

# NORTHERN TERRITORY OF AUSTRALIA

## BUILDING ACT

As in force at 14 December 2005

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**ENDNOTES**



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 14 December 2005

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## BUILDING ACT

An Act to provide for the establishing of technical standards for buildings, the registration of building practitioners and certifiers, the regulation of building matters, the granting of building and occupancy permits and the establishing of a building appeal process, and for related purposes

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Building Act*.

#### **2                      Commencement**

The various provisions of this Act shall come into operation on such dates as are respectively fixed by the Administrator by notice in the *Gazette* in relation to those provisions.

#### **3                      Objects of Act**

The objects of this Act are:

- (a) to establish, maintain and improve building standards;
- (b) to facilitate the adoption and efficient application of national uniform building standards;
- (c) to facilitate national uniform accreditation of building products, construction methods, building designs, building components and building systems;
- (d) to maintain, enhance and improve the safety, health and amenity of people using buildings;
- (e) to promote and provide for the construction of environmentally efficient buildings;
- (f) to provide an efficient and effective system for granting building permits, administering building matters and resolving building disputes;

- (g) to reform aspects of the law relating to the legal liability of regulatory agencies and building practitioners;
- (h) to facilitate national uniformity in the training and qualifications of certain building practitioners and the recognition of qualifications on a national basis;
- (ha) to provide for the registration of building practitioners;
- (hb) to provide for the investigation, audit and disciplining of building practitioners;
- (hc) to establish a compulsory home warranty insurance scheme;
- (j) to facilitate the cost effective construction of buildings; and
- (k) to aid the achievement of an efficient and competitive building industry.

#### 4 **Definitions**

In this Act, unless the contrary intention appears:

**adjoining property**, in relation to building work, means a property (including a street) that is next to, or near, the land on which the building work is to be carried out.

**Advisory Committee** means the Building Advisory Committee established by section 9(1).

**Appeals Board** means the Building Appeals Board established by section 17.

**approved** means approved by the Director.

**approved form** means a form approved under section 167A.

**authorised officer** means a person appointed to be, or who is a member of a class of persons appointed to be, an authorised officer or authorised officers under section 162(1).

**Building Area** means a part of the Territory to which, under section 6(2), all or any of the provisions referred to in that section are declared to apply.

**building** includes a structure and a part of a building or structure.

**building certifier** means a person, firm or corporation registered under section 24 in the category of building practitioners known as building certifiers and, in relation to a function the Director is directed under section 48 to perform, includes the Director.

**building notice** means a building notice issued under section 108 or 109.

**building order** means a building order made under section 112.

**building permit** means a permit to carry out building work granted under this Act.

**building practitioner** means a person, firm or corporation registered under Part 3.

**building work** means work for or in connection with the construction, demolition or removal of:

- (a) a building; or
- (b) plumbing or drainage services, whether or not connected to a building, other than plumbing or drainage services vested in the Power and Water Authority established by the *Power and Water Authority Act*.

**carry out**, in relation to building work, includes to cause to be carried out.

**category of building practitioner** has the meaning in section 4A.

**construct**, in relation to a building, includes:

- (a) build, re-build, erect or re-erect the building;
- (b) repair the building;
- (c) make alterations to the building;
- (d) enlarge or extend the building; and
- (e) place or relocate the building on land.

**Director** means the Director of Building Control appointed under section 7.

**fire upgrading report** means a report prepared under section 116.

**occupancy permit** means a permit to occupy granted under Part 8.

**owner**, in relation to land, includes every person who jointly or severally:

- (a) is entitled to the land for an estate of freehold in possession;

- (b) is a person to whom the Crown has lawfully contracted to sell the land under an Act relating to the alienation of lands of the Crown; or
- (c) is entitled to receive or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession or otherwise.

**Practitioners Board** means the Building Practitioners Board established by section 12.

**promote or conduct**, in relation to a public assembly, includes to be interested in the proceeds or profits, if any, of the public assembly.

**public assembly** means an assembly of persons whether or not admission to the assembly is gained on payment of money or other consideration and whether or not its purpose is public entertainment.

**public authority** means the Crown, a public or local authority established by or under an Act or a statutory body representing the Crown, and includes a person exercising functions on behalf of the Crown or the authority or body.

**registered** means registered under Part 3.

**Registrar**, in relation to a committee or board, means the employee, within the meaning of the *Public Sector Employment and Management Act*, whose duties under that Act include performing the functions of the Registrar of the committee or board.

**Regulations** includes a code or other document adopted by the Regulations for the purposes of this Act.

**related building application**, in relation to an application for the grant of an occupancy permit, means a building application relating to the same building work as that to which the application for the permit relates.

**relevant person**, in Part 9, means the owner of land or a building who proposes to carry out building work on the land or building.

**repealed Act** means the *Building Act* as in force immediately before the commencement of this Act.

**reporting authority** means a body or person (other than the building certifier to whom the application is made) required by the Regulations to report on, or consent to, an application for a building permit.

**street** includes a road (within the meaning of the *Control of Roads Act*), lane, footway, square, court, alley and right of way.

**substantial compliance certificate** means a substantial compliance certificate issued under section 172F.

**temporary structure** means:

- (a) a booth, tent or other temporary enclosure, whether or not a part of it is permanent; or
- (b) a mobile structure.

#### **4A Categories of building practitioner**

- (1) The following are the categories of building practitioner:
  - (a) building certifier;
  - (b) certifying architect;
  - (c) certifying plumber;
  - (d) certifying engineer;
  - (e) building contractor.
- (2) The Regulations may prescribe:
  - (a) a category of building practitioner; or
  - (b) a sub-category of a category of building practitioner.
- (3) In this Act, a reference to a category of building practitioner includes:
  - (a) a category of building practitioner; and
  - (b) a sub-category of a category of building practitioner, prescribed under subsection (2).

## **5 Act to bind Crown**

This Act binds the Crown, not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly so permits, the Crown in all its other capacities.

## **6 Application**

- (1) Subject to subsections (2) and (3), this Act, other than Parts 4 to 13 (inclusive), applies throughout the Territory.
- (2) The Minister may, by notice in the *Gazette*, declare that all or any of the provisions of Parts 4 to 13 (inclusive) apply in and in relation to the parts of the Territory specified in the notice and, on the Minister so declaring, those provisions apply accordingly.
- (3) The Minister may, by notice in the *Gazette*, declare that a provision of the Regulations specified in the notice does not apply in all or a part of the Territory specified in the notice and accordingly, on the Minister so declaring, the provision does not apply in the Territory or that part of the Territory.
- (4) In the application of this Act to building work in respect of which an approval or permit is required by or under this Act, this Act and the Regulations prevail over all other Acts and instruments of a legislative character.

## **Part 2 Building administration**

### **Division 1 Director of Building Control**

#### **7 Director of Building Control**

The Minister may appoint an employee, within the meaning of the *Public Sector Employment and Management Act*, to be the Director of Building Control.

#### **8 Functions and powers of Director**

- (1) The functions of the Director are:
  - (aa) to investigate complaints against, and to audit the work and conduct of, building practitioners;
  - (ab) to conduct disciplinary proceedings in relation to building practitioners before the Practitioners Board;

- (ac) to prosecute alleged offences against this Act or the Regulations, whether the alleged offender is a building practitioner or another person;
  - (a) to advise the Minister on all matters relating to building in the Territory;
  - (b) to promote research into building matters;
  - (c) to liaise with groups and bodies involved in the building industry and with other interested groups or bodies on building matters;
  - (d) to publish reports and disseminate information on building matters;
  - (e) to carry out periodic reviews of this Act and the Regulations;
  - (f) to report on any building matters when required by the Minister to do so;
  - (g) to liaise with any national body established to deal with building regulation matters; and
  - (h) such other functions as are imposed on the Director by or under this or any other Act or as directed by the Minister.
- (2) The Director has such powers as are conferred on him or her by or under this or any other Act and, subject to this Act, may do all things necessary or convenient to be done for or in connection with or incidental to the performance of his or her functions and the exercise of his or her powers.
- (3) The Director shall keep, and make available to members of the public for inspection at his or her office during normal office hours, a register of building permits, occupancy permits and substantial compliance certificates.

## **Division 2 Building Advisory Committee**

### **9 Establishment of Advisory Committee**

- (1) There is established by this section a Committee to be known as the Building Advisory Committee.
- (2) The Advisory Committee shall consist of such members appointed by the Minister as the Minister thinks fit.

- (3) The members of the Advisory Committee shall elect one of their number to be the Chairman of the Committee and another to be its Deputy Chairman.
- (4) Without limiting the generality of subsection (2), the Director or a member of the Appeals Board or the Practitioners Board may be appointed as a member of the Advisory Committee.

**10 Schedule 2 to apply**

Schedule 2 has effect with respect to the members and procedure of the Advisory Committee.

**11 Functions and powers of Advisory Committee**

- (1) The functions of the Advisory Committee are:
  - (a) to advise the Minister on the administration of this Act;
  - (b) to investigate and report to the Minister on all matters related to this Act that are referred to it by the Minister;
  - (c) to accredit building products, construction methods, designs, components or systems; and
  - (d) such other functions as are imposed on it by or under this or any other Act or as directed by the Minister.
- (2) The Advisory Committee has such powers as are conferred on it by or under this or any other Act and, subject to this Act, may do all things necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers.

**Division 3 Building Practitioners Board**

**12 Establishment of Practitioners Board**

There is established by this section a Board to be known as the Building Practitioners Board.

