

**1998**

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

**BUILDING (AMENDMENT) BILL (NO. 2) 1998**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
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Minister for Urban Services**

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

### **OUTLINE**

This is an amending Bill. It amends the *Building Act 1972* (referred to in the amending Bill as the *Principal Act*). The *Building Act* regulates the erection, alteration and demolition of buildings.

The Bill allows people not employed by the government ("private certifiers") to give plan approval and carry out inspections of building work. Certifiers are persons registered under the *Construction Practitioners Registration Bill*.

Under the present scheme, a statutory office holder, the Building Controller, or the Builder Controller's agents, approves plans for building, issues a permit to a licensed builder or an owner-builder to carry out the work and issues a Certificate of Occupancy for the completed work.

The new scheme allows a certifier to approve the plans and inspect the work. There is no need for a building permit. The certifier ensures any consultation of, or consent from, other parts of the government or other bodies that are affected by building work is made or obtained. The Building Controller issues a Certificate of Occupancy on the basis of a certificate from the certifier and evidence that the plumbing and electrical work associated with the building work has been satisfactorily completed.

Under the new scheme, the Building Controller's other role in relation to building work is in relation to documents. Before work begins, the certifier must give the Building Controller copies of approved plans and notice of the builder who is to carry on the work. Once the work is complete, the certifier provides the Building Controller with copies of specified documents relevant to the approval process.

The Building Controller therefore holds copies of the records of all work on a building, even if several different certifiers are engaged on successive alterations to a building. The records are available to interested parties.

The records, together with the powers of the Building Controller and building inspectors, may be used to audit the performance of builders and certifiers. An audit may lead to disciplinary action against builders under the *Principal Act* or against certifiers under the *Construction Practitioners Registration Bill*. The Building Controller continues to be responsible for builders' licensing and only the Controller or the Controller's agents may issue stop and demolition notices under Part IV of the *Principal Act*.

### **Financial Implications**

The introduction of private certification will be revenue-neutral for the government. Staff numbers and approval fees will be reduced as functions are transferred to private certifiers and special fees will cover regulatory costs.

## CLAUSE NOTES

### Formal clauses

**Clauses 1, 2 and 3** are formal clauses that deal with the short title of the Bill and its commencement and provide that references to the "Principal Act" in the Bill mean the Building Act 1972.

The introduction of private certification of plan approval and inspections primarily affects Part III of the Principal Act but has indirect consequences for parts of the Principal Act concerned with other matters.

- References in other parts of the Principal Act to provisions of Part III are revised and renumbered.
- There are no longer building permits. References to building permits in other parts of the Act, and in some cases in other Acts, are adjusted appropriately. In the new scheme, the overall process of approval is referred to as "building approval". The concept is different but in most cases this term can be substituted.
- Under the old scheme, approval might be subject to "conditions". Building approval has "requirements", and references to conditions are modified.

### Interpretation

**Clause 4** adds to the Principal Act definitions of the terms "approved plans", "building approval", certifier, "owner-builder's licence" and "plans" and omits the definition of "building permit" and subsection 5 (3)

The changes to Part III replace building permits with building approval. Subsection 5 (3) is a transitional arrangement in the Principal Act to deal with permits outstanding from the building laws replaced by that Act in 1972. There are no longer any permits in that category.

### Application

**Clause 5** replaces the word "permit" in subsection 6 (2) of the Principal Act with "approval". Subsection 6 (2) states that the Principal Act does not apply to a temporary building on a building site if the work is being carried out with approval under the Principal Act. The effect of this change is to describe the approval as constituted by "building approval" and not a "building permit"

### Position of the Crown

**Clause 6** replaces "29" with "40A" in paragraph 6A (2) (b) of the Principal Act. Section 6A states which provisions of the Act apply to the ACT Crown. Paragraph 6A (2) (b) includes section 29 of the Principal Act among these provisions. The amendment inserts a reference to proposed new section 40A, which corresponds to repealed section 29.

### **Inspection**

**Clause 7** amends section 9 of the Principal Act. It replaces subsection 9 (1) and paragraph 9 (2) (a).

Section 9 deals with the inspection powers of building inspectors. Subsection (1) provides for rights of entry for visual inspections in ordinary circumstances and subsection (2) provides rights of entry when authorised in writing by the Building Controller in specified circumstances and subsection (3) then allows the building inspector to undertake additional actions in the course of inspections in these specified circumstances. The changes allow for the replacement of building permits by building approval and the removal of the concept of conditions of approval.

Subclause 7 (c) repeals subsection 9 (5A) of the Principal Act. Subsection 9 (5A) is a transitional arrangement. It contains a procedure for dealing with failure to comply with notices outstanding from the building laws that were replaced by the Principal Act in 1972. There are no relevant notices in that category.

