floor on the metal plates attached to the walls of the floor under subsection (1); and

(d) the owner does not substitute other plates showing the current maximum safe live load for the floor.

Maximum penalty: 5 penalty units.

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

Maximum penalty: 5 penalty units.

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

Maximum penalty: 5 penalty units.

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

82 Exceeding safe live load

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

Maximum penalty: 50 penalty units.

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

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

Division 6.1 Application and interpretation of pt 6

83 Application of pt 6 to building work

(1) This part does not apply to—

(a) building work in relation to an exempt building; or

(b) building work that is exempt under a regulation.

(2) However, this part applies to building work mentioned in subsection (1) if—

(a) the work involves—

(i) handling asbestos; or

(ii) disturbing friable asbestos; and

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

84 Definitions for pt 6

In this part:

actuary, for an approved scheme, does not include a special actuary.

approval criteria means the requirements determined under section 99 (Approval criteria for schemes).

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

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

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building does not include paving or a structure that is a fence, retaining wall, outdoor swimming pool, outdoor ornamental pond, mast, antenna, aerial, advertising device, notice or sign.

building work does not include work in relation to the demolition of a whole building.

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

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

fidelity certificate, for building work, means a certificate issued for the building work by the trustees of an approved scheme.

fidelity fund scheme means a scheme for a building industry fidelity fund established under a trust deed.

prudential standards means the standards determined under section 103.

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

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

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

Examples

1 A building has shops on its ground storey, a hotel on its 2nd storey and private residential units on its 3rd storey. It is not a residential building because it is not used mainly for private residential use.

2 A building has 2 wings, which are structurally independent of each other. The north wing has 3 storeys including the ground storey. The south wing has 6 storeys including the ground storey. All storeys contain residential units. The north wing is a residential building. The south wing is not a residential building because it is 6 storeys.

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3 A building has 2 wings that are dependent on each other for structural support. The north wing has 3 storeys including the ground storey. All storeys contain residential units. The lower 3 storeys of the south wing are structurally integrated with the north wing. A structural instability in any of the lower 3 storeys in the south wing could compromise the structural integrity of both wings of the building. The south wing storeys that are higher than the north wing are structurally independent of the north wing. The north wing of the building is a residential building. The lower 3 storeys of the south wing are a residential building to the extent that they are a structurally integral adjunct to the building as a whole. The upper 3 storeys of the south wing are not a residential building because they are over 3 storeys and not a structurally integral adjunct to the building.

4 A 4-storey residence has a parking garage as its ground storey. A structural instability in the garage could compromise the building's structural integrity. The garage is a residential building because it is a structurally integral adjunct to the building and the building is a residential building.

5 A single storey residence has a garage attached at the side. The roof trusses of the building span across the residence and garage in a single span. A structural instability in the garage could compromise the structural integrity of the roof trusses and, because of that, compromise the structural integrity of the building. The garage is a residential building because it is a structurally integral adjunct to the building and the building is a residential building.

6 A single storey residence has a garage attached at the side and under the same roofline as the residence. The garage is mainly used for cars and is not for residential use. No structural elements of the residence depend on the garage for structural integrity. A structural instability in the garage could not compromise the structural integrity of the residence. The garage is not a residential building because it is not a structurally integral adjunct to a building intended primarily for residential use. The residence, apart from the garage, is a residential building.

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

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

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

storey does not include a storey below the ground storey.

85 Meaning of *completion day* for pt 6

(1) In this part:

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

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

86 Cost of building work for pt 6

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

(a) if a contract has been entered into for carrying out of the building work—the cost of the work as fixed by the contract; or

(b) in any other case—

(i) an amount agreed between the construction occupations registrar and the builder; or

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

(2) For subsection (1), the ***cost*** of building work—

(a) includes the cost of any engineering service in relation to the land where the building work is to be carried out; but

(b) does not include the cost of the land where the building work is to be carried out.

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Division 6.2 Statutory warranties

87 Residential building work to which pt 6 does not apply

(1) This part does not apply in relation to residential building work—

(a) carried out or to be carried out by or for the Territory or the Commonwealth, a Territory authority or an authority established under a Commonwealth Act; or

(b) in relation to which an owner-builders licence has been granted; or

(c) if the cost of the work is less than the amount prescribed under the regulations; or

(d) in relation to a building or dwelling other than a class 1 or class 2 building.

(2) Subsection (1) (d) does not prevent this part from applying in relation to residential building work carried out in relation to a garage that provides structural support for, or is a structurally integral adjunct to, a class 1 or class 2 building.

88 Statutory warranties

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

(2) The builder warrants the following:

(a) that the residential building work has been or will be carried out in accordance with this Act;

(b) that the work has been or will be carried out in a proper and skilful way and—

(i) in accordance with the approved plans; or

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(ii) if the work involves or involved handling asbestos or disturbing friable asbestos—in accordance with approved plans that comply with this Act in relation to the asbestos;

(c) that good and proper materials for the work have been or will be used in carrying out the work;

(d) if the work has not been completed, and the contract does not state a date by which, or a period within which, the work is to be completed—that the work will be carried out with reasonable promptness;

(e) if the owner of the land where the work is being or is to be carried out is not the builder, and the owner expressly makes known to the builder, or an employee or agent of the builder, the particular purpose for which the work is required, or the result that the owner desires to be achieved by the work, so as to show that the owner is relying on the builder's skill and judgment—that the work and any material used in carrying out the work is or will be reasonably fit for the purpose or of such a nature and quality that they might reasonably be expected to achieve the result.

(3) Each of the owner's successors in title succeeds to the rights of the owner in relation to the statutory warranties.

(4) The warranties end at the end of the period prescribed under the regulations after the completion day for the work.

(5) In subsection (2):

owner means—

(a) for a contract mentioned in subsection (1) for the sale of a residential building—the person to whom title in the land where the building was built is transferred under the contract; or

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(b) for a contract mentioned in subsection (1) to carry out residential building work—the owner of the land where the work is to be carried out under the contract.

89 Builder's liability

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

Division 6.3 Residential building insurance

90 Complying residential building work insurance

(1) An insurance policy issued for residential building work complies with this section if—

(a) it is issued by an authorised insurer; and

(b) it provides for a total amount of insurance cover of at least the amount prescribed under the regulations, or the cost of the work, whichever is less, for each dwelling that forms part of the work; and

(c) if the builder is not the owner of the land where the work is to be carried out—it insures the owner and the owner's successors in title for the period beginning on the day the certifier for the work issues a building commencement notice under section 37 for the work and ending at the end of the period prescribed under the regulations after the day a certificate of occupancy is issued for the work; and

(d) if the builder is the owner of the land where the work is to be carried out—it insures the builder's successors in title for the period beginning on the day the title in the land is transferred to someone else and ending at the end of the period prescribed under the regulations after the day a certificate of occupancy is issued for the work; and

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(e) the whole of the premium payable for the period has been paid; and

(f) it insures the owner (if the builder is not the owner) and the owner's successors in title against the risk of being unable to enforce or recover under the contract under which the work has been, is being or is to be carried out because of the insolvency, disappearance or death of the builder; and

(g) it insures the owner (if the builder is not the owner) and the owner's successors in title against the risk of loss resulting from a breach of a statutory warranty; and

(h) it insures the owner (if the owner is not the builder) and the owner's successors in title against the risk of loss resulting, because of the builder's negligence, from subsidence of the land; and

(i) it provides that a claim under it may only be made within the period prescribed under the regulations, or a stated longer period after the claimant becomes aware of the existence of grounds for the claim; and

(j) the form of the policy has been approved in writing by the construction occupations registrar.