**12A Membership of Practitioners Board**

- (1) Subject to this section, the Minister:
  - (a) must appoint in writing the persons the Minister considers appropriate to be members of the Practitioners Board; and



- (b) must appoint in writing:
  - (i) one of those members to be the Chairman of the Board;  
and
  - (ii) another of those members to be the Deputy Chairman of the Board.
- (2) Without limiting subsection (1)(a), a member of the Advisory Committee or a member of the Appeals Board may be appointed as a member, but the Director cannot be appointed as a member.
- (3) At least one member must be a legal practitioner who is enrolled as a legal practitioner (however described) of the High Court, the Supreme Court, or the Supreme Court of a State or another Territory of the Commonwealth and has been so enrolled for at least 5 years.
- (4) The members who are not legal practitioners (the **industry members**) must be persons the Minister considers have appropriate experience in the building industry or matters connected with the building industry.
- (5) If practicable, at least one industry member must be appointed to represent the interests of each category of building practitioner.
- (6) An industry member who is appointed to represent the interests of a category of building practitioner must be:
  - (a) registered in the category of building practitioner the member is appointed to represent; and
  - (b) chosen by the Minister in accordance with section 12B.
- (7) An industry member cannot be appointed to represent more than one category of building practitioner, but 2 or more industry members may be appointed to represent the interests of the same category of building practitioner.
- (8) In this section:

**category of building practitioner** does not include a sub-category of a category of building practitioner.

**12B Procedure for choosing members for categories of building practitioner**

- (1) The Minister must invite:
  - (a) the professional or trade organisation that, in the Minister's opinion, represents the majority of persons registered in a category of building practitioner; or
  - (b) if, in the Minister's opinion, there are 2 or more professional or trade organisations that each represents a substantial number of persons registered in a category of building practitioner – each of those organisations,

to nominate, within the time specified, 3 persons who reside in the Territory to be members of the Practitioners Board.

- (2) Subject to subsections (3) and (4), the Minister must choose from the nominations received from each organisation one person to be appointed as a member.
- (3) If fewer than 3 nominations are received from an organisation, the Minister is not required to choose a person in respect of that organisation.
- (4) If fewer than 3 nominations are received for a category of building practitioner, the Minister may choose a person who was not nominated for that category of building practitioner but who, in the Minister's opinion, is appropriate to represent the interests of that category of building practitioner.

**13 Schedule 2 to apply**

Schedule 2 has effect with respect to the members and procedure of the Practitioners Board.

**14 Functions and powers of Practitioners Board**

- (1) The functions of the Practitioners Board are:
  - (a) to establish and maintain a system of performance reporting on building practitioners to ensure that information on past performance is available and able to be taken into account when assessing the competence of building practitioners;
  - (b) to register persons as building practitioners;
  - (c) to monitor the compliance of building practitioners with their registration requirements;

- (d) to monitor the competence to practice and professional conduct of building practitioners;
  - (e) to conduct inquiries into the work and conduct of building practitioners and, if necessary, to discipline building practitioners;
  - (f) to develop and publish codes of practice about the work and conduct of building practitioners for reference by building practitioners and for use by the Board and the Director in assessing the work and conduct of building practitioners; and
  - (g) any other functions imposed on the Board by this or another Act or the Minister.
- (2) The Practitioners Board has such powers as are conferred on it by or under this or any other Act and, subject to this Act, may do all things necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers.

#### **16 Register of Building Practitioners, &c**

- (1) The Practitioners Board shall cause to be maintained a register of building practitioners with separate parts for each category of building practitioner.
- (2) The Practitioners Board may give directions for the purposes of correcting information in the register.

### **Division 4 Building Appeals Board**

#### **17 Establishment of Appeals Board**

- (1) There is established by this section a Board to be known as the Building Appeals Board.
- (2) The Appeals Board shall consist of such members appointed by the Minister, having experience in the building industry or matters connected with the building industry, as the Minister thinks fit, of whom:
  - (a) one shall be appointed to be its Chairman; and
  - (b) one other shall be appointed to be its Deputy Chairman.
- (3) Without limiting the generality of subsection (2), the Director, a member of the Advisory Committee or a member of the Practitioners Board may be appointed as a member of the Appeals Board.

**18 Schedule 2 to apply**

Schedule 2 has effect with respect to the members and procedure of the Appeals Board.

**19 Functions and powers of Appeals Board**

- (1) The functions of the Appeals Board are:
  - (a) to determine appeals relating to disputes about:
    - (i) the effect of the Regulations or the manner in which the Regulations are to be or have been complied with; and
    - (ii) the construction of a party wall or the expenses to be borne by the owners of premises separated by a party wall in relation to any such construction;
  - (b) to determine appeals under section 131 relating to the application of the Regulations to land, buildings or building work; and
  - (c) such other functions as are imposed on it by or under this or any other Act.
- (2) The Appeals Board has such powers as are conferred on it by or under this or any other Act and, subject to this Act, may do all things that are necessary or convenient to be done for or in connection with or incidental to the performance of its functions and the exercise of its powers.

**Division 5 General**

**20 Delegation by Minister and Director**

- (1) The Minister may, in writing, delegate to a person or to the holder from time to time of a specified office, any of the Minister's powers and functions under this Act, other than:
  - (a) this power of delegation; or
  - (b) the Minister's powers under sections 6(2) and (3), 9(2), 12(2), 17(2), 20 or 48.
- (2) The Director may, in writing, delegate to a person or to the holder from time to time of a specified office, any of the Director's powers and functions under this Act, other than this power of delegation.

- (3) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister or Director, as the case may be.
- (4) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister or the Director.

## **Part 3 Building practitioners**

### **Division 1AA Preliminary**

#### **21A Definitions**

In this Part, unless the contrary intention appears:

**audit** means an audit conducted under section 34A, and includes an audit extended under section 34C.

**auditor**, in relation to an audit, means:

- (a) the person authorised under section 34A(3) to conduct the audit; or
- (b) if paragraph (a) does not apply – the Director.

**building practitioner** includes a person who was registered at the time certain work was done, or certain conduct was engaged in, by the person but who ceases to be registered at any time after the time of that work or conduct.

**inquiry** means an inquiry conducted under Division 3A.

**Inquiry Board**, in relation to an inquiry, means the Practitioners Board as constituted under section 34J to conduct the inquiry.

**investigation** means an investigation conducted under section 30, and includes an investigation extended under section 31.

**professional misconduct**, in relation to a building practitioner, means conduct referred to in section 34S.

**working day** means a day other than a Saturday, Sunday or public holiday within the meaning of the *Public Holidays Act*.

## **21B Application**

Divisions 2, 3, 3A, 3B and 4 apply in relation to work done, or conduct engaged in, by a building practitioner:

- (a) whenever the work was or is done or the conduct was or is engaged in; and
- (b) if the building practitioner is or was registered in the category of building contractor – even though the building practitioner was not required to be registered in that category at the time of the work or conduct.

## **Division 1 Registration**

### **22 Building practitioners to be registered**

A person shall not:

- (a) take or use the title of building practitioner or building practitioner of a particular category of building practitioners (either alone or in combination with any other words);
- (b) perform a function or exercise a power of, or work as, a building practitioner or building practitioner of a particular category of building practitioner; or
- (c) in any way imply that he or she is:
  - (i) registered under this Part; or
  - (ii) authorised to perform a function or work for which registration is required under this Part,

unless he or she is appropriately registered under this Part.

Penalty: \$5,000.

### **23 Application for registration as building practitioner (other than as building contractor)**

A person may, in the approved form accompanied by the prescribed fee, on behalf of the person or a firm or corporation of which he or she is a partner or member, apply to the Board to be registered (or for the firm or corporation to be registered) as a building practitioner in a category of building practitioner (other than the category of building contractor).

## **24 Registration of building practitioner**

(1) Where the Practitioners Board is satisfied, on an application under section 23, that a person, not being a corporation:

- (a) is a fit and proper person to be so registered;
- (b) has the relevant qualifications and experience determined by the Minister in relation to the particular category of building practitioners specified in the application; and
- (c) has complied with the prescribed conditions, if any,

it shall register the person as a building practitioner in the category of building practitioners specified in the application.

(2) Where the Practitioners Board is satisfied, on an application under section 23, on behalf of a firm, that:

- (a) all of the natural persons by whom the firm is constituted would be fit and proper persons to be so registered if the application had been made by them personally;
- (b) at least one of those natural persons has the relevant qualifications and experience determined by the Minister in relation to the particular category of building practitioners specified in the application and is registered as a building practitioner in that category; and
- (c) the firm has complied with the prescribed conditions, if any,

it shall register the firm as a building practitioner in the category of building practitioners specified in the application.

(3) Where the Practitioners Board is satisfied, on an application under section 23 on behalf of a corporation, that:

- (a) all of the persons concerned in the management or conduct of the corporation would be fit and proper persons to be so registered if the application had been made by them personally;
- (b) at least one of those persons has the relevant qualifications and experience determined by the Minister in relation to the particular category of building practitioners specified in the application and is registered as a building practitioner in that category; and
- (c) the corporation has complied with the prescribed conditions, if any,

it shall register the corporation as a building practitioner in the category of building practitioners specified in the application.

- (4) Conditions prescribed for the purposes of subsections (1)(c), (2)(c) or (3)(c) may include a condition requiring a building practitioner to hold a policy of professional indemnity or other insurance of a type or for an amount, or both, determined by the Minister.
- (5) A person shall not perform a function of a building practitioner unless the person holds a policy of insurance, if any, required as a condition of his, hers or its registration as a building practitioner.

Penalty: \$10,000.

#### **24A Application for registration as building contractor**

A person may, in the approved form accompanied by the prescribed fee, apply to the Practitioners Board to be registered as a building practitioner in the category of building contractor.