### **Classes of builder's licences**

**Clause 8** replaces paragraph 14 (6B) (c) of the Principal Act with the words "the number of building projects that may be undertaken by the builder concurrently; and". The paragraph describes one of the conditions or restrictions to which a builder's licence may be subject. The words replaced refer to restrictions on the number of building permits that may be granted or held.

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

**Clause 9** replaces subsections 18 (6) and 18 (7) of the Principal Act. Section 18 of the Principal Act deals with disciplinary action against holders of builders' licences. Subsection 18 (6) allows the Building Controller, when issuing a disciplinary notice under subsection 18 (1) to a builder, to provide a copy of the notice to owners of land where the builder is carrying out building work and 18 (7) gives the owners a period of time to make representations, whether or not they have received a copy of the notice. The effect of the changes is to replace references to the work as something for which a building permit has been issued with references to the carrying out of building work.

### **Insertion**

Owner-builders formerly obtained a special building permit after assessment of their ability to carry out specific approved plans successfully. This assessment continues to be carried out by the Government and to separate the process from those carried out by certifiers, the authority that they are given is now called a licence. Two sections dealing with owner-builders have been added to Division III of Part II of the Principal Act, which deals with builders' licensing. They replace the system contained in repealed section 39 of the Principal Act.

**Clause 10** inserts *new sections 23A and 23B*.

### **Grants of licences**

**Proposed new subsection 23A (1) allows an individual who owns land and intends to carry out building work on it to apply for an owner-builder's licence. The person may intend to carry out the work personally or to supervise it.**

**Proposed new subsection 23A (2) states that a fee is payable with the application. The application must be in writing, signed, and accompanied by**

- (a) a copy of building approval and approved plans for the work,**
- (b) details of relevant skills and experience;**
- (c) any other information or documents required by the regulations.**

**Proposed new subsection 23A (3) states that the Building Controller may approve the application if satisfied that it complies with proposed new subsection 23A (2) and:**

- (a) the building work concerned is new work on, or alterations to, the applicant's principal place of residence; or**
- (b) the work can be carried out by a person who does not hold a builder's licence**

**Proposed new subsection 23A (4) requires the Building Controller to be satisfied that the applicant has the skills and experience to carry out the building work before the Building Controller issues a licence.**

**Proposed new subsection 23A (5) allows the Building Controller to ask in writing for further evidence or documents on which to base a decision under proposed new subsection 23A (3).**

**Proposed new subsection 23A (6) allows the Building Controller to refuse the application if further information called for under proposed new subsection 23A (5) is not provided. The information must be provided within 14 days unless the notice allows a longer period.**

**Proposed new subsection 23A (7) states that if the building work is for new work on, or alterations to, the applicant's principal place of residence, only one application is to be approved in five years.**

**Proposed new subsection 23A (8) specifies that both a building permit under repealed section 39 and an owner-builder licence under proposed new section 23A count in deciding whether another application has been approved in the previous five years.**

**Proposed new subsection 23A (9) provides that the only work an owner-builder permit authorises is the work in relation to which it was issued.**

***Period for which owner-builder's licence is in effect.***

Proposed ***new section 23B*** states that an owner-builder permit lapses when the relevant certifier gives the Building Controller a certificate under proposed new paragraph 40 (1) (g) that the work has been satisfactorily completed or when the building approval lapses, if no certificate has been given by the time of the lapse. Lapse does not include the supersession of a building approval when a new approval is issued as provided for in proposed new section 35A.

***Substitution***

**Clause 11** repeals Part III of the Principal Act and replaces it with a new Part.

Part III of the Principal Act deals with plan approvals and inspection and the Part has been rewritten and reorganised to accommodate the new scheme of private certification of these.

A certifier is appointed by the owner of the land where building work is to take place. The certifier approves the plans and amendments to them. Plan approval includes consulting or obtaining the consent of other parts of the government or other bodies that are affected by building work or have powers over it. There is currently no legislative authority for this co-ordination process and it is carried out under administrative understandings between those concerned.

In the new scheme, the approval processes involved have been simplified by removing the need for builders to apply for and obtain a permit before beginning work. The owner informs the certifier of the builder who is to undertake the work. There is no longer a requirement to wait for the issue of a building permit but licences are graded and the certifier must check that the builder's licence authorises the builder to undertake the work. When the builder is undertaking residential building required by Part VA of the Principal Act to be covered by warranty insurance, the certifier must check that insurance has been obtained. This is a requirement currently linked to the issue of a building permit.

The certifier carries out the inspections required for the kind of building work and certifies its completion. At completion the certifier will have to ensure that any required consent or approval of other parts of the government or other bodies is obtained. This is another process that is currently carried out under administrative understandings.

***Division 1—Preliminary***

***Interpretation***

Proposed ***new section 29*** gives the meaning of references to "stage" in proposed new Part III of the Principal Act.

