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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

BUILDING (GENERAL) REGULATION 2008
SUBORDINATE LAW No SL2008–3

EXPLANATORY STATEMENT

Circulated by authority of
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Overview

The *Building (General) Regulation 2008* (hereinafter referred to as "the regulation") is made under the Act (the *Building Act 2004*, section 152 (Regulation making power)), and will repeal and replace the *Building Regulation 2004*.

The main differences between the 2004 regulation and the 2008 regulation are that the 2008 regulation caters for reforms under the Planning System Reform Project. The fundamental objective of the reform project is to deliver a faster, simpler and more effective system of planning in the ACT.

Key reforms in the 2008 regulation include—

- resolving anomalies and modernising language from the 2004 regulation;

- widening exemptions from the application of the Act, and centralising exemptions in the regulation rather than exemption being provided both in the Act and the regulation;

- prescribing details to support reforms delivered through the *Building Legislation Amendment Act 2007*, which amends the *Building Act 2004* to also cater for reforms under the Planning System Reform Project, including new offences in relation to granting building approval under the *Building Act 2004* in the absence of a respective development approval under the *Planning and Development Act 2007*.

Strict liability offences in the regulation

Section 49

There are 2 strict liability offences created by section 49 of the regulation. Section 49 (1) creates an offence against a certifier who is a person if the certifier issues a building approval, or approves amended plans, for the erection or alteration of a single dwelling on a block leased under a residential lease. Grounds of the offence relate to the parameters of a development approval exemption prescribed in the *Planning and Development Regulation 2008*, schedule 1, section 1.100. Section 1.100 provides that the exemption only applies to a dwelling if the dwelling is, or will be, the first dwelling built on the block since the block was leased under a residential lease and the dwelling complies with the Residential Zones Single Dwelling House Development Code in the territory plan an dteh relevant precinct code under the plan.

Section 49 (2) creates a similar offence to the s 49 (2) offence but the section 49 (2) grounds are in relation to plans that are defective because they contain information that is false or inaccurate. The grounds provide that if the plans were not defective, the certifier would have contravened subsection 49 (1).

The section 49 offence grounds mirror those parameters but only in respect of non-compliance with the rules of that code prescribed in section 49.

The maximum penalty for both offences is 10 penalty units. A penalty unit is defined in the *Legislation Act 2001* (the Legislation Act) and is currently $100 for an individual and $500 for a corporation.

The intention in applying strict liability to the offence is to encourage certifiers to exercise due skill, care and diligence in determining if the above-mentioned s 1.100 exemption applies to a dwelling when the certifier grants a building approval for a dwelling. Committing the offence is highly likely to mislead landowners and builders into incorrectly believing that no development approval is required for the dwelling. This could lead to those entities subsequently inadvertently committing offences under the *Planning and Development Act 2007* (the Act) including undertaking development without a required development approval. Other adverse ramifications include exposing the constructed dwelling to the risk of an order under the Act requiring the dwelling to be altered or demolished because of the lack of, and lack of availability of, a development approval for the dwelling, as constructed. This would have self-evident adverse impacts on the value of the dwelling.

Strict liability offences are an efficient and cost effective deterrent for breaches of regulatory provisions. They are appropriate where the authority is in a position to readily assess the truth of a matter and that an offence has been committed. Strict liability is beneficial where offences need to be dealt with expeditiously to ensure confidence in the regulatory scheme.

A strict liability offence under section 23 of the *Criminal Code 2002* means that there are no fault elements for any of the physical elements of the offence. That means that conduct alone is sufficient to make the defendant culpable. However, the mistake of fact defence expressly applies to strict liability as does the other defences in Part 2.3 of the *Criminal Code*. Section 23(3) of the *Criminal Code* provides that other defences may still be available for use in strict liability offences. Defences such as intervening conduct or event (see section 39 of the *Criminal Code*) are available.

Strict liability offences do not have a fault element, termed ‘mens rea’. However, strict liability does not oust a range of defences to criminal responsibility in Territory law. For example, a person may raise a defence that they were mentally ill at the time of committing a strict liability offence. Strict liability offences do not lead to a reversal in the onus of proof. Such offences require the prosecution to prove the elements of the offence beyond reasonable doubt. It is then open to a defendant to raise defences and to bear an evidential burden only as to their existence. The prosecution must then disprove the existence of any defence beyond reasonable doubt. As the burden of proof on a defendant is an evidential burden, the defendant will only have to point to evidence that suggests a reasonable possibility that the defence applies.

The provision for strict liability offences is consistent with recently enacted ACT legislation. The *Heritage Act 2004* and *Tree Protection Act 2005* both provide for strict liability offences. Strict liability offences are also used in other jurisdictions including the Commonwealth.

Lower penalties for strict liability offences provide a safeguard for those affected.

The regulation has not included the defence of reasonable excuse in the offence provision because it was considered that the general defences in Part 2.3 of the *Criminal Code* would cover any reasonable excuses for contravening the section.

Human rights issues

The strict liability offence could be argued to trespass unduly on personal rights and liberties and be a limitation on the right to be presumed innocent under section 22 of the Human Rights Act 2004 (the HRA). However, it is considered it is permissible as a reasonable limitation under section 28 of the HRA which provides that human rights may be subject only to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. In effect, section 28 requires that any limitation or restriction of rights must pursue a legitimate objective and there must be a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

To facilitate consistency with the HRA, strict liability offences only impose an evidential burden on the defendant. Furthermore, as stated above, if strict liability applies, the defence of mistake of fact and other defences under the Criminal Code such as intervening conduct or event (section 39) may be available.

Another indication that the strict liability offence is a reasonable limitation under section 28 of the HRA is the low maximum penalty of $1,000 fro individuals (10 penalty units) and no imprisonment.

An effective enforcement regime is crucial for the planning and land authority to fulfil its role and responsibilities as the regulator of land development. A judgment must be made about the value to society of the presumption of innocence as opposed to the protection of the community from development with unacceptable impacts on neighbours and the general community, the protection of the environment, and the protection of human health and safety.

Strict liability offences reduce risks to the community. An adequately deterrent scheme to ensure development takes place in accordance with the planning legislation reduces the risk of the community being affected by bad and/or inappropriate development. It is also crucial that the authority have the ability to act quickly and decisively, particularly in circumstances where delay may result in irreparable damage.