#### **24B Registration of building contractors**

- (1) Where the Practitioners Board is satisfied, on an application under section 24A by a person, not being a corporation, that the person:
  - (a) is a fit and proper person to be registered;
  - (b) has the relevant qualifications and experience determined by the Minister in relation to the category of building contractor; and
  - (c) has complied with the prescribed conditions, if any,it must register the person as a building practitioner in the category of building contractor.
- (2) Where the Practitioners Board is satisfied on an application under section 24A by a corporation that:
  - (a) all the directors of the corporation would be fit and proper persons to be registered if the application had been made by them personally;
  - (b) at least one director or a nominee of the corporation is a building practitioner in the category of building contractor to which the application relates;
  - (c) the director or nominee referred to in paragraph (b) resides in the Territory; and



- (d) the corporation has complied with the prescribed conditions, if any,

it must register the corporation as a building practitioner in the category of building contractor.

- (3) Conditions prescribed for the purposes of subsection (1)(c) or (2)(d) may include a condition requiring a building practitioner to hold a policy of professional indemnity or other insurance of a type or for an amount, or both, determined by the Minister.

#### **24C Registration of building contractors (transitional)**

- (1) A person who carried out building work before the commencement of this section may, in the approved form accompanied by the prescribed fee, apply to the Practitioners Board to be registered as a building practitioner in the category of building contractor.

- (2) Where the Practitioners Board is satisfied, on an application under subsection (1) by a person, not being a corporation, that the person:

- (a) carried out building work before the commencement of this section;
- (b) is a fit and proper person to be registered;
- (c) has qualifications and experience determined by the Minister;
- (d) is competent to carry out work as a building contractor; and
- (e) has complied with the prescribed conditions, if any,

it must grant the registration of the person as a building practitioner in the category of building contractor.

- (3) Where the Practitioners Board is satisfied, on an application under subsection (1) by a corporation, that:

- (a) the corporation carried out building work before the commencement of this section;
- (b) all the directors of the corporation would be fit and proper persons to be registered if the application had been made by them personally;
- (c) at least one director or a nominee of the corporation is a building practitioner in the category of building contractor to which the application relates;

- (d) the director or nominee referred to in paragraph (c) resides in the Territory; and
- (e) the corporation has complied with the prescribed conditions, if any,

it must register the corporation as a building practitioner in the category of building contractor.

- (4) An application under this section must be made within 6 months after the commencement of this section.
- (5) Conditions prescribed for the purposes of subsection (2)(e) or (3)(e) may include a condition requiring a building practitioner to hold a policy of professional indemnity or other insurance of a type or for an amount, or both, determined by the Minister.
- (6) In this section:

***building work*** means building work that, after the commencement of Part 4A, may be carried out only by a prescribed building contractor.

#### **24D Term of registration**

Subject to this Act, a building practitioner's registration remains in force for 2 years from the date it is granted or renewed.

#### **24E Application for renewal of registration as building practitioner**

- (1) A building practitioner may, in the approved form accompanied by the prescribed fee, apply to the Practitioners Board to renew the practitioner's registration.
- (2) The Practitioners Board may refuse to accept an application if it is made after the prescribed date.

#### **24F Renewal of registration of building practitioner**

- (1) Where the Practitioners Board is satisfied, on an application under section 24E, that a person, not being a corporation:
  - (a) is a fit and proper person to be registered;
  - (b) has the relevant qualifications and experience determined by the Minister in relation to the particular category of building practitioner specified in the application;

- (c) has complied with the continuing development requirements determined by the Minister in relation to the particular category of building practitioner specified in the application;
- (d) has been shown by performance reporting to have performed satisfactorily; and
- (e) has complied with the prescribed conditions, if any,

it must renew the registration of the person as a building practitioner.

- (2) Where the Practitioners Board is satisfied, on an application under section 24E, on behalf of a firm, that:

- (a) all of the natural persons by whom the firm is constituted would be fit and proper persons to be registered if the application had been made by them personally;
- (b) at least one of the persons referred to in paragraph (a):
  - (i) has the relevant qualifications and experience determined by the Minister in relation to the particular category of building practitioner specified in the application;
  - (ii) is registered as a building practitioner in that category; and
  - (iii) has complied with the continuing development requirements determined by the Minister in relation to the particular category of building practitioner specified in the application;

- (c) the firm has been shown by performance reporting to have performed satisfactorily; and

- (d) the firm has complied with the prescribed conditions, if any,

it must renew the registration of the firm as a building practitioner.

- (3) Subject to subsection (4), where the Practitioners Board is satisfied, on an application under section 24E on behalf of a corporation, that:

- (a) all of the persons concerned in the management or conduct of the corporation would be fit and proper persons to be registered if the application had been made by them personally;

- (b) at least one of the persons referred to in paragraph (a):
  - (i) has the relevant qualifications and experience determined by the Minister in relation to the particular category of building practitioner specified in the application;
  - (ii) is registered as a building practitioner in that category; and
  - (iii) has complied with the continuing development requirements determined by the Minister in relation to the particular category of building practitioner specified in the application;
- (c) the corporation has been shown by performance reporting to have performed satisfactorily; and
- (d) the corporation has complied with the prescribed conditions, if any,

it must renew the registration of the corporation as a building practitioner.

- (4) Where the Practitioners Board is satisfied, on an application under section 24E by a corporation to renew its registration as a building practitioner in the category of building contractor, that:
  - (a) all the directors of the corporation would be fit and proper persons to be registered if the application had been made by them personally;
  - (b) at least one director or a nominee of the corporation:
    - (i) has the relevant qualifications and experience determined by the Minister in relation to the category of building contractor specified in the application;
    - (ii) is registered as a building practitioner in that category;
    - (iii) has complied with the continuing development requirements determined by the Minister in relation to that category; and
    - (iv) resides in the Territory;
  - (c) has been shown by performance reporting to have performed satisfactorily; and

- (d) the corporation has complied with the prescribed conditions, if any,

it must renew the registration of the corporation in the category of building contractor.

- (5) Conditions prescribed for subsection (1)(e), (2)(d), (3)(d) or (4)(d) may include a condition requiring a building practitioner to hold a policy of professional indemnity or other insurance of a type or for an amount, or both, determined by the Minister.

**24FA Practitioners Board may rely on certain reports and information**

For the purpose of satisfying itself of a matter referred to in section 24(1), (2) or (3), 24B(1) or (2), 24C(2) or (3) or 24F(1), (2), (3) or (4), the Practitioners Board may rely on a report or other information provided by a prescribed person or body.

**24FB Notice of decisions**

- (1) This section applies in relation to a decision of the Practitioners Board under this Division:
- (a) to register or refusing to register a person as a building practitioner; or
- (b) to renew or refusing to renew the registration of a person as a building practitioner.
- (2) As soon as practicable after making the decision, the Practitioners Board must give written notice of the decision to the person.
- (3) The notice of the decision must set out:
- (a) the reasons for the decision; and
- (b) the procedure for commencing an appeal under Division 4.

**24G Determinations**

- (1) The Minister may, by notice in the *Gazette*, determine the qualifications and experience for registration as a building practitioner in a category of building practitioner.
- (2) The Minister may, by notice in the *Gazette*, determine the continuing development requirements for a building practitioner in a category of building practitioner.

- (3) The Minister may, by notice in the *Gazette*, determine the types and amounts of insurance policies for sections 24(4), 24B(3), 24C(5) and 24F(5).
- (4) The Minister may, by notice in the *Gazette*, determine criteria to be met by insurance providers under this Act.

#### **24H Certificate of registration**

- (1) The Practitioners Board must issue a registration certificate to a person, firm or corporation registered as a building practitioner.
- (2) A registration certificate must be in the approved form.

#### **25 Function of building practitioner to be carried out by natural person**

- (1) Where a function of a building practitioner is carried out by a firm:
  - (a) it shall be carried out by or at the direction of a partner who is a building practitioner in the relevant category and shall be certified by that partner; and
  - (b) the firm shall cause the name of the partner to appear in all advertisements in respect of the relevant function published by or on its behalf.

Penalty: \$5,000.

- (2) Where a function of a building practitioner is carried out by a corporation:
  - (a) it shall be carried out by or at the direction of a person concerned in the management or conduct of the corporation who is a building practitioner in the relevant category and shall be certified by that person; and
  - (b) the corporation shall cause the name of the person to appear in all advertisements in respect of the relevant function published by or on its behalf.

Penalty: \$5,000.

- (3) For subsection (2), if the corporation is a building practitioner in the category of building contractor, a reference to a person concerned in the management or conduct of a corporation means the director or nominee of the corporation referred to in section 24B(2)(b), 24C(3)(c) or 24F(4)(b).

**25A Practitioners Board to be notified of changes to registration requirements**

- (1) Subject to subsection (2), a corporation registered in the category of building contractor must within 7 days notify the Practitioners Board if:
- (a) a nominee of the corporation ceases to act for the corporation or his or her registration as a building contractor is cancelled or suspended or is not renewed;
  - (b) a director of the corporation registered in the category of building contractor ceases to be a director or his or her registration is cancelled or suspended or is not renewed; or
  - (c) a nominee referred to in paragraph (a) or a director referred to in paragraph (b) ceases to reside in the Territory.

Penalty: \$50 000.

- (2) If a corporation registered in the category of building contractor ceases to comply with the registration requirements of this Part because:
- (a) the nominee of the corporation, or each such nominee, ceases to act for the corporation or his or her registration as a building contractor is cancelled or suspended or is not renewed;
  - (b) the director of the corporation registered in the category of building contractor, or each such director, ceases to be a director or his or her registration is cancelled or suspended or is not renewed; or
  - (c) the nominee referred to in paragraph (a) or the director referred to in paragraph (b), or each such nominee or director, ceases to reside in the Territory,

notification under subsection (1) must be given immediately.

- (3) Notification under this section must be in the approved form.