(2) However, if the owner is a developer, the insurance is taken to comply with subsection (1) (c), (f), (g) or (h) if it insures the owner's successors in title, even though it does not insure the owner.

(3) To remove any doubt, an insurance policy issued in relation to residential building work may exclude claims other than those in circumstances in which the builder is insolvent, dead or has disappeared.

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(4) In this section:

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

insolvent—a builder is taken to be insolvent if—

(a) for a builder who is an individual—the builder is bankrupt or personally insolvent; or

(b) for a builder who is a corporation—the builder is being wound up, has had a receiver or other controller appointed, has entered into a deed of company arrangement with its creditors or is otherwise under external administration under the Corporations Act, chapter 5.

Note ***Bankrupt or personally insolvent***—see the Legislation Act, dictionary, pt 1.

91 Provisions of residential building insurance policies

(1) A complying residential building insurance policy may provide that the authorised insurer who issues the policy is not liable for the amount prescribed under the regulations, or the stated lesser amount, of each claim.

(2) In calculating the amount of the premium payable in relation to a complying residential building insurance policy, the value of the work is taken to be equal to the cost of the work.

(3) A provision, stipulation, covenant or agreement that negatives, limits or modifies or purports to negative, limit or modify the operation of this part is void.

(4) A complying residential building insurance policy—

(a) is not be taken to be invalid only because it contains a term, condition or warranty not contained in the form of policy approved by the construction occupations registrar; but

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(b) a term, condition or warranty mentioned in paragraph (a) is void.

92 Builder's misrepresentation etc does not prevent liability

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

93 Claims if builder insolvent and work unfinished

(1) This section applies if—

(a) a builder is not the owner of the land where the builder is carrying out residential building work; and

(b) the builder fails to complete the work because the builder becomes insolvent; and

(c) the owner has paid the builder part or all of the cost of the work; and

(d) the work is insured under a complying residential building insurance policy.

(2) The owner is not entitled to recover from the insurer any amount by which the amount paid exceeds the cost of the work done.

(3) However, if the owner has paid a deposit on the work and the cost of any work done is less than the amount of the deposit, the owner may recover from the insurer the lesser of the following amounts:

(a) the amount of the deposit less the cost of any work done;

(b) the amount prescribed under the regulations less the cost of any work done.

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(4) In this section:

deposit, in relation to residential building work, means an amount that was paid or payable by the owner to the builder, under the contract to carry out the work, before the beginning of the work.

insolvent—see section 90 (4).

94 Recovery from builder

(1) This section applies if—

(a) a court gives judgment in favour of a person in relation to a matter for which the person is insured under a complying residential building insurance policy; and

(b) the insurer is a party to the proceeding in which the judgment is given; and

(c) the judgment is not satisfied in full within 30 days after the day judgment is entered.

(2) The judgment creditor may apply to the court for a direction that judgment be entered in favour of the creditor against the authorised insurer who issued the policy.

(3) The judgment creditor must give the insurer at least 7 days written notice of his or her intention to make an application.

(4) A judgment entered against an authorised insurer is enforceable only to the extent that it had not been satisfied at the time the judgment was entered.

(5) An authorised insurer may, in addition to any other right or remedy, recover from a builder in relation to whose work a complying residential building insurance policy was issued so much of the following as the insurer has paid under or because of the policy:

(a) any judgment entered or obtained against the insurer; and

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(b) any amounts paid by the insurer in payment, settlement or compromise of a claim or judgment against the builder or of a judgment entered or obtained against the insurer; and

(c) the costs of, and expenses reasonably incurred by, the insurer.

95 Duties of insurers

(1) A person commits an offence if—

(a) the person has been an authorised insurer in the business of issuing residential building insurance policies; and

(b) the person ceases to be in that business, or the person's authority to carry on insurance business is cancelled under the *Insurance Act 1973* (Cwlth); and

(c) the person fails to notify the construction occupations registrar of the cessation or cancellation within 7 days after the day of cessation or cancellation.

Maximum penalty: 50 penalty units.

(2) An offence under subsection (1) is a strict liability offence.

(3) An authorised insurer must not represent that an insurance policy issued or to be issued by the insurer is complying residential building work insurance if the insurer knows that it is not.

Maximum penalty: 250 penalty units.

(4) On or before 31 July in each year, an authorised insurer must give a written statement to the construction occupations registrar in relation to claims on residential building insurance policies dealt with by the insurer in the financial year ending on the previous 30 June, stating the following:

(a) the number of claims;

(b) the amount of each claim;

(c) the number of claims that were paid;

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(d) the amount paid on each claim;

(e) if a claim was rejected—the reason for its rejection.

Maximum penalty: 100 penalty units.

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

Division 6.4 Approved fidelity fund schemes

96 Approval of fidelity fund schemes

(1) The planning and land authority may approve a fidelity fund scheme.

(2) An application for approval of a fidelity fund scheme must—

(a) be signed by all the trustees of the scheme; and

(b) be accompanied by—

(i) a copy of the trust deed certified in accordance with the approval criteria; and

(ii) any other information prescribed under the approval criteria.

(3) The planning and land authority may approve a fidelity fund scheme only if the scheme complies with the approval criteria.

(4) An approval is a notifiable instrument.

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

97 Additional information for approval of scheme etc

(1) This section applies if the trustees of a fidelity fund scheme apply to the planning and land authority for approval of the scheme.

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(2) The planning and land authority may, by written notice given to the trustees, require the trustees to give the authority —

(a) stated additional information or documents that the authority reasonably needs to decide the application; or

(b) a statutory declaration about a stated matter in relation to information or documents provided in relation to the application.

Note 1 The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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

98 Authority may require changes to scheme

Before approving a fidelity fund scheme, the planning and land authority may require changes to be made to the scheme to ensure that it complies with this Act.

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

99 Approval criteria for schemes

(1) The Minister may determine requirements (the ***approval criteria***) for this Act with which a fidelity fund scheme must comply to be an approved scheme.

(2) The approval criteria must include requirements in relation to—

(a) the management of the fidelity fund scheme in accordance with the trust deed; and

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(b) qualifications or suitability for appointment as a trustee of the scheme; and

(c) the powers and duties of the trustees; and

(d) the financial management of the scheme; and

(e) the building work for which a fidelity certificate may be issued, or must not be issued, under the scheme; and

(f) the people who can and cannot make claims under a fidelity certificate; and

(g) applications for claims under fidelity certificates issued under the scheme; and

(h) dealing with claims under the scheme; and

(i) complying with the prudential standards.

(3) The approval criteria may apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

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

(4) A determination is a disallowable instrument.

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

100 Approval of scheme may be conditional

(1) The approval of a fidelity fund scheme may be given subject to conditions.

(2) A condition may be expressed to have effect despite anything in the prudential standards.

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(3) The trustees of an approved scheme each commit an offence if the trustees fail to ensure that the scheme complies with the conditions of the scheme's approval.

Maximum penalty: 60 penalty units.

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

101 Application for changes to approved scheme

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

(2) The application must—

(a) be signed by all the trustees of the scheme; and

(b) set out the proposed change to the scheme and the reasons for the change.