The objective of the legislation can only be achieved by removing the need for intent

by way of a strict liability offence because the purpose of the provision is not to punish wrongdoing but to protect the community.

The regulation prescribes a defence to a prosecution for an offence against subsection 49 (1) or 49 (2)—if the defendant proves that the defendant took all reasonable steps to find out whether the relevant site work required development approval, and was satisfied on reasonable grounds that the development did not require development approval.

The regulation also prescribes a defence to a prosecution for an offence against subsection 49 (2)—if the defendant proves that the defendant took all reasonable steps to find out if the approved plans contained false or inaccurate information, and was satisfied on reasonable grounds that the plans did not contain false or inaccurate information.

It is considered that the limitation in the strict liability offence serves a legitimate objective, it is rationally connected to achieving that objective and it is the least restrictive means of achieving that objective. The offence provision is both reasonable and proportionate in terms of the HRA.

Notes on Regulation

Section 1 provides for the title of the regulation as—*Building (General) Regulation 2008*.

Section 2 states the regulation commences the day the *Building Legislation Amendment Act 2007* commences. However, under the Legislation Act, section 75 (1), section 1 and 2 of the regulation commence on the day the regulation is notified on the legislation register.

Section 3 states that the dictionary at the end of the regulation is a part of the regulation. It has 2 notes explaining the application of the dictionary.

Section 4 explains that the "notes" that appear in the regulation are aids to interpretation but are not, in law, part of the regulation.

Section 5 defines the meaning of the term ***building work*** so as it includes building work that involves handling asbestos or disturbing friable asbestos. The term is defined in more detail in the Act, and the intention of section 5 is to extend that meaning to also encompass building work that involves handling asbestos or disturbing friable asbestos. Section 6 (2) of the Act enables the regulation to prescribe what is or is not building work in addition to what is prescribed by the Act.

Section 6 prescribes that buildings, or doing building work, as described in relevant provisions of schedule 1 in the regulation, is exempt for the purposes of s 15, s 65, s 83 and s 152 (1A) of the Act. Schedule 1 prescribes what is exempted from the application of all (if so specified), or specified provisions of, the Act. Some of the exemptions are prescribed as only applying where stated conditions are satisfied, such as compliance with a stated code. The exempted buildings and building work relate to either comparatively small buildings or structures of not significant structural complexity, or certain temporary buildings or structures. The cost and efficiency benefits gained from deregulation of the

construction of exempt buildings outweigh the justification for regulating their construction.

Examples of buildings and building work exempted under schedule 1 include certain size buildings or certain building work in relation to—small amounts of asbestos, fences, walls, retaining walls, outdoor decks, carports, pergolas, porches, verandas, shelters, gazebos, shade structures, hail protection structures, sheds, greenhouses, conservatories, cubbyhouses, storerooms, workshops, studios, outbuildings, other class 10a buildings (garages for example), antenna or aerial assemblies, artificial pools, internal alterations to certain buildings, outdoor ponds, small structures, amusement rides, water tanks, and some aspects of swimming pools .

The section describes certain dimensional tolerances and other matters that specified aspects of those buildings or structures or building work need to be within in order to qualify as ***exempt buildings***.

In the case of alterations to certain buildings, section 6 places limitations on the exemption with respect to structural sufficiency, fire ratings, fire escape, fire protection, light and ventilation. If work may affect those matters in a pre-existing or proposed building then the section stipulates that the work is not exempt under schedule 1. That is because those matters have potential for serious adverse effects on human safety and amenity and the value of buildings, and therefore those matters need to be addressed under the statutory approval processes provided under the Act, including being subject to compliance with the Building Code of Australia, in order to reduce the potential for adverse outcomes.

The section also provides that building work mentioned schedule 1, table 1.3, items 1 to 24, is not exempt if the building work is not ***minor maintenance work*** and involves handling asbestos or disturbing ***friable*** asbestos. The Act defines the term ***friable***.

The section defines that term ***minor maintenance work*** to mean minor maintenance on premises that is done personally by an individual who owns or occupies the premises. That is intended to prevent other entities being exposed to the risks inherit in working with asbestos, such as entities who's occupation involves such work on premises the entity does not own or occupy.

The section defines what ***minor maintenance work*** means when done in relation to only bonded asbestos that is part of a building. The work must only entail all or any of the following in relation to that asbestos—low speed or hand drilling, sealing, painting or coating.

The section provides that the work must be done in accordance with asbestos removal code, which is made under the regulation, in order to be exempted. The code's main purpose is to describe how to handle or disturb asbestos containing materials safely.

Section 7 provides that the Minister may exempt buildings from the application of the Act (the *Building Act 2004*). Section 152 of the Act enables the regulation to exempt certain matters from the application of all or part of the Act. That is to cater for circumstances where in might not be in the public interest to delay construction or occupation of a

building, for example, until all of the statutory approval process provided in that Act are applied to the building.

Section 8 sets out the criteria for the appointment of a government certifier for building work—

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

(b) a licensed builder has started the work; and

(c) the owner of the land where the work is being carried out cannot, after making reasonable efforts, appoint a certifier for the work.

Subsection 20 (4) of the Act refers to the criteria. The intention is that the government certifier provides a safety net that can provide the certification services that are unreasonably difficult or impossible to obtain from the private sector. An effect of the criteria is that a person cannot choose to use a government certifier's services unless the person practically has no other option. Therefore there will effectively be no commercial competition between government certifiers and certifiers in the private sector.

Section 9 provides a definition of the term ***proposed building work***. It provides that the meaning of the term includes work proposed to be carried out under an application for building approval under the Act.

Section 10 prescribes that the number of copies of plans required for a building approval application, as referred to in section 26 (2) (a) of the Act, is 3 copies of the plans. The intention is that the certifier keep one copy, one copy is required to be given to the construction occupations registrar and one copy is required to be given to the applicant for the plan approval. The certifier is entitled to require extra copies in certain circumstances where extra copies are required for certain consultations or referrals to referral entities.

Section 11 prescribes the general requirements for applications for building approval, as referred to in section 26 (3) of the Act. It requires certain cost estimates, safety precautions and the area of the respective land parcel to be stated in the application. The cost estimate is used as a basis for determining fees that are required as part of the plan approval requirements under the Act.