## ***Division 2—Certifiers***

### ***Eligibility for appointment as a certifier***

Proposed **new section 30** deals with the eligibility of persons to be appointed as certifiers. Proposed new subsection 30 (1) provides for the regulations to specify which categories of building work a registered construction practitioner is qualified to be appointed certifier for.

Proposed new subsection 30 (2) states that a registered construction practitioner is eligible to be appointed certifier for building work if the person is entitled under the proposed Construction Practitioners Registration Act to perform services as certifier in relation to the work and is qualified under the Building Regulations to be appointed.

Proposed new subsection 30 (3) states that if a person becomes ineligible to act as certifier after being initially appointed, the person ceases to be a certifier at the time when the person becomes ineligible.

Proposed new subsection 30 (4) gives the meaning of references to “registered construction practitioner” in proposed new section 30.

The effect of proposed new section 30 is that a certifier is a person registered under the proposed Construction Practitioners Act in a category of construction practitioner. The Building Regulations make categories of construction practitioner eligible to certify kinds of building work. The certifier’s eligibility is subject to the restrictions that clause 8 of the proposed Construction Practitioners Act places on interests in the work.

### ***Appointment of certifiers***

Proposed new **subsection 31 (1)** states that the owner of land appoints the certifier. The appointment must be in writing and the certifier must be eligible as described in proposed new section 30.

Proposed new subsection 31 (2) describes how an appointment may end. The owner may give the certifier written notice of revocation. The certifier may give the owner written notice of relinquishment of the appointment. The certifier may cease to be eligible under proposed new section 30 to be a certifier.

### ***Notification of appointment or cessation of appointment of certifier***

Proposed **new section 32** requires a certifier to give the Building Controller written notice of appointment as a certifier, revocation of the appointment or relinquishment of the appointment. The notice must be given within 7 days of the appointment, revocation or relinquishment. An appointment, revocation or relinquishment does not need to be notified if it takes place before a certifier has given building approval for the building work.

A penalty of 1 penalty unit applies to contravention of this provision.

***Prohibition against contracting out***

Proposed ***new section 33*** invalidates a provision in a contract or agreement that attempts to limit or modify the operations of proposed new Part III in relation to a certifier or building work. The effect of this proposed new section is prevent a certifier from having obligations to the owner or builder inconsistent with the requirements of the Principal Act.

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

***Application***

Proposed ***new section 33A (1)*** states that an application for approval of building work must be made by the owner of land to the certifier appointed as set out in proposed new Division 2 of Part III of the Principal Act.

Proposed new subsection 33A (2) allows an appointment to be made by the owner's agent.

Proposed new subsection 33A (3) requires the application to be in writing and describes the information to be provided in it. It must give the name of the owner of the land and identify the land. The number of plans for the work that must be provided and other requirements for the application are to appear in the regulations.

***Issue of building approvals***

Proposed ***new subsection 34 (1)*** sets out the requirements for approval of an application for building approval.

- (a) It must contain the information required in proposed new subsection 33A (3).
- (b) If it is submitted by an agent, the agent must be authorised in writing by the owner.
- (c) The plans must comply with the requirements contained in the regulations.
- (d) Any requirements in the regulations for consulting or obtaining the consent of another person, body or authority must have been carried out.
- (e) If the plans are for a new building, they must comply with the Principal Act, the regulations and the Building Code.
- (f) if the plans are for a substantial alteration to a building, the altered building must comply with the Building Code.
- (g) The building as designed must be structurally adequate.

Proposed new subsection 34 (2) allows the work to comply with some other standard, despite proposed new paragraphs 34 (1) (e) and (f) above, if the Building Code does not contain relevant provisions.

Proposed new subsection 34 (3) specifies that the "substantial alterations" referred to in proposed new paragraph 34 (1) (f) mean alterations or additions carried out



over 3 years that add up to half the volume of the building Proposed new subsection 34 (4) then states that the outer walls and roof define the volume of a building for the purposes of proposed new subsection 34 (3)

Proposed new subsection 34 (5) allows the regulations to specify the form of a building approval. It is to be marked on or attached to the plans, or partly marked and partly attached. Under proposed new subsection 34 (6), if any part of the approval is not marked on the plans, the plans are to be annotated to this effect

Proposed new subsection 34 (7) requires the certifier to give a copy of the approval and relevant plans to the applicant as soon as practicable Within seven days of approval, the certifier must give the Building Controller a copy of the approval, the plans, notification of the certifier's appointment, if not previously reported, and a fee

Proposed new subsection 34 (6) has been added to ensure that builders are aware of all the plans and other approval documents and none are overlooked in the construction phase. The other requirements of this proposed new section are similar to those contained in repealed section 33 of the Principal Act.