(3) This section does not apply to a change to the scheme declared under the prudential standards to be a change to which this section does not apply.

102 Approval of changes to approved scheme

(1) The planning and land authority may approve or refuse to approve a change to an approved scheme.

(2) The planning and land authority must refuse to approve a change to the scheme if not satisfied that the scheme as proposed to be changed would continue to meet the approval criteria and the prudential standards.

(3) This section does not apply to a change to the scheme declared under the prudential standards to be a change to which this section does not apply.

(4) An approval or refusal to approve is a notifiable instrument.

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

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103 Prudential standards

(1) The Minister may determine standards (the ***prudential standards***) for this Act relating to prudential matters that must be complied with by an approved scheme.

Note Power given under an Act to make a statutory instrument includes power to make different provision for different categories, eg different kinds of schemes (see Legislation Act, s 48).

(2) The prudential standards may—

(a) require approval of the trustees of the approved scheme; and

(b) make provision in relation to—

(i) the capital adequacy of the scheme; and

(ii) the valuation of liabilities; and

(iii) the effectiveness of risk management strategies and techniques; and

(iv) requiring the giving of information to the commissioner for fair trading, or any other entity prescribed under the prudential standards, about decisions by the trustees to pay or refuse to pay claims.

Note An Act that authorises the making of a statutory instrument (eg prudential standards) also authorises an instrument to be made with respect to any matter required or permitted to be prescribed under the authorising law or that is necessary or convenient to be prescribed for carrying out or giving effect to the authorising law (see Legislation Act, s 44).

(3) The prudential standards may—

(a) provide for the exercise of discretions under the standards, including discretions to approve, impose, adjust or exclude particular prudential requirements in relation of an approved scheme; and

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(b) apply, adopt or incorporate a law or instrument, or a provision of a law or instrument, as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

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

(4) A determination under this section is a disallowable instrument.

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

(5) In this section:

prudential matters, for an approved scheme, means matters relating to the conduct by the trustees of the scheme of any of the scheme's affairs—

(a) in a way that keeps the scheme's affairs in a sound financial position; and

(b) with integrity, prudence and professional skill.

104 Compliance with prudential standards by trustees

(1) The trustees of an approved scheme each commit an offence if the trustees fail to ensure that the scheme complies with the prudential standards.

Maximum penalty: 60 penalty units.

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

105 Notice to trustees to comply with prudential standards

(1) This section applies if the planning and land authority is satisfied on reasonable grounds that an approved scheme—

(a) is contravening a provision of the prudential standards; or

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(b) is likely to contravene a provision of the prudential standards in a way that is likely to give rise to prudential risk.

(2) The planning and land authority may, by written notice given to the trustees of the approved scheme, require the trustees to comply with a provision of the prudential standards within a stated time.

(3) The trustees must comply with the notice despite anything in the trust deed or in any contract or arrangement to which they are a party.

(4) The trustees of an approved scheme each commit an offence if the trustees fail to comply with a notice given to the trustees under this section.

Maximum penalty: 60 penalty units.

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

106 Notice to trustees requiring information

(1) The planning and land authority may, by written notice given to the trustees of an approved scheme, require the trustees to give the authority stated information about anything relevant to the scheme's ability to meet its liabilities and potential liabilities at a particular date or time or at particular intervals, including, for example, information about—

(a) the scheme's liabilities and potential liabilities; and

(b) contributions to the scheme; and

(c) administrative or other costs of the scheme; and

(d) claims received by the scheme.

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

(2) The notice must state a reasonable period for complying with the notice.

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(3) Without limiting subsection (1) (d), the notice may require information about—

(a) the number of claims received by the scheme; and

(b) the amount of each claim; and

(c) the number of claims that have been paid; and

(d) the amount paid on each claim; and

(e) if a claim was rejected—the reason for its rejection.

(4) The trustees of an approved scheme each commit an offence if the trustees fail to comply with a notice given to the trustees under this section.

Maximum penalty: 60 penalty units.

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

107 Suspension or cancellation of approval of approved scheme

(1) The planning and land authority may take action under this section in relation to an approved scheme on any of following grounds:

(a) the trustees of the scheme have contravened this Act or another Territory law in relation to the scheme;

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

(b) the scheme is insolvent and is unlikely to return to solvency within a reasonable time;

(c) the scheme has inadequate capital and is unlikely to have adequate capital within a reasonable time;

(d) the scheme is, or is likely to become, unable to meet its liabilities;

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(e) there is, or there may be, a risk to the security of the scheme's assets;

(f) there is, or there may be, a sudden deterioration in the scheme's financial condition;

(g) the scheme has ceased to issue fidelity certificates in the ACT;

(h) a ground prescribed under the prudential standards exists for the suspension or cancellation of the approval of the scheme.

(2) If the planning and land authority proposes to suspend or cancel the approval of the scheme, the authority must give the trustees of the scheme a written notice—

(a) stating the grounds on which the authority proposes to suspend or cancel the approval; and

(b) stating the facts that, in the authority's opinion, establish the grounds; and

(c) telling the trustees that the trustees may, within a stated reasonable time, give a written response to the authority about the matters in the notice.

(3) If, after considering any response given under subsection (2) (c), the planning and land authority is satisfied that the grounds for suspending or cancelling the approval have been established, the authority may suspend or cancel the approval.

(4) If the planning and land authority suspends or cancels an approval, the authority must give written notice of the suspension or cancellation to the trustees.

(5) Suspension or cancellation of an approval takes effect on the day when notice of the suspension or cancellation is given to the trustees or, if the notice states a later date of effect, that date.

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(6) A suspension or cancellation under this section is a notifiable instrument.

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

108 Cancellation of approval on application

(1) The planning and land authority may cancel the approval of an approved scheme if the trustees of the scheme ask the authority, in writing, to do so.

(2) If the planning and land authority cancels the approval, the authority must give written notice of the cancellation to the trustees.

(3) A cancellation under this section is a notifiable instrument.

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

109 Orders consequential on etc suspension or cancellation

(1) If the planning and land authority suspends or cancels the approval of a fidelity fund scheme under this division, the authority may apply to the Supreme Court for orders to give effect to, or consequential on, the suspension or cancellation.

(2) On application under subsection (1), the Supreme Court may make the orders it considers just, including—

(a) orders for the winding-up of the scheme; and

(b) orders in relation to the assets and liabilities of the scheme.

110 Address for service for trustees

(1) The trustees of an approved scheme must, at all times, have an address for service in the ACT for this Act.

(2) An address becomes the address for service for the trustees when written notice of the address is given by the trustees to the planning and land authority.

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

Division 6.5 Auditors and actuaries of approved schemes

111 Appointment of auditor and actuary for approved scheme

(1) The trustees of an approved scheme must appoint—

(a) an auditor for the scheme; and

(b) an actuary for the scheme.

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

(2) Within 6 weeks after a person stops being the auditor or actuary for an approved scheme, the trustees must appoint someone else to be auditor or actuary.

(3) A person may only hold an appointment as auditor or actuary for an approved scheme if—

(a) the planning and land authority has approved the appointment and its terms; and

(b) the approval has not been revoked.

(4) The appointment of a person as auditor or actuary for an approved scheme cannot take effect while an appointment of someone else in that position is current.