**Division 2 Investigation of complaints by Director**

**26 Making complaint**

- (1) A person may complain to the Director about a building practitioner on one or more of the following grounds:
- (a) the practitioner has committed an offence against this Act or the Regulations;

- (b) the practitioner has carried out work in a negligent or incompetent manner;
  - (c) the practitioner is otherwise guilty of professional misconduct.
- (2) The complaint must:
- (a) be in writing;
  - (b) contain particulars of the matter complained of;
  - (c) identify the building practitioner; and
  - (d) include the name and address of the complainant.

### **27 Request for further information**

The Director may request the complainant to provide, within the specified time (which must be at least 5 working days after the request is made), further particulars about the complaint.

### **28 Dismissal without investigation**

The Director may dismiss the complaint without investigating it if satisfied:

- (a) the complaint is without foundation or is frivolous or vexatious;
- (b) the matter complained of is insubstantial;
- (c) the complainant does not comply with a request under section 27 for further particulars about the complaint; or
- (d) after considering any response of the building practitioner under section 29(b), the Director considers that investigation is not warranted.

### **29 Building practitioner to be informed**

If the Director does not dismiss the complaint under section 28(a), (b) or (c), the Director must, by notice in the approved form:

- (a) inform the building practitioner of the complaint and attach to the notice a copy of the complaint; and
- (b) invite the practitioner to respond to the Director about the complaint within the specified time (which must be at least 5 working days after the notice is given).



**30 Investigation to be conducted**

- (1) If the Director does not dismiss the complaint under section 28, the Director must investigate the complaint as soon as practicable after the time for the building practitioner to respond has expired.
- (2) The investigation may relate to more than one complaint.

**31 Investigation may be extended to other matters and other building practitioners**

- (1) This section applies if, in the course of the investigation, the Director forms the view that a matter that is not the subject of the complaint being investigated could have been the subject of:
  - (a) another complaint about the building practitioner being investigated; or
  - (b) a complaint about another building practitioner.
- (2) The Director may extend the investigation to include the matter if the Director considers it appropriate to do so.
- (3) If the investigation is extended to include the matter, the Director must, by notice in the approved form:
  - (a) inform the building practitioner to whom the matter relates of the particulars of the matter and that the investigation has been extended to include the matter; and
  - (b) invite the practitioner to respond to the Director about the matter within the specified time (which must be at least 5 working days after the notice is given).

**32 Production and inspection of documents**

- (1) The Director may, by notice in the approved form, require a building practitioner or the complainant to produce to the Director any documents that may be relevant to the investigation.
- (2) The Director may inspect, or take extracts from or copies of, any documents produced under subsection (1).

**33 Building practitioners and others must cooperate during investigation**

- (1) If, in the course of the investigation, a building practitioner:
- (a) refuses or fails, without reasonable excuse, to comply with any reasonable request from the Director to answer a question, provide information or produce a document; or
  - (b) in purported response to a request from the Director, gives an answer, provides information or produces a document that is false or misleading,

the Director may refer the matter to the Practitioners Board for inquiry.

- (2) A person must not, without reasonable excuse:
- (a) refuse or fail to comply with a requirement of the Director under section 32(1); or
  - (b) obstruct or hinder the Director in the exercise of a power under section 32.

Penalty: If the offender is a natural person – \$5 000.

If the offender is a body corporate – \$50 000.

**34 Action on completion of investigation**

- (1) On completion of the investigation, the Director must decide:
- (a) whether or not there is evidence that a building practitioner the subject of the investigation has committed an offence against this Act or the Regulations and, if there is evidence, may decide to prosecute the building practitioner for the alleged offence; and
  - (b) whether or not there is evidence that a building practitioner the subject of the investigation is guilty of professional misconduct and, if there is evidence, must refer the matter to the Practitioners Board for inquiry.
- (2) The Director must, as soon as practicable after making a decision under subsection (1), give the building practitioner and the complainant written notice of the decision.
- (3) The notice must set out the reasons for the decision.

### **Division 3 Audit of building practitioners by Director**

#### **34A Conduct of audit**

- (1) The Director may audit a building practitioner's work or conduct or both:
  - (a) whenever the Director considers it appropriate to do so; or
  - (b) as a consequence of a complaint made under Division 2:
    - (i) whether or not the complaint is about the building practitioner or another building practitioner; and
    - (ii) whether or not the complaint is investigated under that Division.
- (2) The Director must audit a building practitioner's work or conduct or both if directed to do so by the Practitioners Board under section 34U.
- (3) The Director may authorise another person to conduct an audit or class of audits on the Director's behalf.
- (4) The Director must determine the nature of, and the procedure for conducting, an audit or class of audits.

#### **34B Building practitioner to be notified**

- (1) Before an audit of a building practitioner is conducted, the auditor must give the practitioner such notice of the audit as is reasonable, having regard to:
  - (a) the nature of the audit; and
  - (b) the urgency or otherwise of the audit.
- (2) The notice may be written or oral.
- (3) If oral, the notice must be confirmed in writing by the auditor as soon as possible.

#### **34C Audit may be extended to other building practitioners**

- (1) This section applies if, in the course of the audit of a building practitioner, the auditor forms the view that another building practitioner should be audited.
- (2) The auditor may extend the audit to include the other building practitioner if the auditor considers it appropriate to do so.

- (3) If the audit is extended to another building practitioner, the auditor must give the other building practitioner notice of the audit in accordance with section 34B.

**34D Production and inspection of documents**

- (1) The auditor conducting the audit may, by notice in the approved form, require a building practitioner to produce to the auditor any documents that may be relevant to the audit.
- (2) The auditor may inspect, or take extracts from or copies of, any documents produced under subsection (1).

**34E Building practitioners must cooperate with auditor**

- (1) If, in the course of the audit, a building practitioner:
- (a) refuses or fails to comply with any reasonable request from the auditor to answer a question, provide information or produce a document; or
  - (b) in purported response to a request from the auditor, gives an answer, provides information or produces a document that is false or misleading,

the Director may refer the matter to the Practitioners Board for inquiry.

- (2) A building practitioner must not, without reasonable excuse:
- (a) refuse or fail to comply with a requirement of an auditor under section 34D(1); or
  - (b) obstruct or hinder an auditor in the exercise of a power under section 34D.

Penalty: If the offender is a natural person – \$5 000.

If the offender is a body corporate – \$50 000.

**34F Action on completion of audit**

- (1) On completion of the audit, the Director must decide:
- (a) whether or not there is evidence that a building practitioner the subject of the audit has committed an offence against this Act or the Regulations; and
  - (b) whether or not there is evidence that a building practitioner the subject of the audit is guilty of professional misconduct.

- (2) On making a decision under subsection (1), the Director may decide to take one or more of the following actions in relation to the building practitioner:
- (a) if there is the evidence referred to in subsection (1)(a) – prosecute the building practitioner for the alleged offence;
  - (b) if there is the evidence referred to in subsection (1)(b) – refer the matter to the Practitioners Board for inquiry;
  - (c) develop with the building practitioner a remedial program for the building practitioner.
- (3) If, on completion of an audit of a building practitioner:
- (a) the Director makes the decision referred to in subsection (2)(c); and
  - (b) the building practitioner does not participate in the development or implementation of the remedial program to the Director's reasonable satisfaction,
- the Director may reconsider a decision made on completion of the audit not to prosecute the practitioner for an alleged offence or not to refer a matter relating to the practitioner for inquiry or both and may decide to prosecute or to refer the matter or both.
- (4) The Director must, as soon as practicable after making a decision under this section, give the building practitioner written notice of the decision.
- (5) The notice must set out the reasons for the decision.

### **Division 3A Inquiries by Practitioners Board**

#### **34G When inquiry to be held**

The Practitioners Board must hold an inquiry into a matter that is referred to it by the Director under section 33(1), 34(1)(b), 34E(1) or 34F(2)(b) or (3).

#### **34H Inquiry into building practitioner who is no longer registered**

- (1) This section applies if a building practitioner the subject of an inquiry was registered at the time of the work or conduct being inquired into but, before or during the inquiry, ceases to be registered.

- (2) The inquiry is limited to the building practitioner's work or conduct or both (as the case requires) during the 3-year period immediately before the practitioner ceased to be registered.

#### **34J Constitution of Board for inquiry**

- (1) Subject to subsection (3), the Practitioners Board must be constituted for an inquiry by 3 of its members chosen by the Chairman of the Practitioners Board, of whom:
- (a) one must be a legal practitioner; and
  - (b) one must be an industry member who is appointed to represent the interests of the category of building practitioner in which the building practitioner the subject of the inquiry is or was registered.
- (2) The member referred to in subsection (1)(a) is the presiding member for the inquiry.
- (3) If there are no members available (because of a conflict of interest or otherwise) to be appointed as the member referred to in subsection (1)(a) or (b), the Chairman may appoint in writing:
- (a) to be the member referred to in subsection (1)(a) – a legal practitioner who is enrolled as a legal practitioner (however described) of the High Court, the Supreme Court, or the Supreme Court of a State or another Territory of the Commonwealth and has been so enrolled for at least 5 years; or
  - (b) to be the member referred to in subsection (1)(b):
    - (i) a person who is not a member of the Practitioners Board but is registered in the category of building practitioner in which the building practitioner the subject of the inquiry is or was registered; or
    - (ii) if it is not practicable to appoint a person referred to in subparagraph (i) – an industry member who is registered in a category of building practitioner (although not the category in which the building practitioner the subject of the inquiry is or was registered).
- (4) The Director cannot be appointed under subsection (3).
- (5) In this section:

***category of building practitioner*** does not include a sub-category of a category of building practitioner.

***industry member*** has the meaning in section 12A.

**34K Conduct of inquiry generally**

- (1) Subject to this Division, the procedure for an inquiry must be determined by the presiding member for the inquiry.
- (2) The Inquiry Board is not bound by the rules of evidence but is bound by the rules of natural justice.
- (3) The inquiry must be conducted with as little formality and technicality, and with as much expedition, as this Act and the Regulations and a proper consideration of the matter being inquired into permits.
- (4) The Inquiry Board must keep a record of its proceedings in the inquiry.