#### ***External design and siting considerations***

Proposed ***new subsection 34A (1)*** requires the certifier not to grant approval if the certifier believes that the design and siting of the building would contravene any law

Proposed new subsection 34A (2) states that proposed new subsection 35 (1) does not apply if the building work is part of a development that is not required to be approved under Division 2 of Part VI of the Land (Planning and Environment) Act 1991

Proposed new section 34A has the same effect as repealed section 38 of the Principal Act.

#### ***Amendment of approved plans***

Proposed ***new section 35*** deals with amendments to plans after approval

Proposed new section 35 (2) allows the owner to make application to the certifier for amendments to the approved plans

Proposed new subsection 35 (3) allows the making of regulations that apply to the application

Proposed new subsection 35 (4) states that if the proposed amendments are so significant that the amendments should be treated as a new building application, then the certifier must refuse to approve them. Otherwise, the certifier may approve the amendment if the amended plans comply with proposed new subsection 34 (1) and proposed new section 34A.

Proposed new subsection 35 (5) requires a certifier dealing with amendments to comply with the requirements of proposed new subsections 34 (5), (6) and (7) except for proposed new subparagraph 34 (7) (b) (iv).

The effect of the proposed new section is to make approval of an amendment follow the same pattern as approval of original plans, except for the payment of fees

***Effect of issue of further building approval***

Proposed ***new section 35A*** states that further building approval supersedes an earlier approval.

***Land to be used in accordance with lease***

Proposed ***new section 36*** states that building approval for building work on leased land does not allow the use of the land for a purpose not permitted by the lease. It has the same effect as repealed section 37 of the Principal Act.

***Period for which approvals are in force***

Proposed ***new subsection 36A (1)*** provides for a building approval to remain in force for a maximum of three years after issue or for a shorter time if the development period requires the building work to be completed in a shorter period.

Proposed new subsection 36A (2) allows an original approval that was limited to the period set by development conditions to be extended if the development period is extended. Proposed new subsection 36A (3) limits extensions under proposed new subsection 36A (2) to a total of three years from the original approval.

Proposed new subsection 36A (4) gives the meaning of references to "development period" in proposed new section 36A. Laws on development may require construction to begin and end within certain periods.

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

***Requirements for carrying out building work***

Proposed ***new section 37*** sets out requirements for carrying out building work. These are:

- (a) The materials used must comply with the Building Code.
- (b) The way the materials are used must comply with the Building Code.
- (c) The work must be carried out in a proper and skilful manner.
- (d) The work must be carried out in accordance with the approved plans.
- (e) If an owner-builder's licence has not been granted for the work, the work must be carried out by a person who holds a builder's licence that authorises the carrying out of the work.
- (f) If an owner-builder's licence has been granted for the work, the work must be carried out by the licence holder.

- (g) The licensee must carry out any safety precautions specified in the application for building approval and any other precautions specified by the certifier or a building inspector

Proposed new section 37 has a similar effect to repealed section 40 of the Principal Act

***Notifications by owner of land in relation to building work***

Proposed ***new subsection 37A (1)*** requires the owner of land, or the owner's agent, to notify the certifier of the name and licence number of the builder who is to carry out the building work and to do so before work commences.

A penalty of 20 penalty units for a natural person or 100 penalty units for a body corporate applies to contravention of this provision.

Proposed new subsection 37A (2) requires an owner who change builders to notify the certifier of the name and licence number of the new builder before the new builder takes up the work.

A penalty of 20 penalty unit for a natural person or 100 penalty units for a body corporate applies to contravention of these provisions.

Proposed new subsection 37A (3) requires an owner who proposes to carry out the building work as an owner-builder to notify the certifier of the owner's owner-builder licence number.

A penalty of 20 penalty units applies to contravention of this provision.

***Notifications by certifier in relation to building work***

Proposed ***new subsection 38 (1)*** requires the certifier to notify the Building Controller in an approved form of the name and licence number of the person undertaking building work and state whether the licensee is authorised by the licence to undertake the work. The certifier must provide that information within seven days of being notified by the owner.

Proposed new subsection 38 (2) requires the certifier, if Part VA of the principal Act requires the building work to be covered by residential building work insurance, to advise the Building Controller if a suitable housing indemnity insurance policy is in effect and identify that policy. The certifier must provide the information within seven days of being notified by the owner under proposed new section 37A.

Proposed new subsection 38 (3) requires the certifier to comply with proposed new subsections 38 (1) and (2).

A penalty of 5 penalty units applies to contravention of this provision

### ***Stages of building work***

Proposed ***new subsection 38A (1)*** states that the stages of building work are to be set out in the regulations.

Proposed new subsection 38A (2) provides that a licensee in charge of building work may not proceed with building work above damp course level unless the certifier has received and been satisfied by a plan signed by a registered surveyor. The plan must specify the position of the building relative to the boundaries of the land on which it is being built and specify the height of the floors of the building relative to a level specified in the approved plans. The certifier must be satisfied that the position of the building and level of the floors of the building correspond to the approved plans and any conditions to which a compulsory consent is subject.