112 Approval of appointment of auditor or actuary

(1) The trustees of an approved scheme may, in writing, ask the planning and land authority to approve—

(a) the appointment of a person as auditor for the scheme; or

(b) the appointment of a person as actuary for the scheme.

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(2) The planning and land authority may approve the appointment only if satisfied that the person meets the eligibility criteria for the appointment prescribed under the prudential standards.

(3) The planning and land authority must give the trustees notice of the authority's decision to approve or refuse to approve the appointment.

(4) If the planning and land authority refuses to approve an appointment, the notice must include the reasons for the refusal.

113 Revocation of approval of appointment of auditor or actuary

(1) The planning and land authority may, in writing, revoke the approval of a person's appointment as auditor or actuary for an approved scheme if satisfied that the person—

(a) has failed to exercise adequately and properly the functions of the appointment under this Act; or

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

(b) does not meet 1 or more of the criteria for fitness and propriety prescribed under the prudential standards; or

(c) does not meet the eligibility criteria for the appointment prescribed under the prudential standards.

(2) The revocation of the approval takes effect on the day the revocation is made.

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

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114 When person stops holding appointment as auditor or actuary

A person stops holding an appointment as auditor or actuary of an approved scheme if—

(a) the approval of the person's appointment is revoked under section 113; or

(b) the person resigns the appointment by giving written notice to the trustees of the approved scheme; or

(c) the trustees end the appointment by giving written notice to the person.

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

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

(2) Within 14 days after the day a person stops being auditor or actuary for an approved scheme, the trustees must give the planning and land authority written notice of that event, including the date when it happened and the reasons for and circumstances of that event.

(3) Subsection (2) does not apply in relation to the revocation by the planning and land authority of the approval of a person's appointment.

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116 Compliance with prudential standards by auditors and actuaries

(1) The auditor or actuary for an approved scheme commits an offence if the auditor or actuary contravenes the prudential standards in relation to the exercise of his or her functions as auditor or actuary for the scheme.

Maximum penalty: 60 penalty units.

(2) An offence against this section is an offence of strict liability.

117 Auditor and actuary to tell authority if scheme insolvent etc

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

(a) forms the belief that—

(i) the scheme is insolvent, or there is a significant risk that it will become insolvent; or

(ii) the trustees have contravened this Act or another Territory law in relation to the scheme; and

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and prudential standards (see Legislation Act, s 104).

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

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

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118 Giving of information to authority by auditor or actuary etc

(1) This section applies to a person who is, or has been, an auditor or actuary for an approved scheme.

(2) The person may give information to the planning and land authority about the approved scheme if the person considers that giving information will assist the authority to exercise the authority's functions under this part.

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

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

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

119 Auditor's role

(1) The auditor for an approved scheme must, in accordance with the prudential standards—

(a) exercise the functions of auditor for the scheme prescribed under the prudential standards; and

(b) find out and report on whether the trustees of the scheme are complying with the prudential standards; and

(c) prepare, and give to the trustees of the scheme, any reports required under the prudential standards to be prepared by the auditor; and

(d) give the trustees any certificates relating to the scheme's accounts that are required under the prudential standards to be prepared by the auditor.

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(2) A report under subsection (1) (c) must deal with everything required under the prudential standards to be dealt with in the report.

(3) A certificate under subsection (1) (d) must contain statements of the auditor's opinion on the matters required under the prudential standards to be dealt with in the certificate.

120 Actuary's role

(1) The actuary for an approved scheme must, in accordance with the prudential standards—

(a) exercise the functions of actuary for the scheme prescribed under the prudential standards; and

(b) prepare, and give to the trustees of the scheme, the reports (if any) required under the prudential standards to be prepared by the actuary.

(2) A report under subsection (1) (b) must deal with everything required under the prudential standards to be dealt with in the report.

121 Certificates and reports required to be given to authority

(1) The trustees of an approved scheme must, in accordance with the prudential standards, give to the planning and land authority —

(a) a copy of each certificate given to the trustees under section 119 (Auditor's role); and

(b) the reports mentioned in that section and section 120.

Maximum penalty: 60 penalty units.

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

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122 Special actuary to investigate liabilities

(1) The planning and land authority may, by written notice given to the trustees of an approved scheme, require the trustees to appoint, at the scheme's expense, an additional actuary (the ***special actuary***) to—

(a) investigate completely or partially the scheme's liabilities as at a particular time; and

(b) give the authority a written report within a stated period.

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

(2) The special actuary must not be—

(a) the actuary appointed under section 111 (Appointment of auditor and actuary for approved scheme); or

(b) a trustee or officer of the scheme.

Note For who can be appointed a special actuary, see s 125.

(3) Within 7 days after the day the trustees are given the notice, the trustees must appoint the special actuary and give the planning and land authority written notice of the actuary's name.

(4) The trustees of an approved scheme commit an offence if the trustees fail to comply with subsection (3).

Maximum penalty: 100 penalty units.

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

123 Objection to special actuary by authority

(1) This section applies if the trustees of an approved scheme notify the planning and land authority of the special actuary's name under section 122 (3).

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(2) Within 7 days after the day the planning and land authority is notified, the authority may give written notice to the trustees that the actuary is not acceptable to the authority.

(3) If the trustees are given a notice under subsection (2), the trustees must within 7 days after the day they are given notice—

(a) appoint a different special actuary; and

(b) give the planning and land authority written notice of the name of that actuary.

(4) Subsection (2) applies whether the notification of the special actuary's name is under section 122 (3) or subsection (3) (b).

(5) The trustees of an approved scheme commit an offence if the trustees fail to comply with subsection (3).

Maximum penalty: 100 penalty units.

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

124 Special actuary's report

(1) The trustees must ensure that a special actuary's report is given to the planning and land authority—

(a) within 30 days after the day the authority gave the notice under section 122 (1); or

(b) within any additional further time the authority allows in writing.

(2) The report must be signed by the special actuary.

(3) Also, the report must contain a statement of the special actuary's opinion about each of the following:

(a) the adequacy of the whole or part of the amount stated in the scheme's accounts in relation to its liabilities, and the amount that the actuary considers would be adequate in the circumstances;

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(b) the accuracy of any relevant valuations made by the actuary;

(c) the assumptions used by the actuary in making the valuations;

(d) the relevance, appropriateness and accuracy of the information on which those valuations were based;

(e) anything else in relation to which the prudential standards require a statement of the actuary's opinion to be included in the report.

(4) The trustees of an approved scheme commit an offence if the trustees fail to comply with subsection (1).

Maximum penalty: 100 penalty units.

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

125 Who can be appointed as special actuary

(1) A person can only be appointed as a special actuary for section 122 (Special actuary to investigate liabilities) if the person—

(a) is a Fellow of The Institute of Actuaries of Australia; or

(b) the planning and land authority has, in writing, approved the person as an actuary for that section.

(2) The planning and land authority may approve a person only if satisfied that the person has actuarial qualifications and experience that make the person an appropriate person to exercise the functions of a special actuary for section 122.

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126 Obligations of trustees to auditors and actuaries

(1) The trustees of an approved scheme commit an offence if the trustees fail to make arrangements necessary to enable the auditor or actuary for the scheme, or any special actuary for the scheme, to exercise his or her functions in relation to the scheme.

Maximum penalty: 60 penalty units.