The *section* provides that the construction occupations registrar determines the method for calculating that cost, and that such a determination is a notifiable instrument. That determination is necessary to establish a consistent method of cost calculation and to reduce incidence of fee evasion.

The safety information is particularly relevant for dangerous aspects of the work such as demolition. Demolition, including demolition by explosion or implosion, is included under the definition of ***building work*** in the Act and is therefore regulated by the Act. It is intended that the required safety information include particulars of things like hoardings to protect footpath traffic, security fencing, barricades and road traffic management plans where applicable to the work. The required land area is used for statistical purposes.

Section 12 prescribes certain specific requirements for applications for building approval in relation to the erection or alteration of a building, as referred to in the Act, s 26 (3). It requires certain information to be given in the application in certain circumstances including (if any)—the building class, type of fire-resisting construction and site classification, all as set out in the Building Code of Australia, the materials used, the number of storeys, the number of new dwellings created by the building work, and relevant floor areas. They also include, if a performance requirement of the building code is to be complied with by use of an alternative solution under the code,—the performance requirement, and the alternative solution, and each assessment method used to show that the alternative solution complies with the performance requirement. They further include, if the building code does not state a standard of work in relation to any part of the proposed building work and it is intended to carry out that part of the proposed building work in accordance with a standard of work stated in another document—

(i) the nature of the proposed building work; and

(ii) the title of the document; and

(iii) each assessment method used to show that the proposed building work complies with the standard of work stated in the document.

Most of that information is to assist the certifier in determining if the application complies with technical standards, such as the Building Code of Australia. Some is used for statistical purposes.

The term ***alternative solution*** is defined in the Building Code of Australia. Section 12 refers to the code to define the meanings of the terms ***assessment method*** and ***performance requirement*** for the section.

Section 13 prescribes requirements for applications for building approval in relation to the removal or demolition of a building, as referred to in section 26 (3) of the Act. Demolition, including demolition by explosion or implosion is included under the definition of building work in the Act and is therefore regulated by it. Section 16 requires certain information to be given in the application in certain circumstances including details of the methods to be used in the execution of the building work including a work plan as stated or set out in Australian Standard AS 2601 (which deals with demolition) as in force on the commencement of the regulation, and the number of dwellings demolished (if any). The information is relevant to determining how the work is to be done and site inspection requirements during the demolition, and the information about dwelling numbers is used for statistical purposes.

Section 14 prescribes the things that must be included in an application for building approval under Act, that relates to removal of bonded asbestos from a residential building, as mentioned in the Act, section 26 (3). The section stipulates that aspects must comply with the asbestos removal code, which is made under the regulation. The code's main purpose is to describe how to handle asbestos-containing materials safely.

Section 15 prescribes the things that must be included in an application under section 26 of the Act, for building approval under Act, that relates to removal of asbestos other than

bonded asbestos from a residential building. An intention of the section is to ensure the application provides sufficient information for a building certifier to determine if the asbestos work is likely to be carried out compliant with the Act, and to be aware of the approximate amount and kind of asbestos to be removed.

Section 16 prescribes general requirements for plans that accompany applications for a building approval, as referred to in section 27 (1) (a) of the Act. It requires plans, in certain circumstances, to—

- be drawn to Australian Standard 1100 (which deals with technical drawing);
- show easements (so the certifier can check for compliance with utility services laws);
- show certain pipe connections in relation to storm water, sewer, or water supply and land surface grading, where relevant to the proposed work (so the certifier can check for compliance with utility services laws, and surface drainage requirements of the Building Code of Australia);
- include a site plan on a scale of not less than 1:200 showing the block, section, boundaries and dimensions of the parcel of land (so the certifier can check for compliance with laws regulating the design and siting of buildings).

The information is required to determine if the work will comply with the Act, other laws, required standards and the building code, enable the building work to be built to the plan, and to enable a certifier to determine if the work as built complies with the Act, the plan, relevant standards and the building code.

Section 16 also defines the meaning of some terms used in that section.

Section 17 prescribes requirements for plans that accompany applications for building approval in relation to the erection or alteration of a building, as referred to in section 27 (1) (a) of the Act. Plans that relate to the erection or alteration of a building must contain sufficient information about the proposed finished dimensions, arrangement, locations and inherent characteristic of materials making up every element of the proposed building work—

(a) to allow a certifier to work out if a building erected or altered in accordance with the plan would contravene the Act; and

(b) to allow a competent builder to carry out the building work in accordance with the plans and the Act; and

(c) to allow a certifier to work out if the building work, if carried out, complies with the plan and the Act.

It further requires that information required to be shown on the plans must be consistent with AS 1100 (which is about technical drawing), and must be apparent from reading the drawing, rather than having to take measurements from the drawing.

However, the *section* provides some dispensation in relation the requirement to provide details about certain things. The cost and time needed to document such specific

information about every part of a building are difficult to justify in terms of the benefits gained from requiring such detailed documentation, particularly considering the computer aided design and manufacture techniques used in fabricating house framing. The dispensation applies to certain walls, partitions, floors, or roofs, masonry, and concrete elements.

The section prescribes the level of information that is required in respect of things covered by the dispensation. It provides an example on how an aspect of the dispensation can apply. Section 17 also indicates that plans may contain other information than that prescribed.

Section 18 prescribes the things that must be included in plans mentioned in the Act, s 27 (1) (a) that relate to removal of asbestos and form part of an application for building approval under Act. An intention of the section is to ensure the application provides sufficient information for a building certifier to determine if the asbestos work is likely to be carried out compliant with the Act, and to make the certifier aware of the extent and nature of the asbestos work.

The section defines key terms of the section as having the same meaning as in the asbestos removal code, which is made under the regulation. The code's main purpose is to describe how to handle asbestos-containing materials safely.

Section 19 prescribes the kind of building approval applications that must be referred to referral entities for comment and indicates that the entities are listed in schedule 2 of the regulation. Such referrals are mentioned in the Act s 27 (1) (b). Other provisions in the regulation stipulate when other entities must be consulted on or consent to or approve a building approval application (see sections 21 and 22). That is a different process to the referral process under section 19.