**34L Inquiry to be public**

An inquiry must be open to the public unless the presiding member for the inquiry directs otherwise.

**34M Parties to inquiry**

- (1) The parties to an inquiry are:
  - (a) the Director; and
  - (b) the building practitioner the subject of the inquiry.
- (2) A party may appear before the inquiry personally or by a representative.

**34N Powers to compel evidence**

- (1) The Inquiry Board may require a person giving evidence at an inquiry:
  - (a) to take an oath or affirmation; or
  - (b) to answer a question.
- (2) The Inquiry Board may, by notice in writing served on the person, require a person:
  - (a) to attend and give evidence; or
  - (b) to attend before the Board and produce a document in the person's possession or control.

- (3) The Inquiry Board may keep a document produced to it under this section for as long as the Board considers it necessary to complete the inquiry.
- (4) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

Penalty: If the offender is a natural person – \$5 000.

If the offender is a body corporate – \$50 000.

#### **34P Decision on inquiry**

- (1) On completion of an inquiry, the Inquiry Board must:
  - (a) decide, in accordance with section 34S, whether or not a building practitioner the subject of the inquiry is guilty of professional misconduct; and
  - (b) if the practitioner is guilty – decide the action to be taken under section 34T and whether or not to take additional action under section 34U.
- (2) As soon as practicable after making the decision, the Inquiry Board must give written notice of the decision to:
  - (a) the Director;
  - (b) the building practitioner; and
  - (c) if the matter inquired into was referred to the Board under section 33(1) or 34(1)(b) – the complainant in the investigation.
- (3) The notice must set out:
  - (a) the reasons for the decision; and
  - (b) the procedure for commencing an appeal under Division 4.

#### **34Q Costs**

- (1) If the Inquiry Board decides that a building practitioner the subject of an inquiry is not guilty of professional misconduct, the Board may order the Territory to pay all or a specified part of the practitioner's reasonable costs.
- (2) The costs ordered to be paid are recoverable as a debt due to the building practitioner by the Territory.



**34R Publication of decision**

- (1) The Inquiry Board may give a copy of its decision in an inquiry to:
  - (a) a professional or trade organisation of which the building practitioner the subject of the inquiry is a member; or
  - (b) the practitioner's employer.
- (2) The Inquiry Board must not give an organisation or employer a copy of the decision until after the building practitioner has been notified of the decision under section 34P(2).
- (3) The Inquiry Board, or an organisation or employer who is given a copy of a decision under subsection (1), may publish a copy or report of the decision in whatever manner the Board, organisation or employer considers appropriate.
- (4) The Inquiry Board, organisation or employer is not civilly or criminally liable for publishing in good faith a copy of, or a fair and accurate report of, the decision.

**Division 3B Professional misconduct and disciplinary action**

**34S Professional misconduct**

A building practitioner is guilty of professional misconduct if, on completion of an inquiry, the Inquiry Board is satisfied on the balance of probabilities that the practitioner:

- (a) has committed an offence against this Act or the Regulations;
- (b) is guilty of a pattern of negligent or incompetent conduct or serious negligence or incompetence in carrying out particular work;
- (c) has authorised or permitted an employee, or another person engaged to do work on the practitioner's behalf, to work as a building practitioner in a category of building practitioner in which the employee or other person is not registered;
- (d) obtained his or her registration by fraud or misrepresentation;
- (e) has had his or her authority to practise as a building practitioner in a place outside the Territory cancelled or suspended, otherwise than for failure to renew the authority;
- (f) is guilty of conduct referred to in section 33(1)(a) or (b) or 34E(1)(a) or (b); or

(g) is otherwise guilty of professional misconduct.

#### **34T Disciplinary action by Inquiry Board**

If, on completion of an inquiry, the Inquiry Board decides under section 34P(1)(a) that a building practitioner is guilty of professional misconduct, the Board may take any of the following actions in relation to the practitioner:

- (a) reprimand the practitioner;
- (b) require the practitioner to pay all or a specified part of the reasonable costs of the Director in the inquiry;
- (c) require the practitioner to give an undertaking to do, or not to do, a specified thing:
  - (i) at any time or during any period; or
  - (ii) at a specified time or during a specified period;
- (d) require the practitioner to pay to the Territory a civil penalty not exceeding \$5 000;
- (e) suspend the practitioner's registration for a specified period (not exceeding 3 years);
- (f) cancel the practitioner's registration.

#### **34U Inquiry Board may direct audit**

In addition to any action under section 34T, the Inquiry Board may direct the Director to audit the building practitioner's work or conduct or both.

#### **34V Recovery of civil penalty**

A civil penalty imposed under section 34T(d) is recoverable as a debt due to the Territory by the building practitioner.

#### **34VA Suspension where building practitioner no longer meets registration requirements**

- (1) The Practitioners Board must, by order, suspend the registration of a building practitioner if it is satisfied that the building practitioner has ceased to comply with the qualifications or other requirements for registration.
- (2) A suspension under subsection (1) remains in force until the Board is satisfied that the building practitioner has complied with the qualifications or other requirements for registration.

- (3) As soon as practicable after deciding to order a suspension under subsection (1), the Practitioners Board must give written notice of the decision.
- (4) The notice must set out:
  - (a) the reasons for the decision; and
  - (b) the procedure for commencing an appeal under Division 4.

**34VB Returning registration certificate after registration suspended or cancelled**

A building practitioner must, not later than 14 days after his or her registration is cancelled or suspended, deliver to the Practitioners Board the registration certificate issued under section 24H.

Penalty: \$1 000.

**34W Effect of suspension**

The suspension of the building practitioner's registration has, during the period of suspension, the same effect as the cancellation of the registration.

**Division 4 Appeals**

**35 Appellable decisions**

Each of the following decisions of the Practitioners Board is an appellable decision:

- (a) a decision under section 24 to register or refusing to register a person in a category of building practitioner (other than the category of building contractor);
- (b) a decision under section 24B or 24C registering or refusing to register a person in the category of building contractor;
- (c) a decision under section 24F renewing or refusing to renew the registration of a person;
- (d) a decision under section 34P that a building practitioner is or is not guilty of professional misconduct;
- (e) a decision under section 34P to take or not to take an action under section 34T or 34U;
- (f) a decision under section 34VA to suspend the registration of a building practitioner.

### **36 Appeal to Local Court**

- (1) Subsection (2) applies to a person who is entitled to be notified of an appellable decision under section 24FB(2), 34P(2)(a) or (b) or 34VA(3).
- (2) The person may, within 30 days after being notified of the decision, appeal to the Local Court against the decision.

### **36A Nature of appeal**

- (1) Subject to subsection (2), the appeal is to be a rehearing of the evidence before the Practitioners Board.
- (2) The Local Court may admit evidence that was not before the Practitioners Board only if the Court is satisfied there were special reasons that prevented its presentation before the Board.

### **36B Determination of appeal**

- (1) In determining the appeal, the Local Court may:
  - (a) confirm the appellable decision;
  - (b) vary the appellable decision; or
  - (c) set aside the decision and substitute another decision that could have been made instead of the appellable decision.
- (2) The Court may give the orders it considers appropriate to give effect to its decision under subsection (1).
- (3) A decision of the Court under subsection (1)(b) or (c) is taken to be the decision of the Practitioners Board (except for this Division).

### **36C Decision on appeal is final**

The decision of the Local Court on an appeal is final and is not subject to appeal.

### **36D Operation and implementation of appellable decision**

- (1) Commencing an appeal does not affect the operation or implementation of the appellable decision.
- (2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the appellable decision as the Court considers appropriate to effectively hear and decide the appeal.

- (3) The order:
- (a) is subject to the conditions specified in the order; and
  - (b) has effect:
    - (i) for the period specified in the order; or
    - (ii) if no period is specified – until the Local Court has decided the appeal.

## **Division 5 General**

### **37 Certificates to be displayed**

A building practitioner shall display his, her or its certificate of registration in a conspicuous place at the building practitioner's principal place of business in the Territory.

Penalty: \$1,000.

## **Part 4 Building certifiers**

### **Division 1 Private building certifiers**

#### **38 Functions of building certifiers**

- (1) Building certifiers have the following functions:
- (a) to grant building permits and occupancy permits;
  - (b) to issue substantial compliance certificates;
  - (c) any other functions imposed on building certifiers by this Act.
- (2) Subject to this Part, a person other than a building certifier, shall not perform a function referred to in subsection (1) in relation to a building or building work.

Penalty: \$10,000.

#### **39 Other building certifiers not to be engaged**

Subject to sections 43, 44 and 45, a person who has engaged a building certifier to perform a function referred to in section 38(1) in relation to a building or building work shall not engage another building certifier to perform:

- (a) the same function; or

(b) any other function of a building certifier,

in relation to the building or building work, without the consent of the building certifier already engaged.

Penalty: \$5,000.

**40 Building certifier, &c., may rely on certificate of another building practitioner**

A building certifier or the Director may, at any time in performing a function under this Act, rely on a certificate by a building practitioner that building work complies with this Act or the Regulations.

**Division 2 Duties, &c., of building certifiers**

**42 Director to be advised of permits, &c.**

(1) A building certifier who grants a building permit or an occupancy permit shall:

(a) maintain at his or her principal place of business in the Territory a register of building permits and occupancy permits in an approved form;

(b) enter in the register a record of every such permit granted by the building certifier; and

(c) provide to the Director within 7 days after the permit is granted or subsequently amended, a copy of the permit, or the permit as amended, together with such other documents, if any, as are prescribed.

Penalty: \$1,000.

(2) A building certifier shall, on demand by the Director, produce to the Director the register referred to in subsection (1).

Penalty: \$2,000.