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

127 Protection of auditor and actuary from liability

The auditor or actuary for an approved scheme, and any special actuary for the scheme, does not incur civil liability, or criminal liability under the *Defamation (Criminal Proceedings) Act 2001*, for an act or omission done honestly and without negligence for this part.

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Part 7 Administration

Division 7.1 Building inspectors

128 Appointment of building inspectors

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

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

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

129 Identity cards

(1) The construction occupations registrar must issue a building inspector with an identity card that states the person is an inspector for this Act, or stated provisions of this Act, and shows—

(a) a recent photograph of the person; and

(b) the name of the person; and

(c) the date of issue of the card; and

(d) a date of expiry for the card; and

(e) anything else prescribed under the regulations.

(2) A person who ceases to be an inspector must return his or her identity card to the construction occupations registrar as soon as practicable, but no later than 7 days after ceasing to be an inspector.

Maximum penalty: 1 penalty unit.

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

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130 Inspection of approved building work

A building inspector may inspect building work for which a building approval has been issued to decide whether the building work is being, or has been, carried out in accordance with this Act.

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

131 Inspection of building work where no approval

(1) This section applies if the construction occupations registrar has reasonable grounds for suspecting that—

(a) a building approval has not been issued for building work that is being, or has been, carried out; or

(b) building work is not being, or has not been, carried out in accordance with the approved plans for the work or a notice under part 4 (Stop and demolition notices); or

(c) if plans or plans and specification have been approved under this Act for the erection or alteration of a building—

(i) the completed building has deteriorated, or is likely to deteriorate, so that the building is, or is likely to become, unfit for use as a building of the class stated, or for the purpose stated, in the plans or plans and specifications approved in relation to the most recent building work carried out in relation to the building; or

(ii) the building is being used other than as a building of the class stated, or for the purpose stated, in the plans or plans and specifications approved in relation to the most recent building work carried out in relation to the building; or

(d) for a building other than a building to which paragraph (c) applies—the building has deteriorated to the extent that it is unfit for any use; or

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(e) a building or part of a building is no longer structurally sound; or

(f) because of the use to which the building has been or is being put, the maximum safe live load has been or is being exceeded or the load on the building has been or is in excess of the load that the building was designed to carry; or

(g) a building or part of a building is unsafe because of fire hazard or unfit for use because of a danger to health.

(2) The construction occupations registrar may, in writing, authorise a building inspector to carry out an inspection of the building work or the building at any reasonable time.

(3) The construction occupations registrar may authorise the inspector to do 1 or more of the following:

(a) make tests of the soil or the building materials used or to be used in the building work or building;

(b) order the opening or cutting into or pulling down of any building work.

132 Costs of inspection

(1) If, on inspection, it is found that there are grounds for the giving of a stop notice, the builder must bear the costs (the ***inspection costs***) of any pulling down, opening or cutting into the building work carried out during the inspection.

(2) However, if, on inspection, it is found that there are no grounds for the giving of a stop notice, the Territory must bear the inspection costs and the costs of making good any damage to the building work caused by the inspection.

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133 Power to authorise required work

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

134 Building inspector

(1) A building inspector authorised under section 130 or section 131 to inspect a building or building work may enter on premises where the building has been erected or building work is being or has been carried out.

(2) However, the building inspector is not authorised to remain on the premises if, when asked by the occupier of the premises, the building inspector does not produce—

(a) if authorised under section 130—the inspector's identity card; or

(b) if authorised under section 131—a written certificate signed by the construction occupations registrar that the inspector is authorised to enter the premises.

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Part 8 Building code, recognised standards etc

Division 8.1 Building code and recognised standards

136 Building code

(1) In this Act:

building code means—

(a) the Building Code of Australia prepared and published by the Australian Building Codes Board as amended from time to time by—

(i) the Australian Building Codes Board; and

(ii) the Australian Capital Territory Appendix to the Building Code of Australia; and

(b) a document prescribed by regulation.

(2) The Minister may make an Australian Capital Territory Appendix to the Building Code of Australia.

Note Power given under an Act to make a statutory instrument (including the Australian Capital Territory Appendix to the Building Code of Australia) includes power to amend or repeal the instrument (see Legislation Act, s 46 (1)).

(3) The Australian Capital Territory Appendix to the Building Code of Australia is a disallowable instrument.

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

Note 2 An amendment or repeal of the Australian Capital Territory Appendix to the Building Code of Australia is also a disallowable instrument (see Legislation Act, s 46 (2)).

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

Example

prescribe an area to be a bushfire-prone area

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

137 Publication of building code etc in newspaper

(1) The planning and land authority must publish, in a daily newspaper, notice of the publication of each edition of the Building Code of Australia and each amendment of it by the Australian Building Codes Board.

(2) A notice is a notifiable instrument.

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

138 Inspection of building code

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

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

139 Certified copies of building code

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

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139A Recognised standards

(1) The Minister may declare a document to be a recognised standard for this Act.

(2) However, the Minister must not make a declaration under subsection (1) in relation to a document unless the document has been approved (however described)—

(a) by or on behalf of the Australian Building Codes Board; or

(b) under a system or scheme (however described) administered or approved (however described) by the Australian Building Codes Board; or

(c) as prescribed by regulation.

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

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

(4) In this section:

Australian Building Codes Board includes an entity prescribed by regulation.

Division 8.2 Asbestos code

139B Approval of asbestos code

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

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

(2) A code of practice may—

(a) set out practices, standards and other matters about building work if the work involves the use, handling or disposal of asbestos; and

(b) be approved as in force from time to time.

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(3) An approved code of practice is a disallowable instrument.

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

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

(4) The construction occupations registrar must make a copy of the asbestos code, and any instrument applied (with or without change) by the asbestos code, available for public inspection during ordinary office hours at—

(a) the office of the construction occupations registrar; or

(b) another place prescribed by regulation.

Note A reference to an instrument includes a reference to a provision of an instrument (see Legislation Act, s 14 (2)).

(5) In this section:

applied includes adopted and incorporated.

Division 8.3 Energy efficiency certificates

139C Energy efficiency certificates

(1) This section applies if a person is required to provide a certificate or other document (an ***energy efficiency certificate***) in relation to an energy efficiency provision.

(2) An energy efficiency certificate must be prepared—

(a) by a building assessor; and

(b) in accordance with—

(i) a code of practice (if any) in relation to the certificate; or

(ii) if a regulation provides for energy efficiency certificates—the regulation.

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(3) In this section:

code of practice means a code of practice approved under the *Construction Occupations (Licensing) Act 2004*, s 104A.

energy efficiency provision means a provision of this Act or the building code, prescribed by regulation, that requires building work, or proposed building work, or parts of building work, or parts of proposed building work, to comply with stated energy efficiency requirements.

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

139D Conflict of interest—building assessors

(1) A building assessor must not prepare an energy efficiency certificate for building work, in relation to a building, if the building assessor—

(a) has a legal or equitable interest in the building; or

(b) has a financial interest in the building; or

(c) is the certifier for the building work.

(2) However, a building assessor who has a conflict of interest mentioned in subsection (1) (a) or (b) may prepare an energy efficiency certificate if—

(a) the certificate is for—

(i) proposed building work; or

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(ii) building work in relation to a building or part of a building that must not be occupied under section 76 (Occupation and use of buildings); and

Example—part of building

- a unit in a multi-unit development
- an extension of an existing building

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

(b) the building assessor gives the registrar a declaration of the assessor's conflict of interest.