Section 19 provides that the application must be referred to an entity mentioned in an item in schedule 2 if the building work involves something prescribed in schedule 2 in relation to the entity. For example if schedule 2 mentions *demolition of building to which water or sewerage services supplied or water meter connected*, and the schedule mentions that the entity to which building approval application must be referred to is *ActewAGL Distribution*, then an application in respect of that kind of work must be referred to that entity.

The section stipulates that a referral under its relevant subsection must be accompanied by a copy of the plans relating to the proposed building work. That is so the referral entity can provide advice on the proposed work shown in the plans. The section does not stipulate who must or must not make the referral, so the certifier for the work, or the applicant, or another entity may make it.

Section 20 sets out the requirements of a referral entity that is referred a building approval application under section 19.

The section stipulates that the entity must give advice in relation to the building approval application not later than 15 working days after the day the application is given to the entity. The advice is mentioned in the Act, s 30A (3). The 15-day period is intended to be sufficient time for the entity to make its determination about how it will advise on the application, whilst not unduly delaying the statutory approval process.

The section also stipulates that the entity must only provide advice that relates to the entity's area of authority. That is because the advice, if dissenting, might have the effect of vetoing the issue of the building approval sought in the application, and therefore the entity's advice must be constrained to matters relevant to the entity's authority under relevant legislation. For example, if the entity's authority relates to fire safety, prevention and suppression, it would not be appropriate that the entity provide advice about sewerage connections.

The section provides other parameters that regulate the referral entity in giving the advice, including that if the advice includes a condition, the condition must not require the building work be carried out in a way that is inconsistent with, or more burdensome than, the Act. That is intended to ensure that such conditions cannot impose regulatory burdens in excess of the Act, or that are inconsistent with the Act, as it is not intended that such conditions have effect beyond the ambit of the other provisions of the Act.

The provision includes examples of requirements that are inconsistent with, or more burdensome than the Act, and of an entities authority to provide referral advice.

It is intended that a referral entity provide only 1 of the following written responses under the section—

- state whether the entity supports the application unconditionally; or
- state whether the entity supports the application subject to a stated condition; or
- state whether the entity opposes the application and the reasons for opposing the application.

Section 21 describes a list of approvals and consents that the certifier for building work must be satisfied on reasonable grounds have been obtained, before a building approval can be given for the building work. They are referred to in the Act, s 152 (2) (c). A number of areas of the ACT Government and some outside it have interests in aspects of construction or administer legislation affecting aspects of it. The provisions for consents and approvals in section 21 maintain the link between planning and building regulation and continue other relevant arrangements that were in place under the former building regulations.

Section 22 describes a list of consultations that the certifier for building work must be satisfied on reasonable grounds have been undertaken before a building approval can be given for the building work. A number of areas of the ACT Government and some outside of Government have interests in aspects of construction or administer legislation affecting

aspects of it. The provisions for consents and approvals in section 22 maintain the link between planning and building regulation and continue other relevant arrangements that were in place under the former building regulations.

The section also limits the period for response to consultation to 10 working days. The section stipulates to the effect that once a copy of an application has been duly referred to an entity under the section, if 10 working days have elapsed since the copy was given, then the certifier can be satisfied on reasonable grounds that the relevant consultation has taken place. That is intended to be the case even if no response is received from the entity or the entity indicates it—

supports the application subject to conditions; or

opposes the application.

It is intended that the entitlement for an entity to be consulted not establish a veto power over the application. So, for example, if a consulted entity responds, within the 10-day period allowed for consultation, that the entity opposes and will not permit the application or the work to proceed, that does not necessarily override the certifier's requirement to give the relevant building approval. Nevertheless, prior to issuing the approval the proponent might consider the outcome of the consultation and negotiate with the entity or alter the application accordingly, for example, to help ensure the entities concerns are resolved.

Section 23 contains criteria to be used to determine if plans are for the ***substantial alteration*** of a building, as referred to in section 29 (2) of the Act. An intention is that if the floor area of the proposed building work on a class 2 to 9 building, when added to the floor area of building work carried out on the same building in the previous 3 years, comprises more than 50% of the floor area of the building, then under the Act the plans ought to also reflect any work required to ensure the entire building will meet current requirements of the Act (and not just the otherwise proposed work).

The same applies for a class 1 or class 10 building except that internal alterations carried out on the pre-existing building do not need to count towards the altered floor area.

The anticipated outcome is that in the long term many old buildings will be upgraded to better keep pace with changes in building code requirements.

Section 23 also gives 5 examples of the effect of those provisions to endeavour to illustrate the intent of the section.

Sections 24 to 29 set out alternatives to the requirement to comply with respective provisions of the Building Code of Australia, where it is not always practical to bring pre-existing buildings fully into compliance with that code. For example, section 23 of the regulation and section 29 (2) of the Act apply the code to pre-existing buildings in certain circumstances. For example where a pre-existing house is to be significantly extended, and that amounts to a ***substantial alteration*** under section 23 of the regulation, then under

section 29 of the Act the whole house as extended must be brought into compliance with the code.

However, sections 24 to 29 of the regulation provide alternative methods of compliance, as it is often not practical to retrofit certain items to a pre-existing building to bring the building up to current code requirements. For example, it might not be cost effect to retrofit termite barriers to a pre-existing house that has no such barriers built into its brickwork.

It is intended that instead of complying with the code, the pre-existing part of the building need only comply with the alternative provisions prescribed by section 24 to 29. Those provisions deal with fundamental building and fire safety.