A penalty of 50 penalty units for a natural person and 250 penalty units for a body corporate is provided for contravention of this provision.

Proposed new subsection 38A (3) states that in proposed new paragraph 38A (2) (b) (ii), "compulsory consent" means a consent required under proposed new paragraph 34 (1) (d) or any other law of the Territory.

(Proposed new paragraph 34 (1) (d) allows the regulations to prescribe requirements for the consent of persons, bodies or authorities. Conditions relative to the position or height of buildings may be part of their approval under the regulations or may be part of other legislation applying to building work.)

Proposed new subsection 38A (4) states that a licensee in charge of building work who has reached a stage of building work prescribed in the regulations may not proceed beyond that stage unless the licensee has given the certifier notice that the stage has been reached and the certifier has inspected the building work and given written permission for the work to proceed.

A penalty of 50 penalty units for a natural person and 250 penalty units for a body corporate is provided for contravention of this provision.

Proposed new subsection 38A (5) requires a certifier who has received a notice under proposed new paragraph 38A (4) (a), that a stage has been reached, to inspect the work as soon as is practicable.

Proposed new subsection 38A (6) requires a certifier who, during an inspection, forms the opinion that the building work is not in accordance with proposed new section 37 to give the builder written directions to achieve compliance. The directions must be reasonable in the circumstances. Proposed new section 37 deals with the requirements for carrying out building work.

Proposed new subsection 38A (7) requires a certifier who, after an inspection, is satisfied that the building work complies with proposed new section 37 to certify to this effect and give the certificate to the builder in charge of the building work.

Proposed new subsection 38A (8) requires a certifier to comply with proposed new subsections 38A (5), (6) and (7) unless there is reasonable excuse

A penalty of 10 penalty units is provided for contravention of this provision

Proposed new subsection 38A (9) states that a builder in charge of building work must keep certain records until a certificate of occupancy and use for the work is issued under section 53 of the Principal Act and then give the records to the last certifier who acted in relation to the building work. The records are:

- (a) test borings, test loadings or other investigations made to determine the permissible load on piles used in the building work, pile-driving operations, calculations of allowable loads and details of the location of the piles,
- (b) test loadings and excavations made to determine the bearing capacity of the foundation for the building; and
- (c) tests referred to in proposed new subsection 38A (10)

Proposed new subsection 38A (10) allows a certifier to give the builder in charge of building work written notice to conduct tests on the materials for the work, or notice to conduct tests on the structure of the building or in relation to any other matter concerned with the work. The notice will specify the tests

Proposed new subsection 38A (11) requires the builder in charge of building work to conduct a test specified in the previous subsection and to give the results of the test, to the certifier as soon as practicable. The results must be in written form

Proposed new subsections 38A (2) and (9) have a similar effect to repealed subsections 36 (3) and (10) to (12) of the Principal Act.

#### ***Building inspector may specify safety precautions***

Proposed **new section 39** allows a building inspector to direct safety precautions to be taken if approved building work is being carried on near a street or a place open to the public and the safety precautions are inadequate. It does not matter whether or not safety precautions were part of the application for building approval and approved by the certifier. It is the builder who is responsible for carrying out the directions. The section has a similar effect to repealed section 36A of the Principal Act

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

##### ***Structural engineer's certificate***

Proposed **new section 39A** allows a certifier to require the owner of land to supply a structural engineer's certificate if it is in the interests of future occupants of a building to establish the structural adequacy of the building. The section has a similar effect to repealed subsection 53 (1A) of the Principal Act.

**Completion of building work**

Proposed **new subsection 40 (1)** requires the certifier within 7 days of being satisfied that:

- (a) the building work has been completed in accordance with the requirements of the Principal Act and substantially in accordance with the approved plans; and
- (b) the building or part of a building is structurally adequate

to give the Building Controller a certificate that the work has been completed in accordance with the requirements of the Principal Act and substantially in accordance with the approved plans. The certifier must indicate which subsection of section 53 of the Principal Act the Building Controller might issue a certificate under.

Section 53 of the Principal Act deals with certificates of occupancy and use and allows the issue of certificates for the whole of building work, for part of building work, for demolition or for a structure.

Proposed new sub-subsection 40 (1) (f) states that the regulations may specify that the consent or approval of some person, body or authority is required at completion and the certifier must then provide written evidence that the consent or approval has been obtained.