**43 Referrals to Director**

(1) A building certifier engaged to perform a function of a building certifier under this Act may, at any time with the consent of the Director, refer the engagement to the Director for the performance by the Director of the function.

(2) A referral under subsection (1) may be made without the consent of the owner or occupier of the land or building in or on which the building work is being carried out or of the builder concerned.

- (3) The building certifier shall pay to the Director such fees, costs or expenses in relation to the referral as are agreed with the Director.

**44 Referrals to other building certifiers**

A building certifier engaged to perform a function of a building certifier under this Act may, at any time with the agreement of the other building certifier, refer the engagement to another building certifier for the performance by the other building certifier of the function.

**45 Removal, &c, of building certifier**

- (1) A building certifier who has not completed the functions for which the building certifier was engaged shall not be removed from that engagement by the owner except with the consent of the Director.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

- (2) Where a building certifier resigns from an engagement or dies or becomes incapable for any other reason of performing the functions for which the building certifier was engaged, the owner may, with the consent of the Director, refer the matter to the Director or seek the Director's consent to the engaging of another building certifier.
- (3) An owner shall not engage another building certifier in circumstances referred to in subsection (2) except with the consent of the Director.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

**Division 4 Approvals for public assembly places, &c.**

**47 Building certifier to refer applications to Director**

- (1) A building certifier shall, as soon as practicable after he or she receives an application for an occupancy permit for a prescribed place of public assembly or a place of a prescribed class of places of public assembly, refer the application, and any related building application made to the building certifier, to the Director to be determined by the Director.
- (2) The building certifier shall cause written notice of a referral under subsection (1) to be given to the applicant.

- (3) The Director may remit a related building application to the building certifier for determination by the building certifier if the Director is of the opinion that it is appropriate for the application to be determined by the building certifier.

## **Division 5      Approvals, &c., by Director**

### **48      Director may exercise functions relating to building approvals, &c.**

The Minister may, by notice in the *Gazette*, direct that the Director may perform such of the functions of a building certifier as are specified in the notice and the Director may perform those functions accordingly.

## **Part 5            Building standards**

### **49      Building Regulations – general power**

- (1) Regulations made under section 168 may establish standards and requirements for buildings and the carrying out of building work.
- (2) Standards established by the Regulations may be expressed in terms of performance, types and material or methods of construction, or in such other terms as the Administrator thinks fit.
- (3) The Regulations may apply to existing buildings, whether or not building work is being or is proposed to be carried out on the buildings.

### **50      Building Regulations – safety matters**

The Regulations may provide for matters affecting the safety of existing or proposed buildings, whether or not building work is being or is proposed to be carried out on the buildings and, in particular, may provide for:

- (a) the provision, installation, operation, maintenance and replacement of materials, equipment, services and other items in existing or proposed buildings so as to ensure safety;
- (b) the provision, installation, operation, maintenance and replacement of ventilation, lifts, emergency lighting, emergency power, emergency intercommunication systems, fire fighting equipment and other emergency equipment and services;
- (c) the prevention of, and precautions against (and in the event of), life threatening emergencies;



- (d) fire prevention and precautions; and
- (e) the provision of certificates as to compliance with any or all of the Regulations.

## **51 Application of new regulations**

- (1) A regulation or amendment to a regulation does not apply to building work for which a building permit is granted under this Act before the commencement of the regulation or amendment.
- (2) A regulation or amendment to a regulation does not apply to building work in respect of which a building certifier has certified in writing that substantial progress was made on the design of the building before the commencement of the regulation or amendment.
- (3) Notwithstanding subsections (1) and (2), a building certifier and the owner of a building may agree that a regulation or amendment to a regulation is to apply to building work referred to in those subsections and it shall apply accordingly.

## **52 Codes, &c.**

- (1) The Regulations may incorporate by reference, either wholly or in part and with or without modification, any standards, codes, rules, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body, whether or not it is a Territory authority or body.
- (2) A code or standard adopted under this section may require anything referred to in the code or standard to be in accordance with any other code or standard referred to in the code or standard so adopted.
- (3) The Director:
  - (a) shall cause a copy of every adopted code and standard, and every code or standard referred to in an adopted code or standard, to be available for inspection by members of the public at the office of the Director, without charge, during normal office hours; and
  - (b) may cause copies of every adopted code and standard, and every code or standard referred to in an adopted code or standard, or any part of an adopted code or standard or a code or standard referred to in an adopted code or standard, to be available for purchase by members of the public on payment of such charge as the Director requires.

**53 Accreditation of building products, &c.**

- (1) A building product, construction method, design, component or system accredited by a person or body prescribed for the purposes of this section is accredited for the purposes of this Act.
- (2) The accreditation is subject to such conditions or variations, if any, imposed by the person or body from time to time and remains in force until the accreditation is revoked by the person or body.

**54 Effect of accreditation**

- (1) A building certifier shall not refuse to approve building work on the ground that a building product, construction method, design, component or system connected with the building work is unsatisfactory if the product, method, design, component or system is accredited by a prescribed person or body and it complies with the accreditation.
- (2) The Regulations may provide for the issue of certificates of accreditation for building products, construction methods, designs, components and systems accredited by a person or body.

**Part 6 Building permits**

**Division 1 Building permit required**

**55 Building permit required**

A person shall not carry out building work unless a building permit in respect of the work has been granted and is in force under this Act and the work is carried out in accordance with the permit.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

**Division 2 Applications for building permits**

**56 Who may make application**

An application for a building permit may be made to a building certifier by the owner of the building or the land in or on which the building work is to be carried out or by the owner's agent.

**57 Schedule 3 to apply**

Schedule 3 applies to and in relation to an application for a building permit, and a permit, under this Part.

**58 Further information may be requested by building certifier**

- (1) Before a building certifier grants or refuses to grant a building permit, he or she may require the applicant for the permit to provide additional information or documents or to amend the application.
- (2) If additional information, or a document or an amended application, required under subsection (1) is not supplied within the prescribed time, the building certifier may treat the application as having lapsed.

**Division 3 Approvals**

**59 Act and *Building Regulations*, &c., to be complied with**

- (1) A building certifier shall not grant a building permit unless:
  - (a) the building work and the building permit will comply with this Act and the Regulations;
  - (b) all relevant planning or other prescribed consents, reports or approvals, if any (including consents or reports referred to in clause 5 of Schedule 3), have been obtained or are to be granted or supplied concurrently with the building permit; and
  - (c) all planning or other prescribed conditions, if any, will be complied with.

Penalty: \$10,000.

- (2) A building certifier shall not, in granting a building permit, impose on the applicant lesser standards or requirements than those prescribed, unless permitted to do so by or under this Act.

Penalty: \$10,000.

**60 Historic buildings**

- (1) Notwithstanding section 59, a building certifier may grant a building permit for the carrying out of building work that does not comply with the Regulations if the building work is to be carried out on, or in connection with, a building designated as historic by a prescribed person or body and then only subject to such conditions, restrictions or protections, if any, as are imposed by the person or body.
- (2) Any such building permit may be granted to enable the carrying out of work appropriate to the style, manner of construction and materials of the building.

## **Part 7                    Commencement, inspection and certification of building work**

### **61                    Building work to be insured**

A person shall not commence or continue to carry out building work on a building of a prescribed class of buildings unless:

- (a) the person holds a type or class of approved policy of insurance against failure to carry out the building work due to negligence or reasons beyond his or her reasonable control; and
- (b) the building work, when complete, is covered by an approved policy of insurance against non-compliance with the Regulations.

Penalty:            In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

### **62                    Notification during building work**

- (1) Before building work is commenced the building certifier who granted the building permit for the work shall, in writing, notify the person who is to carry out or be in charge of the carrying out of the building work the stages (***inspection stages***), if any, of the building work on the completion of which the person shall notify the building certifier.
- (2) The Regulations may prescribe inspection stages on the completion of which a person carrying out or in charge of the carrying out of the building work shall notify the Director or the relevant building certifier.
- (3) A person required under subsection (1) or (2) to notify a building certifier or the Director shall not carry out any building work after completing an inspection stage until:
  - (a) the building certifier or the Director, as the case may be, has advised the person that the building work may proceed; or
  - (b) the building work, completed to that inspection stage, has been inspected in accordance with section 63.

Penalty:            \$1,000.

### **63            Inspections**

- (1) Subject to subsection (3), a building certifier or the Director may, at any reasonable time, on being notified under section 62 that an inspection stage has been completed, inspect the building work concerned.
- (2) Subject to subsection (3), the building certifier or the Director may inspect building work at any time, whether or not an inspection stage under section 62 has been completed.
- (3) A building certifier or the Director may inspect building work only with the owner's consent or if otherwise permitted to do so by or under this Act.

### **64            Directions as to work**

- (1) The building certifier or the Director may, after inspecting building work, direct the person carrying out the work or in charge of the carrying out of the work to carry out work so that the building work complies with the relevant building permit, this Act or the Regulations, as the case requires.
- (2) Where a person fails to comply with a direction under this section, the building certifier or the Director who gave the direction may cause a building notice to be served under Part 10 or may take any other action permitted by this Act or the Regulations.

## **Part 8            Occupancy permits**

### **Division 1        Occupancy permits required**

#### **65            Occupancy permit to be obtained**

- (1) A person shall not occupy a building in or on which building work is carried out after the commencement of this Act unless an occupancy permit or an approval to occupy on a temporary basis has been granted, or the Regulations provide that an occupancy permit is not required, for the building.
- (2) A person shall not occupy a building in contravention of the occupancy permit or an approval to occupy on a temporary basis granted in relation to the building.

Penalty for an offence against this section:

In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

**66            Buildings, &c., not to be used for public assembly without occupancy permit**

- (1) A person shall not promote or conduct a public assembly in a place, building or temporary structure unless an occupancy permit has been granted which permits its use for that purpose.
- (2) The occupier of a place, building or temporary structure shall not permit the place, building or temporary structure to be used for the purpose of a public assembly unless an occupancy permit has been granted for that purpose.