The alternative compliance provisions of sections 24 to 29 include coverage of—

in section 24 (1) (a) and 25—glazing where there are human impact safety requirements. This is because retrofitting windows in older houses is not always cost effective, but safety can be addressed by instead applying safety film to the glass at less cost then glass replacement. Section 25 stipulates the alternative compliance method of using safety films;

in section 24 (1) (b)—installation of smoke alarms. This provision does not provide dispensation, but requires full compliance with the relevant provisions of the code, as provision of smoke alarms is relatively inexpensive and are fundamental life safety measures;

in section 24 (1) (c)—building in bush fire areas. This provision does not provide dispensation, but requires full compliance with the relevant provisions of the code, as construction to resist bush fire attack does not substantially add to the cost of normal construction and is a fundamental life safety measure;

in section 24 (1) (d) and 26—stair construction. This is because it is often not cost effective to bring a noncompliant flight of stairs into compliance, particularly if they are too steep to comply and there is not enough room in the building for a longer, less steep, flight. Section 26 stipulates the alternative method of compliance using extra grab rails where stairs are to steep, for example;

in section 24 (1) (e) and 27—construction of balustrades. This is because it is often not cost effective to bring a noncompliant balustrade into compliance. Section 27 stipulates the alternative compliance method of which dispensates certain currently non-compliant balustrades if they complied with the relevant law when they were constructed and have not since been altered, for example;

in section 24 (1) (f)—swimming pool access. This provision does not provide dispensation, but requires full compliance with the relevant provisions of the code, as provision of barriers to prevent young children from drowning in pools is a fundamental life safety measure;

in section 24 (1) (f) to (i)—sealing of buildings. This provision does not provide dispensation, but requires full compliance with the relevant provisions of the code, as sealing of buildings with draft excluders etc is relatively inexpensive and is fundamental to reducing a building's use of energy;

in section 24 (2) and (3), 28 and 29—energy efficiency of roofs, external walls, floors, and external glazing. That is because it is often not cost effective to bring certain noncompliant roofs, walls, floors and windows into compliance, particularly if doing so requires removal of linings to insert bulk thermal insulation or replacement of windows or window glass.

Section 28 stipulates the alternative methods of energy efficiency compliance for pre-existing roofs, external walls and floors. They are alternatives to complying with the relevant provisions of the building code, and only apply to pre-existing buildings. The alternative provided by the section is to bring the roofs, walls and floors up to a specified level of thermal performance, which approaches to the code's respective energy efficiency requirements for roofs, external walls and floors. That is necessary to reduce the building's use of energy, and to avoid the impracticalities of bringing pre-existing buildings into compliance with the code.

Section 29 stipulates the alternative method of compliance for external glazing. The provision permits energy performance films to be attached to glazing rather than having to replace windows or glazing or to provide shading, as the stated film can achieve energy efficiency performance approaching those required by the code. That is necessary to reduce the building's use of energy and to avoid the impracticalities of bringing pre-existing buildings into compliance with the code.

Section 30 sets out criteria, which section 32 (4) of the Act requires be used, to determine if a building built to amended plans (the ***new building***) is ***significantly different*** from a building built to the unamended plans (the ***old building***) when considering plans for approval under the Act. An intention is to require that a new building approval be sought, rather than an amendment to an existing approval, where the criteria indicate that the ***old building*** is significantly different to the ***new building***.

Without that mechanism, it could be possible to reduce the liability to pay relevant determined fees by exploiting the use of the system of amendments to plan approvals. That is because under the Act the relevant fees payable are proportional to the value of the building work. So, for example if the ***old building*** is a 1-bedroom house, the fees payable are based on the cost of that house. If the ***new building*** is in respect of an amendment to the plans for that 1-bedroom house to change it to a 10-room motel, then without the section 30 provisions no additional fees would apply despite the cost of the work increasing substantially. The effect of section 30 is to allow the 1-bedroom house plan to be amended to the extent that it would not have significant impact on the determined fees payable after the amendment. Such changes could include things like adding a window or door, for example. But if the amendment is to add a 2nd bedroom, the increase in certain dimensions of the house as described in the section would prevent the amendment from being treated as an amendment to the relevant plan approval. Instead a new approval ought

to be sought for the extra bedroom, thus incurring a liability to pay extra fees in respect of the extra cost of the work, as required by the Act.

The relevant prescribed criteria, which determine that an amendment to a plan results in a significantly different building include-

(a) the floor area, roof area or volume of the new building has increased or decreased by more than 1%; or

(b) the new building is not same class of building as the old building; or

(c) if the old building had parts that are not of the same class of building—

(i) the position of the parts in the new building has changed; or

(ii) the floor area, roof area or volume of the parts in the new building has increased or decreased by more than 1%; or

(d) any dimension of the perimeter of the new building, including the perimeter of the building's footprint or an elevation, has changed by more than 1%; or

(e) the type of material to be used in the new building to form a structural element, roof, floor or external wall cladding has changed; or

(f) the number of storeys or buildings in the new building has changed.

Section 30 also provides an example to clarify how the change of dimension concept it establishes applies-the height of the building increases from 3m to 3.5m. The change of the dimension is more than 1%.

Section 31 prescribes criteria, which section 42 (2) of the Act requires be taken into account in considering if the material and work standards employed in undertaking building work amount to the building work having been done in a proper and skilful way. The Act requires building work to be done in a proper and skilful way. The prescribed criteria include—

(a) whether the work uses a product or system in accordance with any accessible instructions, directions, guidelines or suggestions of the maker or seller of the product or system. Examples of instructions that are not accessible are—instructions not in English or an information leaflet printed 10 years ago is now unavailable;

(b) whether the work is in accordance with any relevant rules or guidelines published by Standards Australia;

(c) whether, as part of the work, a product or system is being, or has been, used in a way that a reasonable person would expect is contrary to the intended use of the product or system;

(d) whether, as part of the work, a product or system is being, or has been, used in a way that the maker has given written notice will void the maker's warranty;

(e) whether a reasonable person doing the work would know or reasonably suspect that the use of a product or system in a particular way would cause more instability, or affect the durability or soundness of the product or system or of the building work than if the product or system were used appropriately;

(f) how reasonable it is in all the circumstances for the user of a product or system to rely on the maker's statement that the product or system complies with a stated standard;

(g) whether the building work contravenes the Act or another Territory law.

An example of the intended application of paragraph (a) is where the manufacturer of a lintel provided tables specifying the maximum distanced that the lintel can span in a given situation. The tables may be taken as being manufacture's guidelines for the purposes of paragraph (a). If building work involved the installation of a lintel that spans further than that respective maximum distance in the relevant circumstances, then under paragraph (a) that work may be taken to have been done not in a proper way.

It is intended that paragraph (b) applies in respect of any Australian Standard that is applicable to doing the building work. For example, if an Australian Standard sets out acceptable tolerances for the erection of roof trusses then paragraph (b) applies in respect of those tolerances where relevant building work involved the erection of roof trusses covered by that standard. It is intended that apply despite the fact that the building code may, or may not, refer to the Australian Standard.