Proposed new subsection 40 (1) also requires the certifier to provide the Building Controller with:

- (a) written evidence of having obtained any consents or approvals required for the application under proposed new paragraph 34 (1) (d);
- (b) a copy of the survey certificate required under proposed new paragraph 38A (2) (a);
- (c) a copy of the certificates issued for inspection stages under proposed new paragraph 38A (7);
- (d) a structural engineer's certificate for the building under proposed new section 39A or else a statement that the certifier is satisfied that the building is structurally adequate and that no structural engineer's certificate is required;
- (e) copies of the following documents and papers:
  - (i) applications to the certifier under the Principal Act and accompanying documents;
  - (ii) plans or drawings;
  - (iii) approvals, certificates, determinations, notifications or permissions given by the certifier;
  - (iv) certificates or documents from another person that the certifier has relied on in giving approvals, certificates, determinations, notifications or permissions;
  - (v) working papers and calculations relevant to decisions to issue approvals, certificates, determinations, notifications or permissions;

However, under proposed new subsection 40 (2), the Building Controller may allow the certifier not to provide any of the items in the list immediately above under (e) and proposed new subsection 40 (3) exempts the certifier from providing another copy of any of the items on that list which the certifier has already provided to the Building Controller

### ***Division 6—Offences***

#### ***Compliance with Building Code***

Proposed ***new section 40A*** requires building work to comply with the Building Code. It has the same effect as repealed section 29 of the Principal Act.

A penalty of 50 penalty unit for a natural person or 250 penalty units for a body corporate applies to contravention of these provisions.

#### ***Notification of breaches***

Proposed ***new subsection 41 (1)*** requires a certifier to notify the Building Controller of a contravention of the Building Act, the Building Regulations or the Building Code that the certifier observes.

A penalty of 5 penalty unit for a natural person or 25 penalty units for a body corporate applies to contravention of this provision.

Proposed new subsection 41 (2) states that if the certifier informs the builder of a failure to comply with proposed new section 37 on the requirements for carrying on building work and the builder corrects the failure within a reasonable time, no contravention is considered to have occurred.

Proposed new subsection 41 (3) states that the provisions of proposed new subsection 41 (2) apply independently of the issue of a relevant direction under proposed new subsection 38A (6).

#### ***Carrying out building work in breach of section 37***

Proposed ***new section 41A (1)*** states that building work must comply with proposed new section 37 on the requirements for carrying on building work.

Proposed new section 41A (2) makes a breach of proposed new subsection 41A (1) an offence for the owner and the builder.

A penalty of 50 penalty unit for a natural person or 250 penalty units for a body corporate applies to contravention.

Proposed new section 41A (3) creates a separate offence of carrying out building work involving the handling of asbestos in breach of subsection 41A (1).

A penalty of 50 penalty unit for a natural person or 250 penalty units for a body corporate applies to contravention.

Proposed new section 41A (4) allows the owner to make the defence that the owner believed that section 37 was complied with or that the owner was not aware, and could not have been aware, of the building work.

Proposed new section 41A (5) makes it a defence for someone other than the owner to show that the person had carried out the work under a contract with another person or at the request and on the instructions of another person and believed reasonably that building approval had been given and the work had been carried out in compliance with proposed new section 37.

Proposed new section 41A (6) makes it a defence, if the building work carried out involved the handling of asbestos, if the person did not know that the work involved the handling of asbestos or if the person was not recklessly indifferent to whether the building work involved the handling of asbestos.

This section provides an additional defence for the owner in proposed new paragraph 41 (4) (b). Otherwise it has a similar effect to repealed section 30 of the Principal Act.

### **Stop notices**

**Clause 12 amends section 43 of the Principal Act by:**

- (a) replacing the text of paragraph 43 (1) (a) with the words "without a building approval having been issued for the work,";
- (b) omitting paragraph 43 (1) (c);
- (c) replacing the words ", (b) and (c)" in subsection 43 (2) with the words "and "b";
- (d) replacing the words "36 (3)—when the plan referred to in that subsection is received by the Building Controller": in paragraph 43 (3) (ba) with the words "39 (2)—when the certifier notifies the Building Controller that the certifier has received the plan referred to in that subsection";
- (e) removing the word "43" from subsection 43 (4);
- (f) replacing the word "permit" in paragraph 43 (4) (a) with the word "approval"; and
- (g) replacing the text of paragraph 43 (4) (b) with the words "the application is granted."

Section 43 provides for notices requiring building work to stop in specified circumstances. The changes to 43 (1) (a) recognise the replacement of building permits by building approvals. The deletion of 43 (1) (c) is because it implies the abandoned concept of conditions of approval. The changes to paragraph 43 (3) (ba) correspond to the transfer of plan approval to certifiers. The changes to 43 (4) reflect current drafting practice. The changes to 43 (4) (a) and 43 (4) (b) recognise the replacement of building permits by building approvals.



### **Further notices relating to stop notices**

**Clause 13** amends section 44 of the Principal Act by replacing

- (a) references to "permit" in subsection 44 (1) with references to "approval",
- (b) the words "the provisions of this Act and any conditions subject to which the permit was issued" in subsection 44 (1) with the words "the provisions of this Act"; and
- (c) the word "permit" in paragraph 44 (3) (a) with the word "approval"

Section 44 deals with further notices issued after a stop notice. The changes recognise the replacement of building permits with building approvals and the abandonment of the concept of conditions of approval.