Penalty for an offence against this section:

In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

**Division 2            Applications for occupancy permits**

**67            Who may make application**

- (1) An application for an occupancy permit shall be in writing and may be made to a building certifier by the owner of a building or by the owner's agent.
- (2) An owner or owner's agent may apply for an occupancy permit:
  - (a) after carrying out building work;
  - (b) if a variation of the existing occupancy permit is sought; or
  - (c) if an occupancy permit is required for any other reason.

**68            Schedule 3 to apply**

Schedule 3 applies to and in relation to an application for an occupancy permit, and the permit, under this Part.

**69            Declaration of builder that permit complied with**

- (1) A building certifier shall not grant an occupancy permit unless the application for the permit is accompanied by a declaration in an approved form stating that the building work to which it relates has been carried out in accordance with the permit .

Penalty:        \$10,000.

- (2) A building certifier is not required to inquire whether a person who gives a declaration under subsection (1) is the person who carried out the building work.

### **Division 3           Occupancy permits**

#### **70           Building to be suitable for occupation**

A building certifier shall not grant an occupancy permit unless the building concerned is suitable for occupation.

Penalty:       \$10,000.

#### **71           Occupancy permits**

An occupancy permit may apply to the whole or part of a building and shall specify:

- (a) the classification of the building or part of the building to which it applies; and
- (b) such of the prescribed conditions as apply in relation to the building or parts of the building.

#### **72           Effect of occupancy permits**

An occupancy permit is a certificate that the building or part of the building to which it applies is suitable for occupation. It is not a certificate that the building complies with this Act and the Regulations.

#### **73           Regulations – occupancy permits, &c**

Regulations made under section 168 may relate to occupancy permits, may provide for applications for occupancy permits for the change of the use of a building and may provide for the control, regulation and standards for places of public assembly, temporary structures and related building applications.

### **Division 4           Temporary occupation**

#### **74           Temporary occupation of buildings**

- (1) Notwithstanding anything in this Act or the Regulations, a person may, with the approval of a building certifier, occupy on a temporary basis a building for which a building permit has not or could not be granted.

- (2) An application for an approval to occupy a building on a temporary basis may be made to a building certifier by the owner of the building or by the owner's agent.

**75      Schedule 3 to apply**

Schedule 3 applies to and in relation to an application for an approval to occupy a building on a temporary basis, and an approval, under this Division.

**76      Conditions**

- (1) An approval to occupy a building on a temporary basis shall specify the period for which occupancy is permitted.
- (2) An approval to occupy a building on a temporary basis shall not be granted for a period exceeding 6 months without the approval of the Director.

**Part 9                      Protection of adjoining of property**

**77      Protection work to be carried out**

- (1) The owner of land or a building on or in which he or she is carrying out or proposes to carry out building work shall, in the prescribed circumstances, protect an adjoining property by carrying out protection works.
- (2) A building certifier shall not grant a building permit for building work in the circumstances referred to in subsection (1) unless this Part is complied with.

Penalty:      \$10,000.

**78      Notice of building work to be given**

- (1) A relevant person required by section 77 to carry out protection works shall, before commencing the building work, notify the owner of an adjoining property of the proposed building work.
- (2) A notice under subsection (1) shall include:
  - (a) details of the proposed building work as at the date of the notice;
  - (b) details of the proposed protection works setting out its nature, location and duration; and



- (c) the name and principal place of business in the Territory of the building certifier who granted the building permit for the proposed building work.

### **79 Owner of adjoining property to respond to notice**

- (1) The owner of an adjoining property shall, not later than 14 days after receiving notice under section 78, notify the relevant person that the owner agrees to or disagrees with the proposed protection works or requests that the proposal be changed.
- (2) An owner of an adjoining property who fails to respond within 14 days after receiving a notice under section 78 shall be taken to have agreed to the proposed protection works being carried out.

### **80 Effect of agreement**

A relevant person required by section 77 to protect an adjoining property may, in accordance with this Act, proceed to carry out building work if the owner of the adjoining property agrees to the proposed protection works being carried out.

### **81 Effect of disagreement**

- (1) If the relevant person is notified by the owner of an adjoining property that the owner disagrees to the proposed protection works being carried out, the relevant person shall refer the proposal for the protection works to the Director and notify the owner of the adjoining property of the referral.
- (2) On receiving the referral, the Director shall examine the proposal for the protection works and determine whether the work is appropriate.
- (3) The Director may make such inquiries and request such additional information as the Director thinks fit for the purpose of making a determination, but need not give a party a hearing.
- (4) The Director shall give the relevant person and the owner of the adjoining property notice in writing of the determination.

### **82 Appeals**

- (1) The relevant person or the owner of an adjoining property may appeal to the Appeals Board against the determination of a building certifier or the Director in relation to protection works.
- (2) An appeal under subsection (1) shall be in accordance with Part 11.

**83 Decisions of Appeals Board on appeals**

On an appeal under section 82(1), the Appeals Board may determine what protection works are to be carried out by the person who is required by section 77 to protect an adjoining property and any other necessary ancillary matters.

**84 Work not to be carried out until protection requirements met**

- (1) A relevant person required by section 77 to protect an adjoining property shall not carry out any building work giving rise to that requirement until the owner of the adjoining property agrees to the protection works being carried out or the matter is determined in accordance with section 81 or 82.
- (2) Protection works carried out by a person shall be carried out by the person in accordance with:
  - (a) the agreement;
  - (b) the determination of the Director; or
  - (c) the determination of the Appeals Board,as the case requires.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

**85 Emergency procedures**

- (1) The Director, on the application of the owner of land on which building works are or are proposed to be carried out or, on application of an owner of an adjoining property or on the Director's own motion, may, by notice in writing, declare that emergency protection works are required for a particular adjoining property.
- (2) Sections 79 to 84 (inclusive) do not apply to protection works to be carried out in accordance with such a declaration under subsection (1).
- (3) Where the owner and the owner of an adjoining property disagree as to works to be carried out under a declaration, either party may refer the matter to the Appeals Board which may determine what protection works are to be carried out and any necessary ancillary matters.
- (4) A referral under subsection (3) shall be in accordance with Part 11.

**86 Emergency protection works**

Emergency protection works carried out by a person shall be carried out in accordance with:

- (a) the agreement;
- (b) the declaration of the Director; or
- (c) the determination of the building Appeals Board,

as the case requires.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

**87 Absent or incapable owners**

- (1) Where the owner of an adjoining property required to be notified of proposed building work cannot be found or is unable to act, the relevant person may apply to the Director for the appointment of a person to act for the owner during the owner's absence or incapacity.
- (2) An application under subsection (1) shall indicate the circumstances of the case and the grounds of the application.

**88 Appointment of agents for owners**

- (1) Where the Director is satisfied that the owner of an adjoining property cannot, after reasonable inquiry and search, be found or that the owner is incapable of acting in the matter of an agreement under this Part, the Director may, in writing, appoint a suitable person to act as the agent of and in the place of the owner of the adjoining property for the purposes of this Part.
- (2) An appointment under subsection (1) shall be subject to such terms and conditions as to the discharge of the person's duties as agent and as to the payment of fees by the owner of the adjoining property, and otherwise, as the Director thinks fit.
- (3) An agent appointed under this section shall be notified in writing of the appointment, the nature of the agent's duties, the fees to be paid to the agent by the owner of the adjoining property and the terms and conditions, if any, to which the appointment is subject.

**89 Liability not affected**

Nothing in this Part relieves a relevant person from any liability to which the relevant person would otherwise be subject for injury to an owner or occupier of adjoining property because of the protection works carried out by the relevant person under this Part, but the relevant person has the right to complete the works without being subject to proceedings for an injunction.

**90 Inspection of plans**

At any time after notice of intention to commence the carrying out of building work is given under this Part, the building certifier shall, without further or other authority than this section, make available to an owner of an adjoining property notified under section 78, or the owner's agent, on reasonable request, for inspection, any drawings and specifications of the proposed building works in the possession or control of the building certifier.

**91 Building owner to arrange insurance cover**

- (1) A relevant person who is required to carry out protection works under this Part shall, before commencing the works, enter into a contract of insurance, in accordance with this section, with an approved insurer (and renew and maintain that contract in accordance with this section) against damage by the proposed protection works to the adjoining property and against any liabilities likely to be incurred to owners and occupiers of adjoining property and members of the public.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

- (2) The contract of insurance shall be to an amount agreed to by the parties or, where the parties cannot agree, determined by the Director.
- (3) The contract of insurance shall be given to the owner of the adjoining property before the commencement of the works and shall be renewed or extended as often as is necessary during the carrying out of the works and for 12 months after the works are finished.

**92 Record of condition of adjoining property**

- (1) A relevant person shall, before carrying out protection works, in company with the owner of the adjoining property or the owner's agent, make a full and adequate survey of the adjoining property and a record in writing and, if the parties so agree, by any other

means, of all existing cracks and defects in the adjoining property.

- (2) The record shall be signed or otherwise acknowledged as an agreed record of the condition of the adjoining property before the commencement of any protection works.
- (3) The record is admissible in evidence in any proceedings relating to the adjoining property and is evidence of the condition of the adjoining property at the time the record was made.

### **93 Work to conform to Regulations, &c.**

- (1) All protection works for an adjoining property shall be carried out by the relevant person required to carry out the protection works as quickly as possible in the circumstances and in compliance with the Regulations and with the drawings and specifications agreed to between the parties.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

- (2) In proceedings under this Part with respect to the execution of protection works for an adjoining property under this Part, the statement of the Director as to whether or not the Regulations or the drawings or specifications have been complied with is admissible as evidence.