Note If a form is approved under s 128 for the declaration, the form must be used.

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Part 9 Limitation of liability

140 Meaning of *building action* for pt 9

In this part:

building action—

(a) means an action (including a counterclaim) for damages for loss or damage in relation to—

(i) defective building work; or

(ii) defective construction work other than building work; or

(iii) the negligent exercise by a licensed construction practitioner of a function as a certifier, or the negligent failure to exercise such a function; but

(b) does not include an action for damages for death or personal injury.

141 Limit of liability of people jointly or severally liable

(1) A court that decides an award of damages in a building action must give judgment against each defendant to the action who is found to be jointly or severally liable for the damage for the proportion of the total amount of the damages that the court considers to be just, having regard to the extent of that defendant's responsibility for the loss or damage.

(2) The liability for damages of a person found to be jointly or severally liable for damages in a building action is limited to the amount for which judgment is given against the person, even if another Act or a rule of law provides otherwise.

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

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142 Limitation of liability for building actions

(1) A building action may not be brought more than 10 years after—

(a) if a certificate of completion of the relevant building work has been given under this Act—the day the certifier gives the certificate; or

(b) if paragraph (a) does not apply, but the certifier has, in the course or on completion of the building work, inspected it—the day when the last inspection took place; or

(c) if neither paragraph (a) nor paragraph (b) applies—the day the relevant building was 1st occupied or used.

(2) Also, a building action in relation to building work may not be brought more than 10 years after—

(a) if an entity has given a notice under section 24 (2) that the entity's appointment as certifier for the building work has ended—the day the entity gave the notice; or

(b) if an entity's appointment as certifier for the building work has ended under section 19D and the entity need not give notice under section 24 (2)—the day the entity's appointment ended.

(3) Subsections (1) and (2) do not apply to a building action if a shorter limitation period applies to the building action under another Territory law.

(4) In this section:

building, in relation to building work that consists of, or includes, the alteration of a building, means the building as altered.

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Part 9A Notification and review of decisions

142A Definitions—pt 9A

In this part:

decision-maker, for a reviewable decision, means an entity prescribed by regulation.

reviewable decision means a decision prescribed by regulation.

142B Reviewable decision notices

A decision-maker for a reviewable decision must give a reviewable decision notice to each entity prescribed by regulation in relation to the decision.

Note 1 The decision-maker must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

Note 2 The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

142C Applications for review

The following may apply to the ACAT for a review of a reviewable decision:

(a) an entity prescribed by regulation for the decision;

(b) any other person whose interests are affected by the decision.

Note If a form is approved under the *ACT Civil and Administrative Tribunal Act 2008* for the application, the form must be used.

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Part 9B Powers of ACAT

142D Powers of ACAT—proposed buildings etc forming part of development

The ACAT must not, in relation to a proposed building, or a building as proposed to be altered, forming part of a development—

(a) vary a decision to issue a stop notice under section 53 (Stop notices) or a notice under section 58 (2) or (4) (Further notices relating to stop notices) or section 62 (1) (Notice to carry out building work), or substitute a decision for a decision it has set aside, in a way that would be contrary to a development approval for the development; or

(b) vary a decision to issue a notice under section 58 (4), or substitute a decision for a decision the ACAT has set aside, unless there is a development approval for the development.

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Part 10 Miscellaneous

143 Sustainability guidelines

(1) The Minister must make guidelines (the ***sustainability guidelines***) for the sustainable use of materials for building.

(2) A builder must not use a building material in contravention of the sustainability guidelines.

Examples

1 The sustainability guidelines may prohibit the use of rainforest timber for new buildings or repairs other than repairs to things that already consist mainly of rainforest timber. If the guidelines did this, a builder could use rainforest timber to repair window frames made of rainforest timber, but could not put in an extension containing rainforest timber.

2 The sustainability guidelines may allow the demolition of a building containing material from an unsustainable industry, eg rainforest timber. If the guidelines did this, a builder could demolish such a building without contravening the sustainability guidelines.

(3) The sustainability guidelines are a disallowable instrument.

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

144 Service of notices etc

(1) A notice or other document under this Act addressed to 1 person may be served by attaching the notice in a prominent position on the building or, for an alteration to a building, on the part of the building being altered, to which the notice relates.

(2) If a notice under this Act is addressed jointly to 2 or more people, a number of copies of the notice equal to the number of people to whom the notice is addressed must be signed by the person giving the notice, and 1 of those copies must be served on each of the people.

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

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145 Giving copies of documents

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

(a) the lessee or the owner of the parcel of land where the building to which the plans relate is erected; or

(b) if the plans relate to a unit within the meaning of the *Unit Titles Act 2001*—the proprietor of the unit.

147 Recovery of costs of work carried out by inspector

The costs incurred in the carrying out of the requirements of a notice under part 4 (Stop and demolition notices) or a decision of the construction occupations registrar by a building inspector or his or her assistants under section 131 (Inspection of building work where no approval) or section 133 (Power to authorise required work) is recoverable as a debt owing to the Territory from the person who was required to carry them out by the notice or order.

148 Evidentiary certificates

In a proceeding before a court or the ACAT—

(a) a document purporting to be a copy of a notice under this Act and certified as a true copy by the construction occupations registrar or of a person authorised in writing by the registrar must be received in evidence and must be taken without further proof to be a true copy of the notice; and

(b) a notice certified as a true copy under this section must be taken, unless the contrary is proved, to have been given by the person purporting to give it and to have been given on the date stated in the certified copy of the notice; and

(c) a document purporting to be a certificate given by the construction occupations registrar and certifying that there was a building approval in force for stated building work on a

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stated date or during a stated period is evidence that on the stated date or during the stated period the building approval was in force; and

(d) a document purporting to be a certificate given by the construction occupations registrar and certifying that there was no building approval in force for stated building work on a stated date or during a stated period is evidence that on the stated date or during the stated period no building approval was in force for the building work; and

(e) a certificate signed by the construction occupations registrar certifying that a document attached to the certificate is a true copy of plans approved by the registrar under this Act or of a part of such plans is evidence of the plans or of the part as so approved; and

(f) a certificate signed by the construction occupations registrar and certifying that, at a stated date a certificate of occupancy had not been issued for a stated building or a stated part of the building is evidence that, at that date, a certificate of occupancy had not been issued for the building or part of a building.

149 Legal liability for acts of registrar etc

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

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

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150 Determination of fees

(1) The Minister may determine fees for this Act.

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

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

(3) A determination is a disallowable instrument.

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

151 Approved forms

(1) The construction occupations registrar may approve forms for this Act.

(2) If the construction occupations registrar approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see Legislation Act, s 255.

(3) An approved form is a notifiable instrument.

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

152 Regulation-making power

(1) The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

(2) A regulation may exempt a building from the application of this Act, or part of the Act, whether—

(a) directly or by a further instrument; or

(b) conditionally or otherwise.

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(3) The regulations may make provision in relation to—

(a) the approval of building work in relation to particular buildings; and

(b) anything else in relation to the approval of building work on particular buildings; and

(c) the following:

(i) when an entity must be consulted about, consent to, or approve, an application for building approval;

(ii) anything else in relation to the consultation, consent or approval.

Note See s 27 (1) (b).

(4) The regulations may make provision about a matter by applying, adopting or incorporating (with or without change) a standard, or a provision of a standard, as in force from time to time.