### **Notice to produce survey plan**

**Clause 14** amends section 45A of the Principal Act by replacing the words "permit has been granted under this Act" with "approval has been issued", the first use of the expression "36 (3)" with the expression "38A (2)", and the last use of this expression with the expression "38A (2) (a)".

Section 45A provides for a notice requiring the production of a survey plan. The changes recognise the new system of building approvals and replaces references to repealed subsection 36 (3) with references to the corresponding parts of proposed new section 38A.

### **Certificate of occupancy or use**

Part V of the Principal Act deals with certificates of occupancy and use for completed buildings. Some of the processes and discretionary powers formerly associated with the issue of certificates by the Building Controller are now associated with the certifier's certification of the satisfactory completion of the building work and appear in Part III or are no longer required.

Changes to Part V correspond to these considerations. The new scheme provides for the Building Controller to issue a certificate of occupancy and use if the certifier has approved the completed building work and any plumbing and electrical work involved has been approved under the controlling legislation.

**Clause 15** revises section 53 of the Principal Act.

- (a) Subsection 53 (1) is replaced. Subsection 53 (1) gives the meaning of terms used in section 53. The term that remains is "prescribed requirements", which is a short reference to requirements for building work under the Principal Act. The meaning given to it is changed to eliminate references to the abandoned concepts of building permits and conditions of approval.
- (b) Subsections 53 (1A), (1B), (2A), (4), (4A), (5) and (8) are omitted.
- (c) Subsection 53 (2) is modified by removing a reference to repealed subsection 53 (2A).

(d) Subsection 53 (9) lists documentation that can be relied on in issuing a certificate of occupancy and use. Clause 15 omits from subsection 53 (9) the provisions for a surveyor's certificate under paragraph 53 (9) (a), a structural engineer's certificate under paragraph 53 (9) (d) and an architect's or builder's certificate under paragraph 53 (9) (e). The references in paragraphs 53 (9) (b) and (c) to certificates under the Canberra Sewerage and Water Supply Regulations and the Electricity Act 1971 are modified by omitting the specific titles of the persons authorised to provide a certificate. A new paragraph introduces a reference to the certificates and other information provided by a certifier under proposed new section 40.

### **Repeal**

**Clause 16** Repeals section 53A of the Principal Act. Section 53A allows the Building Controller to require the holder of a building permit to provide certain statements in relation to a survey certificates or an application for certificates of occupancy and use.

### **Interpretation**

**Clause 17** replaces the definition of "builder" in section 58A of the Principal Act with the words, "builder", in relation to residential building work or a residential building, means the person whose name is notified to the relevant certifier under section 38". Section 58A of the Principal Act defines the meaning of terms used in Part VA of the Principal Act in relation to residential building work insurance. The repealed definition refers to the abandoned concept of the holder of a building permit.

### **Application**

**Clause 18** replaces paragraph 58B (1) (b) of the Principal Act with the words "in relation to which an owner-builder's permit has been issued;". Section 58B provides that the requirement for residential building work insurance does not apply in certain circumstances. Paragraph 58B (1) (b) refers to work under a building permit granted to a person who is not a licensed builder under repealed section 39. The effect of the change is to replace the reference to building permits with one to the new system of owner-builder licences.

### **Residential building work insurance**

**Clause 19** replaces the words "a building permit is issued for the work" in paragraph 58 (1) (b) of the Principal Act with the words "the certifier in relation to the work receives a notification under subsection 37A (1) or (2) in relation to the builder". The effect of the change is to replace a reference to building permits with one to the requirement in the new system for the owner to notify the certifier of the builder.

### **Review by Administrative Appeals Tribunal**

**Clause 20** modifies the provisions for decisions on which a person may apply for review by the Administrative Appeals Tribunal. In section 60 of the Principal Act subclauses 20 (a) and (c) repeal paragraphs (1) (g) to (h) and (j) to (p).

The repealed provisions provide for the review of decisions under repealed Part III relating to plan approval and building permits. The corresponding decisions under the substituted Part III are transferred to certifiers and outside the normal scope of review by the Administrative Appeals Tribunal.

Subclause 20 (a) substitutes in the Principal Act a new paragraph 60 (1) (g), which reads "refusing an owner-builder's licence under subsection 23A (3)". The new paragraph takes account of the repeal of the provision in section 39 for building permits issued where no builder's licence is required and the introduction of owner-builder licences under proposed new sections 23A and 23B. Proposed new subsection 23A (3) provides for the grant or refusal of owner-builder licences. Subsection 60 (1) is organised in the numerical order of the reviewable provisions and this affects the position of the new provisions.