An example of the intended application of paragraph (c) is where an untreated, low-durability timber wall stud is buried in the ground and used as a long-term structural support for a deck. If it is established that a reasonable person would expect such use of a wall stud to be contrary to the intended use of that product in that it would rot in the ground, then paragraph (c) applies to that use in the building work.

Section 31 also provides an example of the application of paragraph (d)—installing roof sheeting so it is level at any point is use in a way that a reasonable person would expect to be contrary to the intended use of the sheeting if the manufacturer's published literature indicates that the sheet's warranty is voided if the sheeting is installed at a fall of less than 1° off level.

An example of the intended application of paragraph (e) is where plain steel fasteners, such as nails and bolts, were used to hold beams and columns of an external timber pergola together. If it is established that a reasonable person would suspect that the pergola may eventually become unstable due to rusting of the plain steel fasteners, then paragraph (e) applies to their use in the building work.

An example of the intended application of paragraph (f) is where the maker of a container of steel bolts indicated that the bolts are zinc plated and that plating complies with a stated standard. If a person used the nails suspecting that the statement was wrong in that the bolts were clearly of plain steel with no zinc coating (and therefore subject to rapid rusting), then paragraph (f) may apply to the way the person relied on the statement and

used the bolts in the building work in a situation where plain steel bolts were inappropriate due to rusting.

An example of the intended application of paragraph (g) is where a person does building work that does not comply with the building code in circumstances where the Act required such work to so comply.

Section 32 prescribes the criterion, which section 42 (2) of the Act requires be taken into account in considering if the construction tolerances achieved when undertaking building work amount to the building work having been done in a proper and skilful way. The Act requires building work to be done in a proper and skilful way. The prescribed criterion includes—in deciding whether building work has been done in a skilful way, consideration must be taken of whether the work has been carried out to meet or exceed the standards stated in the approved plans, or if the approved plans do not vary reasonable minimum industry standards—to meet or exceed reasonable minimum industry standards.

The section defines what is meant by the term ***reasonable minimum industry standards***—a matter covered by the tolerances guide meets ***reasonable minimum industry standards*** if the matter is not a defect under the guide. The ***tolerances guide*** is prescribed in the regulation, schedule 3, section 3.1 and is the Guide to Standards and Tolerances 2007 published by the Victorian Building Commission and available from http://www.buildingcommission.com.au/resources/documents/S+T_GUIDE_07.pdf.

That guide was produced in collaboration with the Victorian Building Commission and the Office of Fair Trading NSW, the Tasmanian Government and the ACT Government with the assistance of representatives from the building industry, professional associations and consumer groups with an interest in building standards and resolving building disputes.

The section provides that the requirement to notify the guide on the legislation register, under the Legislation Act, s 47 (5), is dissapplied. That is because the guide is freely available from the above-mentioned web site and is subject to copyright limitations.

Section 33 describes how much building work can be done to constitute the building work having reached various stages. The Act prohibits building work from continuing past a stage unless the work had been inspected and passed by a certifier and the certifier had given permission for the work to proceed. The stages are set at points during construction where critical aspects of the work can be seen before being covered over with concrete or wall linings for example. The stages include-

(a) completion of excavation, placement of formwork and placement of steel reinforcing for the footings before any concrete for the footings is poured;

(b)(i) completion of the structural framework and, for a class 1 or class 10 building, before the placement of any internal lining; and

(b)(ii)for a class 1 or class 10 building—completion of placement of formwork, and placement of steel reinforcing, for any reinforced concrete member before any concrete for the member is poured; and

(c) for a building other than a class 1 or class 10 building—completion of any structural framework stated by the certifier in the relevant building approval, before the placement of any internal lining and completion of the placement of formwork and steel reinforcing for any reinforced concrete member stated by the certifier in the relevant building approval, before any concrete for the member is poured; and
(d) completion of the building work approved in the relevant building approval.

The section includes a note—"the Act, s 43 (2) requires certain things to be done before building work proceeds beyond the dampcourse level of a building." That is in addition to the stage requirements of section 33.

The class 1 and class 10 buildings referred to in section 33 are residential buildings that are not blocks of flats, as classified by the building code.

Section 34 prescribes the criteria that a plan must satisfy to be prescribed for the purposes of section 43 (2) (a) (ii) of the Act. It also describes the circumstances under which the section applies. An intention is to provide a degree of dispensation in certain circumstances where the Act requires a plan signed by a registered surveyor (a survey plan).

When most buildings are constructed, before proceeding with construction above the building's damp course level the Act requires the relevant certifier to be given a survey plan for the work and for that certifier to be satisfied the building is located at the required position and that its floors are at the required level. An intention is to detect wrongly positioned building footings and floors before construction becomes more advanced. Most buildings therefore have a survey plan in existence that was created at the early stages of their construction.

The provisions of section 34 recognise that such survey plans can serve a similar purpose as a new survey plan can in respect of certain additions to a building. The Act requires that a new survey plan be made for all new building work that has a damp course, subject to the dispensation of section 34. Most habitable residential buildings do have a damp course. In practice creation of the required survey plan entails a registered land surveyor measuring the building work and boundaries of the land and depicting the measurements in the survey plan. That process can take significant time and has a significant cost.

The section 34 dispensation provides that the certifier can use certain old survey plans to check the position on new building work, rather than require a new survey plan. An example is where an old survey plan for a house states that the house is located at a distance of 6 m from its side boundary, and that the house is parallel to that boundary, and the boundary is straight. In circumstances where an extension of the house is to be constructed at the same 6 m distance from the same boundary, and also parallel to it, then under section 34 the certifier is entitled to rely on the old survey plan rather than require a new survey plan in checking the position of the new extension. That is subject to the provisions of that section which include-

The section applies to building work if—

(a) the work is only in relation to an extension or alteration of an existing class 1 or class 10 building (the ***original building***); and

(b) any building resulting from the work is to be located completely on the same parcel of land (the ***original land***) where the original building is.

A plan (the ***original survey plan***) signed by a registered survey is prescribed in relation to building work if—

(a) the ***original survey plan*** contains sufficient information to allow the certifier to form an accurate opinion about whether the building work complies with the Act, section 43 (2) (b); and

(b) the arrangement of the boundaries of the original land, and location and levels of the original building, have not changed since the original survey plan was made; and

(c) no building on which the work is to be carried out is, or building resulting from the work is to be, situated closer than 100mm away from boundary of the parcel of land.