(5) The Legislation Act, section 47 (6) does not apply in relation to an Australian Standard, or an Australian/New Zealand Standard, applied, adopted or incorporated as in force from time to time under the regulations.

(6) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 60 penalty units for offences against the regulations.

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Dictionary

(see s 3)

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

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

- ACAT
- bankrupt or personally insolvent
- construction occupations registrar
- contravene
- daily newspaper
- exercise
- function
- law
- may (see s 146)
- must (see s 146)
- national land
- planning and land authority
- reviewable decision notice
- Territory land
- under.

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

alteration, of a building, includes—

(a) demolition of part of the building; and

(b) an addition to the building.

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

approval requirement, for plans—see section 29.

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approved plans—

(a) means plans that relate to building work for which a building approval is in effect; and

(b) includes amended plans.

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

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

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

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

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

basic building work—see section 10.

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

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

building—

(a) for Act—see section 7; but

(b) for part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)—see section 84.

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

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building approval means a building approval under part 3.

building code—see section 136 (1).

building inspector means a person appointed under section 128.

building surveyor—see the *Construction Occupations (Licensing) Act 2004*, section 9.

building work—

(a) for Act—see section 6; but

(b) for part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)—see section 84.

certificate of occupancy means a certificate under section 69.

certificate of regularisation—see section 75 (1).

certifier—

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

(b) for division 3.2 (Certifiers and government certifiers)—see section 17.

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

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

completion day, for part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)—see section 85.

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

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decision-maker, for a reviewable decision, for part 9A (Notification and review of decisions)—see section 142A.

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

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

disturbs friable asbestos—see section 10B.

dwelling means a class 1 or class 2 building.

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

eligible entity, for division 3.2 (Certifiers and government certifiers)—see section 18.

energy efficiency certificate—see section 139C (1).

exempt building—see section 12.

exemption assessment—see section 14.

exemption assessment B notice—see section 14B.

exemption assessment D notice—see the *Planning and Development Act 2007*, section 138D.

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

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

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

(a) is crumbly, dusty or powdery; or

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(b) when dry, can be crumbled, pulverised or reduced to powder by hand pressure.

Examples of friable asbestos

1 sprayed asbestos coating or insulation

2 asbestos lagging

3 loose asbestos, asbestos in its raw form

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

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

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

information includes documents.

land includes—

(a) a place under, on or above the ground; and

(b) land that is the subject of a public unleased land permit under the *Public Unleased Land Act 2013*; and

(c) land, a building or a structure, the use of which is authorised by a licence under the *Planning and Development Act 2007*, part 9.11 (Licences for unleased land).

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

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

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

load includes superimposed load.

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

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owner, of land, means—

(a) if the land is held under a lease from the Commonwealth for a term of years—the lessee; or

(b) if the land is subdivided under the *Unit Titles Act 2001*—

(i) if building work has been, is being or is to be carried out on the land for the owners corporation—the owners corporation; or

(ii) if building work has been, is being or is to be carried out on the land for the proprietor of a unit—the proprietor; or

(iii) in any other case—the owners corporation; or

(c) if the land is occupied under a tenancy from the Territory or the Commonwealth—the occupier; or

(d) if the land is subject to a public unleased land permit under the *Public Unleased Land Act 2013*—the permit-holder; or

(e) if the land is subject to a licence under the *Planning and Development Act 2007*, part 9.11 (Licences for unleased land)—the licensee; or

(f) if the Territory carries out or proposes to carry out building work on the land—the Territory; or

(g) if the Commonwealth carries out or proposes to carry out building work on the land—the Commonwealth.

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

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

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

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

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

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

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

reviewable decision, for part 9A (Notification and review of decisions)—see section 142A.

site work—see section 7A.

special actuary, for part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)—see section 122.

specialist building work—see section 9.

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

stop notice—see section 53 (2).

storey—

(a) means a floor level within a building that—

(i) is between 2 other floor levels; or

(ii) has a floor level above or below it; but

(b) does not include a mezzanine level or a space that contains only 1 or more of the following:

(i) a lift shaft, stairway, meter room;

(ii) a bathroom, shower room, laundry, toilet or other sanitary compartment;

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(iii) accommodation intended for up to 3 vehicles; and

(c) for part 6 (Residential buildings—statutory warranties, insurance and fidelity certificates)—does not include a storey below the ground storey (see section 84).

structure—see section 8.

waste management plan, in relation to building work that involves the demolition or alteration of a building, means information that includes—

(a) the extent of work to be undertaken; and

(b) the nature and amount of waste that will be generated; and

(c) the place to which each kind of waste will be taken by the builder, or the builder's agent, for reuse, recycling or disposal; and

(d) any other information prescribed under the regulations.

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Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

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

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3 Legislation history

Building Act 2004 A2004-11

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
remainder commenced 1 September 2004 (s 2 and see Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

as amended by

Criminal Code (Theft, Fraud, Bribery and Related Offences) Amendment Act 2004 A2004-15 sch 2 pt 2.10

notified LR 26 March 2004
s 1, s 2 commenced 26 March 2004 (LA s 75 (1))
sch 2 pt 2.10 commenced 1 September 2004 (LA s 79A)

Emergencies Act 2004 A2004-28 sch 3 pt 3.1

notified LR 29 June 2004
s 1, s 2 commenced 29 June 2004 (LA s 75 (1))
sch 3 pt 3.1 commenced 1 September 2004 (s 2 (2) and see Building Act 2004 A2004-11, s 2 and Construction Occupations (Licensing) Act 2004 A2004-12, s 2 and CN2004-8)

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

notified LR 31 August 2004
s 1, s 2 commenced 31 August 2004 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 September 2004 (s 2 (2))

as modified by

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

taken to have been notified LR 26 March 2004 (A2004-11, s 177 (3) (a))
reg 1 taken to have commenced 26 March 2004 (LA s 75 (1))
remainder commenced 1 September 2004 (A2004-11, s 177 (3) (b))

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

notified LR 8 September 2004
reg 1, reg 2 commenced 8 September 2004 (LA s 75 (1))
reg 5 commenced 9 September 2004 (reg 2)

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

as amended by

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

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.7 commenced 2 June 2005 (s 2 (1))

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

notified LR 6 July 2005
s 1, s 2 commenced 6 July 2005 (LA s 75 (1))
sch 1 pt 1.1, amdt 1.21 commenced 27 July 2005 (s 2)

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

notified LR 6 April 2006
s 1, s 2 commenced 6 April 2006 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 September 2006 (s 2 and CN2006-19)

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

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
sch 1 pt 1.1 commenced 1 July 2006 (s 2 (1) as am by A2006-24 s 4)

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

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
remainder commenced 19 May 2006 (s 2)

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

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Building Legislation Amendment Act 2007 A2007-26 sch 1 pt 1.1

notified LR 13 September 2007
s 1, s 2 commenced 13 September 2007 (LA s 75 (1))
sch 1 pt 1.1 commenced 31 March 2008 (s 2 (1) and see Planning and Development Act 2007 A2007-24, s 2 and CN2008-1)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 A2008-36 sch 1 pt 1.7

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.7 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