Subclause 20 (b) modifies paragraph 60 (1) (i) by replacing the words "33A (2)" with "36A (2)". Repealed subsection 33A (2) provides for the extension of the period for which plan approval is valid. Proposed new subclauses 36A (2) and 36A (3) allow the extension of the period for which building approval is valid up to a total of three years.

Subclause 20 (d) replaces paragraph 60 (3) (c) with the words "in the case of a decision referred to in paragraph (1) (g)—to the applicant for the owner-builder's licence". Subsection 60 (3) states to whom notice of a reviewable decision must be given. It proceeds by reference to the reviewable decisions listed in subsection 60 (1). Subsection 60 (3) (g) is replaced under subclause 20 (a) by a provision relating to the refusal of owner-builder licences and the notification requirement is modified accordingly.

Subclause 20 (f) repeals paragraph 60 (3) (e) to (k). Subsection 60 (3) contains requirements to notify decisions under the repealed Part III relating plan approval and building permits. The corresponding decisions are omitted from subsection 60 (1) by subclause 20 (c) and the notification requirements are modified correspondingly.

#### **Recovery of costs of work carried out by an inspector**

**Clause 21** amends section 62 of the Principal Act by omitting the words ", or in the carrying out of the requirements of a notice under section 8 of the Building Ordinance 1964,". The words omitted are a transitional arrangement and allow the recovery, as a debt owed to the Commonwealth, of the costs of carrying out a notice under one of the building laws repealed in 1972 and replaced by the Principal Act.

#### **Evidence**

**Clause 22** amends section 63 of the Principal Act by:

- (a) adding to subsections 63 (3) and 63 (3A) the words "or approval" after each occurrence of the word "permit",

(b) inserting at the end of the section a new subsection that gives the meaning of references to "building permit" in section 63.

Section 63 allows the Building Controller to certify in court proceedings that certain documents are true copies or that certain certificates have or have not been issued. Subsection 63 (3) deals with certificates about the holding of builders' licences or a building permit and subsection 63 (3A) with a certificate that there was no building permit. The effect of the changes is to extend this provision to certificates of the issue or non-issue of building approval and retain it in relation to building permits issued under the repealed form of Part III of the Principal Act.

### **Schedule**

**Clause 23** repeals the Schedule to the Principal Act. The Schedule lists the inspection stages that may be applied to work under subsection 36 (1) of the Principal Act. Inspection stages are provided for in subsection (1) of proposed new section 38A.

### **Transitional**

**Clause 24** contains transitional arrangements. Their effect is that the old form of the Principal Act continues to apply to building work in relation to which approval processes had begun under the Principal Act before its amendment by the Bill.

Sub-subclause 24 (1) (a) provides that the Principal Act in the form it had before its amendment by the Bill will continue to apply to a building permit granted before the day the Bill comes into effect. Sub-subclause 24 (1) (b) provides that it will apply to building plans that were lodged with the Building Controller before the day the Bill comes into effect, whether or not the plans were approved before that day. A building permit may be issued after the day the Bill comes into effect. Sub-subclause 24 (1) (c) provides that it will apply to building work for which a building permit referred to in 24 (1) (a) or 24 (1) (b) is issued.

Subclause 24 (2) states that applications for approval of plans for building work made before the day when the Bill comes into effect are subject to Part III of the Principal Act in the form it had before its amendment by the Bill. If the plans are approved, a person who would have been eligible to apply for a building permit for the work before the day when the Bill comes into effect may apply for a building permit for the work and Part III of the Principal Act in the form it had before its amendment by the Bill continues to apply to the work and to the Building Controller's powers in relation to the grant or refusal of a building permit.

Subclause 24 (3) give the meaning of references to "commencement day" in clause 24.

### **Consequential amendments to other laws**

**Clause 25** provides for amendments to the Acts and Regulations listed in the Schedule.

**SCHEDULE—AMENDMENTS OF OTHER LAWS**

The **Schedule** contains amendments to other laws. In the *Common Boundaries Act 1981* it omits paragraph 2 (5) (b) and it replaces the word "permit" with "approval" in subsection 52 (3) of the *Discrimination Act 1991*, paragraph 149 (2) (b) of the *Environment Protection Act 1997* and the definition of "building work" in subregulation 3 (1) of the *Environment Protection Regulations*

The affected provisions of the *Discrimination Act*, the *Environment Protection Act* and the *Environment Protection Regulations* use the grant, application for, or requirement for, a building permit under the *Principal Act* to identify progress towards construction and the effect of the **Schedule** is to replace references to "building permit" with references to "building approval".

Paragraph 2 (5) (d) of the *Common Boundaries Act* provides that the fees payable to the Building Controller in respect of an application for the approval of plans or for the grant of a building permit are among the fees that may be taken into account in calculating the cost of erecting a dividing fence. There is no clear equivalent to these fees in the new system and, under subregulation 3 (1) (a) of the *Building Regulations*, the construction of boundary fences is now usually exempt from building approval.