Section 35 describes a list of approvals that the Act requires be obtained when a certifier believes that building work appears complete, as part of the building approval process. They are referred to in section 48 (2) (d) of the Act. A number of areas of the ACT Government have interests in aspects of construction or administer legislation affecting aspects of it. The provisions for approvals in section 35 maintain the link between planning and building regulation. The prescribed list includes—

(a) if development approval for building work is subject to a condition that relates only to building work—the approval of the chief planning executive to the way in which the condition has been satisfied. [The section includes examples to illustrate how that provision only applies where the approval relates ***only to building work***. The example cites circumstances where a condition requires an aspect of plans for building work to be redrawn in the plans. Whilst such a condition is in connection with the building work, it does not only relate to the building work. In fact the condition does not require building work to be carried out, in that the condition only requires the plans to be redrawn. In that case the section does not require approval of the way the condition has been satisfied. That is because the certifier was required to check that the condition had been satisfied (ie the plans redrawn) prior to granting the building approval for the building work. The certifier is then responsible for checking that the building work, as executed, complies with the building approval and thereby the redrawn plans, and therefore requiring further approval is unwarranted];

(b) approval of the installation of any fire appliance in the new building or new part of the building by the chief officer (fire brigade) or chief officer (rural fire service);

(c) approval under the *Scaffolding and Lifts Regulations 1950*, section 21.

Section 36 prescribes the circumstances that must exist for building work to be taken as being ***fundamentally noncompliant***. If a certifier for building work becomes aware that

the work is fundamentally noncompliant, under section 50 of the Act the certifier is required to tell the construction occupations registrar of the non-compliance. Section 50 of the Act also enables the regulation to prescribe the criteria for determining if building work is fundamentally noncompliant.

Section 36 of the regulation refers to schedule 3 of the regulation, where the criteria are listed. It also provides that building work that alters a building thus producing a different type of building to the building shown in the plans is also fundamentally noncompliant building work. The section includes an example about altering a carport by adding walls, thus producing a garage instead of the carport shown in the relevant plans.

Section 37 prescribes that the cost of residential building work as referred to in section 83 (1) (b) of the Act is $12 000. The intention of that provision is that part 6 of the Act does not apply to residential building work that costs less than $12 000. That part 6 of the Act deals with building warranty insurance.

Section 38 prescribes that the period that needs to elapse before a statutory warranty ends as referred to in section 88 (4) of the Act is 6 years or 2 years after the ***completion day*** (as defined in section 88 (4) of the Act) for the work. The 6-year period applies for residential building work in relation to a ***structural element*** and that the 2-year period applies for residential building work in relation to a ***non-structural element***. The section defines the term ***non-structural element*** of a building to mean a component of the building that is not a ***structural element***. It defines the term ***structural element*** of building to mean an internal or external load-bearing component of the building that is essential to the stability of the building (a foundation, floor, wall, roof, column or beam) or to mean any part of it or any component (including weatherproofing) forming part of the external walls or roof of the building.

An intention in limiting the duration of statutory warranties is to balance the conflicting objectives of providing consumer protection whilst maintaining builder's and insurers liabilities at viable levels.

Section 39 prescribes that the minimum amount that insurance referred to in the Act, subsection 90 (1) (b) must provide insurance cover of, (or an amount equal to the cost of the work, whichever is less), is $85 000. An intention in limiting the minimum amount of required insurance cover to $85 000 is to balance the conflicting objectives of providing consumer protection whilst maintaining builder's and insurers liabilities at viable levels.

Sections 39 to 43 prescribes things, which the Act, section 90 relies on in setting out compliant insurance criteria. Set out below is some of the text of section 90 of the Act with the respective prescribed things inserted and emphasised, to clarify the intention.

"An insurance policy issued in relation to 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 [**$85 000 (see section 39)**], or an amount equal to the cost of

the work, whichever is less, in relation to 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 in relation to the work receives a notification under section 37 in relation to the builder and ending at the end of the period prescribed under the regulations [**5 years (see section 40)**] 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 another person and ending at the end of the period prescribed under the regulations [**5 years (see section 40)**] after the day a certificate of occupancy is issued for the work; and

(e) the whole of the premium payable in relation to 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 [**90 days (see s 41)**], or a longer stated 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."

Section 41 prescribes the 90-day period mentioned in the explanation for section 40, item (i), mentioned above.

Section 42 prescribes an amount, which the Act, section 91 (1) relies on. Set out below is some of the text of section 91 (1) of the Act with the prescribed amount, $500, inserted and emphasised, to clarify the intention of section 91 (1) and section 41.

"A compliant residential building insurance policy may provide that the authorised insurer who issues the policy is not liable for the 1st amount equal to the amount prescribed under the regulations [**$500**], or the stated lesser amount, of each claim."

Section 43 prescribes an amount, which section 93 (3) (b) of the Act, relies on. Set out below is some of the text of section 90 (3) (b) of the Act with the respective prescribed

amount, $10 000, inserted and emphasised, to clarify the intention of section 93 (3) (b) and section 43.

“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) an amount equal to the amount of the deposit less the cost of any work done;

(b) the amount prescribed under the regulations [**$10 000**] less the cost of any work done.”

Section 44 declares the geographic areas that are bush-fire prone, for the purposes of applying the bush-fire-resistance provisions of the Building Code of Australia.

The code provides to the effect that buildings need not be constructed to resist attack by a bush fire unless the building is located in an area that a law declares to be a bush fire prone area, and if the building is in such an area it must be constructed to resist that attack.

The intention is that buildings constructed within the area declared by section 44 to be bush fire prone, be subject to the respective provisions of the code that require bush fire resistant construction.

Section 45 is intended to disapply the requirement of the Legislation Act, s 47 (5), to notify the asbestos removal code and the tolerances guide on the legislation register. Those documents are mentioned in the section and the provision that mentioned them indicates where the documents can be accessed on the internet. The reason for not requiring the documents to be notified is that they are freely available on the internet and are subject to copyright limitations.

Section 46 provides for schedule 4 of the regulation to prescribe the decision s made under the Act or the regulation that are reviewable by the Act Administrative Appeals Tribunal. The intent is the tribunal cannot review a decision unless schedule 4 prescribes otherwise.