ACT Civil and Administrative Tribunal Legislation Amendment Act 2008 (No 2) A2008-37 sch 1 pt 1.14

notified LR 4 September 2008
s 1, s 2 commenced 4 September 2008 (LA s 75 (1))
sch 1 pt 1.14 commenced 2 February 2009 (s 2 (1) and see ACT Civil and Administrative Tribunal Act 2008 A2008-35, s 2 (1) and CN2009-2)

Statute Law Amendment Act 2009 A2009-20 sch 3 pt 3.8

notified LR 1 September 2009
s 1, s 2 commenced 1 September 2009 (LA s 75 (1))
sch 3 pt 3.8 commenced 22 September 2009 (s 2)

Statute Law Amendment Act 2010 A2010-18 sch 1 pt 1.2

notified LR 13 May 2010
s 1, s 2 commenced 13 May 2010 (LA s 75 (1))
sch 1 pt 1.2 commenced 3 June 2010 (s 2)

Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010 A2010-24 pt 2

notified LR 8 July 2010
pt 1 commenced 8 July 2010 (s 2 (1))
pt 2 commenced 8 July 2011 (s 2)

Construction Occupations Legislation Amendment Act 2010 (No 2) A2010-32 pt 2

notified LR 1 September 2010
s 1, s 2 commenced 1 September 2010 (LA s 75 (1))
s 3 commenced 18 February 2011 (LA s 75AA)
pt 2 commenced 1 March 2011 (s 2 and LA s 79)

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Statute Law Amendment Act 2011 A2011-3 sch 3 pt 3.5

notified LR 22 February 2011
s 1, s 2 commenced 22 February 2011 (LA s 75 (1))
sch 3 pt 3.5 commenced 1 March 2011 (s 2)

Planning and Building Legislation Amendment Act 2011 A2011-23 pt 2

notified LR 6 July 2011
pt 1 commenced 6 July 2011 (s 2 (1))
pt 2 commenced 8 July 2011 (s 2 (2) and see Construction Occupations Legislation (Exemption Assessment) Amendment Act 2010 A2010-24 s 2)

Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.6

notified LR 22 November 2011
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))
sch 1 pt 1.6 commenced 1 March 2012 (s 2 (1) and see Evidence Act 2011 A2011-12, s 2 and CN2012-4)

Planning and Building Legislation Amendment Act 2011 (No 2) A2011-54 pt 2

notified LR 13 December 2011
s 1, s 2 commenced 13 December 2011 (LA s 75 (1))
pt 2 commenced 1 July 2012 (s 2 and CN2012-11)

Planning, Building and Environment Legislation Amendment Act 2012 A2012-23 pt 2

notified LR 28 May 2012
s 1, s 2 commenced 28 May 2012 (LA s 75 (1))
pt 2 commenced 29 May 2012 (s 2)

Public Unleased Land Act 2013 A2013-3 sch 2 pt 2.1

notified LR 21 February 2013
s 1, s 2 commenced 21 February 2013 (LA s 75 (1))
sch 2 pt 2.1 commenced 1 July 2013 (s 2 and CN2013-9)

Planning, Building and Environment Legislation Amendment Act 2013 A2013-15 pt 2

notified LR 21 May 2013
s 1, s 2 commenced 21 May 2013 (LA s 75 (1))
pt 2 commenced 22 May 2013 (s 2)

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Statute Law Amendment Act 2013 A2013-19 sch 3 pt 3.3

notified LR 24 May 2013

s 1, s 2 commenced 24 May 2013 (LA s 75 (1))

sch 3 pt 3.3 commenced 14 June 2013 (s 2)

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

Meaning of *building*
s 7 sub A2007-26 amdt 1.1

Meaning of *site work*
s 7A ins A2007-26 amdt 1.1

Meaning of *minor maintenance work*
s 10A ins A2006-16 amdt 1.1
om A2007-26 amdt 1.2

Meaning of *disturbs* friable asbestos
s 10B ins A2006-16 amdt 1.1

Exempt buildings
s 12 am A2007-26 amdt 1.3

Exemption assessments
pt 2A hdg ins A2010-24 s 4

Purpose of exemption assessment B notices
s 13 sub A2005-34 amdt 1.1
am A2006-16 amdt 1.2, amdt 1.3
om A2007-26 amdt 1.4
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s 15 sub A2005-34 amdt 1.2; A2006-16 amdt 1.4
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s 16 om A2007-26 amdt 1.7

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s 17 def ***eligible entity*** ins A2007-26 amdt 1.9
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s 21 sub A2007-26 amdt 1.13

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s 29 am A2005-34 amdt 1.3, amdt 1.4; A2006-16 amdt 1.7; A2006-15 amdt 1.1; A2007-26 amdt 1.22, amdt 1.23; pars renum R10 LA; A2011-3 amdt 3.76; A2010-24 ss 11-13; ss, pars renum R15 LA

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s 48 am A2007-26 amdts 1.39-1.45; ss and pars renum R10 LA

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s 81 am A2011-3 amdt 3.77

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

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def ***land*** ins A2007-26 amdt 1.79
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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Sept 2004	1 Sept 2004– 1 Sept 2004	A2004-66	new Act and amendments by A2004-15, A2004-28 and A2004-66
R2 2 Sept 2004	2 Sept 2004– 8 Sept 2004	A2004-66	commenced expiry
R3 9 Sept 2004	9 Sept 2004– 1 June 2005	A2004-66	modifications by SL2004-34 as amended by SL2004-46
R4 2 June 2005	2 June 2005– 26 July 2005	A2005-20	amendments by A2005-20
R5 27 July 2005	27 July 2005– 27 July 2005	A2005-34	amendments by A2005-34
R6 28 July 2005	28 July 2005– 30 June 2006	A2005-34	commenced expiry
R7 1 July 2006	1 July 2006– 31 Aug 2006	A2006-24	amendments by A2006-16 as amended by A2006-24
R8 1 Sept 2006	1 Sept 2006– 1 Sept 2006	A2006-24	amendments by A2006-15
R9 2 Sept 2006	2 Sept 2006– 30 Mar 2008	A2006-24	commenced expiry
R10* 31 Mar 2008	31 Mar 2008– 1 Feb 2009	A2007-26	amendments by A2007-26

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Republication No and date	Effective	Last amendment made by	Republication for
R11 2 Feb 2009	2 Feb 2009– 21 Sept 2009	A2008-37	amendments by A2008-36 and A2008-37
R12 22 Sept 2009	22 Sept 2009– 2 June 2010	A2009-20	amendments by A2009-20
R13 3 June 2010	3 June 2010– 28 Feb 2011	A2010-18	amendments by A2010-18
R14 1 Mar 2011	1 Mar 2011– 7 July 2011	A2011-3	amendments by A2010-32 and A2011-3
R15 8 July 2011	8 July 2011– 29 Feb 2012	A2011-23	amendments by A2010-24 and A2011-23
R16 1 Mar 2012	1 Mar 2012– 28 May 2012	A2011-48	amendments by A2011-48
R17 29 May 2012	29 May 2012– 30 June 2012	A2012-23	amendments by A2012-23
R18 1 July 2012	1 July 2012– 21 May 2013	A2012-23	amendments by A2011-54
R19 22 May 2013	22 May 2013– 13 June 2013	A2013-15	amendments by A2013-15
R20 14 June 2013	14 June 2013– 30 June 2013	A2013-19	amendments by A2013-19
R21 1 July 2013	1 July 2013– 8 July 2013	A2013-19	amendments by A2013-3

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6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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