Section 47 entitles the Minister to make an exempt building code for schedule 1. Several provisions in schedule 1 stipulate that carrying out building work in respect of specified buildings is exempt from the application of specified provisions of the Act, provided the building work complies with the exempt building code. It is intended that if the code is not made in respect of any or all of the relevant exempt work, then the respective exemption should not apply. It is intended that the code detail construction requirements that if complied with will produce structurally sound and stable buildings.

The section also provides that the exempt building code is a disallowable instrument, which, under the Legislation Act, must be notified on the legislation register, and presented to the ACT Legislative Assembly.

Section 48 entitles the construction occupations registrar to declare an occupation for schedule 1, part 1.3, item 25 (which is about handling small amounts of bonded asbestos).

Within certain parameters, people working in a declared occupation might be entitled to do certain building work involving asbestos.

The section also entitles the construction occupations registrar to declare a qualification relevant to handling bonded asbestos for schedule 1, part 1.3, item 25.

The section also provides that the declarations under the section are a disallowable instrument, which, under the Legislation Act, must be notified on the legislation register, and presented to the ACT Legislative Assembly.

Section 49 see notes on section 49 near the start of this explanatory statement, under the heading *strict liability offences in the regulation*.

The **dictionary** at the end of the regulations is provided for in Section 3 and gives definitions of terms used in the regulations.

Section 100 Defines 3 key terms used in the regulation, part 20.

The section defines what the term ***commencement day*** means. The intention is that that term means the day that the bulk of the legislative reforms under the planning system reform project commence, which is contingent on the full commencement of the *Planning and Development Act 2007*.

The section defines what the term ***new scheme*** means. It is intended to mean the *Building Act 2004*, as in force on or after the day the regulation commences.

The section defines what the term ***old scheme*** means. It is intended to mean the *Building Act 2004*, as in force immediately before the day the regulation commences.

Section 101 provides a transitional arrangement in relation to building approval applications. It is intended to ensure that relevant applications made before the planning system reforms take effect do not have to be redrawn to take account of changes to plan requirements brought about by the reforms. That will only apply if the application has not been decided before the reforms commenced.

After the reforms commence the plans will have to show enough information to satisfy the post-reform requirements.

Section 102 supplements the transitional arrangement provided for in section 101. Where plans that formed part of a building approval application were lodged before the planning system reforms took effect, and the application was not determined by that date, then section 102 entitles a certifier to require the applicant to provide information missing from the plans that would be required to determine the application under the post-reform system.

An example of the effect is if the application was for a dwelling. The certifier might need to know driveway location and roof colour in order to determine if the dwelling is exempt from needing a development approval or not under the post-reform system. Prior to the reforms, building approval plans did not need to show driveways or colours. Post the

reform, certain plans will be required to show that information. Therefore, section 102 entitles the certifier to require the applicant to show the driveway and the roof colour on the plans, if the parameters of section 102 apply.

Section 103 provides a 2-week period after the reforms commence, during which the applicant for a building approval can elect to have the post-reform definition of "substantial alteration" under the regulation s 23, apply to the application. The intention is to allow applicants the opportunity to choose which scheme they want the application determined under—pre-reform or post-reform, in respect of the definition of the term "substantial alteration". The choice can only be exercised if the parameters of the section are satisfied.

The section provides that if the person elects to have the application for building approval decided using the definition of "substantial alteration" under the post-reform scheme, the certifier must treat the building work as a "substantial alteration" only if it is a substantial alteration under the post-reform scheme.

Section 104 provides a transitional arrangement that is the converse of section 103, thus allowing the applicant to choose to avoid the building approval application being regarded as a substantial alteration under the post-reform scheme. That can only apply if it was not a substantial alteration under the pre-reform scheme. The period for electing which scheme to use is the post-reform period prior to 1 January 2009. It is anticipated that that should be sufficient time for plans already partly designed to be altered to cater for the reforms.

Section 105 repeals the *Building Regulation 2004*, as the *Building (General) Regulation 2008* is intended to supersede and replace the *Building Regulation 2004.*

Section 106 provides that part 20 of the regulation expires two years after it commences as it will no longer be required.

Schedule 1, section 1.1 defines terms use in schedule 1.

Schedule 1, part 1.2, column 2 describes exempt buildings, for example a 'temporary building'. Column 3 describes the conditions (if any) that must be satisfied in order for the building mentioned on the corresponding line in column 2 to be exempt from the application of the Act.

Buildings mentioned in part 1.2 are either temporary, or are structures that are part of urban infrastructure.

The section 1.1 definition of a ***temporary building*** provides that a temporary building means a building if—

(a) the building is not a class 1, 2, 3 or 4 building; and

(b) the building is erected on the site of building work for the erection or alteration of another building; and

(c) building approval has been obtained for the building work; and

(d) the building is to be removed when the building work is completed.

The temporary nature of such buildings does not warrant compliance with the Act.

Urban infrastructure is delivered for or on behalf of the Territory under Territory-dictated quality assurance systems and therefore do not warrant compliance with the Act.

Schedule 1, part 1.3, column 2 describes exempt buildings or exempt building work, for example certain fences. Column 3 prescribes the provision of the Act that the building or building work mentioned in the corresponding line in column 2 is exempt from the application of. The corresponding line in column 4 prescribes the conditions (if any) that must be complied with in order for that exemption to apply.

Schedule 2, part 2.1

Schedule 2, part 2.2, column 2 prescribes the proposed building work in an application for building approval that must be referred to the entity on the corresponding line in column 3, under section 19.

Schedule 3, part 3.1

Schedule 3, part 3.2, column 2 prescribes the element of building work that is taken to be fundamentally non-compliant if the degree of non-compliance of the aspect of the element is as mentioned in column 3 or exceeds that degree.

Under section 50 and the Act a certifier who becomes aware of fundamentally noncompliant work is required to notify the construction occupations registrar of the non-compliance.

An example of the effect of item 9 in Schedule 3, part 3.2 is set out after the part.

Schedule 4 prescribes descriptions of decisions that may be referred to the ACT Administrative Appeals Tribunal for review of the decision, the respective decision-makers, and relevant entities who are entitled to seek the review.

Dictionary contains definitions of terms used in the regulation.

Cost implications

Nil