### **94 Entry on adjoining property to carry out protection works**

- (1) For the purpose of carrying out protection works required to be carried out under this Part or the Regulations, a relevant person required to carry out the protection works, or the relevant person's agent, may enter between the hours of 8 a.m. and 6 p.m. on the same day (or at other agreed times) in or on, or into the air space above, the relevant adjoining property and carry out the works.
- (2) A person shall, before entering an adjoining property, give to the occupier of the property not less than 24 hours' notice, or such other notice as is agreed between them, of the person's intention to do so.

Penalty: \$1,000.

- (3) In the course of carrying out protection works under this Part, a person may, without doing unnecessary damage, move any furniture or fittings in the adjoining property which obstruct the carrying out of the works.

**95 Offences by adjoining owner**

- (1) An owner or occupier of an adjoining property shall not refuse to admit a relevant person or a relevant person's agent to the property where the person or the person's agent requires to enter the property for the purposes of carrying out protection works under this Part in accordance with an agreement, declaration or determination.
- (2) An owner or occupier of an adjoining property shall not obstruct or hinder a relevant person or the relevant person's agent in the carrying out of protection works required under this Part.

Penalty: \$1,000.

**96 Lodgment of plans, &c., after completion of work**

A relevant person shall, not later than 28 days after the completion of any protection works carried out under this Part, serve on the owner of the adjoining property and the Director a complete set of drawings and specifications showing the protection works which have been carried out for the adjoining property.

**97 Saving for easements**

Nothing in this Part relating to protection (except for overhead protection) authorises interference with an easement of light or other easement in or relating to a party wall or prejudicially affects the right of a person to preserve a right in connection with a party wall which is demolished or rebuilt or to take a necessary step for that purpose.

**98 Expenses of adjoining owner**

- (1) The costs and expenses necessarily incurred by an owner of an adjoining property in supervising the carrying out of protection works under this Part is, to the extent agreed between the relevant person and the owner of the adjoining property, or as determined by the Appeals Board, a debt due and payable by the relevant person to the adjoining owner.
- (2) A relevant person or the owner of an adjoining property may apply under Part 11 to the Appeals Board for a determination for the purposes of this section.

**99 Compensation**

- (1) A relevant person is liable to compensate an owner or occupier of adjoining property for inconvenience, loss or damage suffered by the owner or occupier during the execution of protection works under this Part.
- (2) An owner or occupier of adjoining property who suffers such inconvenience, loss or damage may apply to the Appeals Board for determination of the question and the amount of compensation payable.
- (3) The amount of compensation determined by the Appeals Board is a debt due and payable by the relevant person to the owner or occupier, as the case requires, of the adjoining property.

**Part 10 Enforcement of safety and building standards**

**Division 1 Emergencies**

**100 Emergency orders**

- (1) Where in the opinion of the Director it is necessary to do so because of a threat to life arising out of:
  - (a) the condition or use of; or
  - (b) the conduct, or proposed conduct, of a public assembly in, a building, place or temporary structure, the Director may, in writing, make an emergency order.
- (2) An emergency order made under subsection (1) may require the owner of a building, place or temporary structure, or the owner's agent:
  - (a) to evacuate the building, place or temporary structure or a specified part of it;
  - (b) not to conduct or promote, or allow the conduct or promotion, of a public assembly on or in the building, place or temporary structure or a specified part of it, or to immediately cease to conduct or promote such a public assembly;
  - (c) to stop work or to carry out building work or other work; and/or
  - (d) to comply with such directions as are specified in the order.

- (3) An emergency order made under subsection (1) also may prohibit:
- (a) the occupation of a building, place or temporary structure; or
  - (b) the use of a building, place or temporary structure or a specified part of it, for the purpose of a public assembly.

#### **101 Work may be carried out by Director**

- (1) If an owner fails to carry out work as required by an emergency order, the Director may carry out the work.
- (2) The costs and expenses incurred by the Director in carrying out work referred to in subsection (1) are a debt due and payable by the owner to the Territory.

#### **102 Police assistance**

The Director or other person exercising the functions of the Director under this Division may request the assistance of a member of the Police Force, and a member of the Police Force may assist, in evacuating a building, place or temporary structure in accordance with an emergency order or in removing persons from a building, place or temporary structure in or on which the Director or person is carrying out work in accordance with an emergency order.

#### **103 Completion of work**

- (1) On completion of work required by an emergency order to be carried out, the owner or the owner's agent shall notify the Director in writing and include with the notification such information relating to the building, place or temporary structure as is required by the Director.
- (2) The Director shall inspect the completed work and report to the owner or the owner's agent that the order has been complied with and cancel the order, or refuse to make such a report and require the order to be complied with.

#### **104 Appeals**

- (1) An owner of a building, place or temporary structure affected by an emergency order, or an owner's agent, may appeal to the Appeals Board, in accordance with Part 11, against the order or against a refusal of the Director to make a report that an emergency order has been complied with.
- (2) On an appeal under this section, the Appeals Board may confirm, amend or cancel the emergency order.



**105            Duration of order**

- (1) Subject to subsection (2), an emergency order remains in force until it is cancelled by the Director or the Appeals Board.
- (2) The Director shall not cancel an emergency order in respect of which an appeal under section 104 is not finally disposed of.

**106            Contravention of emergency order**

- (1) A person shall not contravene or fail to comply with an emergency order.

Penalty:            In the case of a natural person – \$10,000 or imprisonment for 6 months.

In the case of a body corporate – \$50,000.

- (2) It is a defence to a prosecution for an offence against this section if the defendant proves that he or she was not aware of the fact that a public assembly in respect of which the offence arose was the subject of an order under this Division.

**Division 2            Building notices and orders**

**107            Fire hazards**

For the purposes of this Division, a building, place or temporary structure is or contains a fire hazard if it has insufficient:

- (a) means of escape in the event of fire for the persons occupying or using it;
- (b) protection to delay the spread of fire or smoke or both or to facilitate escape from it;
- (c) devices, appliances and equipment for the detection and extinguishing of fire; or
- (d) means of preventing fire or the spreading of fire.

## **108 Building notices**

The Director may serve a building notice, in accordance with the prescribed form, on an owner of a building, place or temporary structure, or on the owner's agent, if the Director is of the opinion that:

- (a) building work has been carried out on the building, place or temporary structure without a building permit required by this Act or in contravention of a building permit or this Act or the Regulations;
- (b) its use contravenes this Act, the Regulations or the occupancy permit granted in relation to it;
- (c) it is unfit for use or occupation; or
- (d) it is a danger to its users or the users of adjoining properties or streets.

## **109 Building notices by building certifiers**

A building certifier may serve a building notice, in accordance with the prescribed form, on the owner of a building (other than a public authority) or the owner's agent in relation to which the building certifier is performing a function under this Act if of the opinion that any one of the circumstances specified in section 108 exists.

## **110 Contents of notices**

A building notice may require the owner of a building, place or temporary structure, or the owner's agent, to show cause, within the period specified in the notice, why occupation of the building, place or temporary structure, or its use for a public assembly, should not be prohibited, or why the owner or agent:

- (a) should not evacuate the building, place or temporary structure;
- (b) should be allowed to conduct or promote, or allow the conduct or promotion, of a public assembly or should not immediately cease to conduct or promote a public assembly on or in the building, place or temporary structure;
- (c) should not operate or carry out building work or other work on or in the building, place or temporary structure; and/or
- (d) should not comply with such directions as are specified in the order.

### **111 Representations by owner**

An owner of a building, place or temporary structure in respect of which a building notice is issued, or the owner's agent, may, in the manner and within the time specified in the notice, make representations to the Director, or to the building certifier concerned, about the matters contained in the notice.

### **112 Building orders**

- (1) The Director or a building certifier may make a building order, in accordance with the prescribed form, after the time allowed under section 111 for making representations has expired.
- (2) Before making a building order, the Director or building certifier shall consider the representations, if any, made to him or her under section 111.
- (3) The Director or a building certifier may make a building order requiring building work or other work to be carried out without first serving a building notice if the Director or building certifier is of the opinion that the building work required to be carried out is of a minor nature.

### **113 Contents of building orders**

A building order may prohibit the occupation of a building, place or temporary structure or its use for a public assembly, or require its owner or the owner's agent:

- (a) to evacuate the building, place or temporary structure or a specified part of it;
- (b) to stop work or to carry out building work or other work on or in it; and/or
- (c) to comply with such other directions as are specified in the order.

### **114 Building orders to stop building work**

- (1) Where, in the opinion of the Director, building work on land contravenes this Act or the Regulations, is a danger to the public or affects the support of adjoining property, the Director may make a building order requiring the owner or other person carrying out the work to stop the work, notwithstanding that a building notice has not been served.
- (2) The Director shall serve a copy of the order on a person apparently in charge of a site on which the building work is being carried out.

**115 Director to be notified**

A building certifier who makes a building order shall, within 2 days after making it, provide a copy of the order to the Director.

Penalty: \$1,000.

**116 Fire upgrading reports**

- (1) Where the Director is of the opinion that a building, place or temporary structure is or may contain a fire hazard, the Director may inspect the building, place or temporary structure and prepare a fire upgrading report as to the work necessary to overcome the hazard.
- (2) A fire upgrading report shall, if a fire hazard is found to exist, contain a program for work to remedy the hazard and any other prescribed matters.
- (3) The Director shall serve a copy of a fire upgrading report on the owner of the building, place or temporary structure or the owner's agent.

**117 Assistance of Fire Service**

The Director may ask the Northern Territory Fire and Rescue Service established by the *Fire and Emergency Act* to assist in the preparation of a fire upgrading report.

**118 Representations by owner**

An owner of a building, place or temporary structure in respect of which a fire upgrading report is issued, or the owner's agent, may, in the manner and within the time specified in the report, make representations to the Director about the matters contained in the report.

**119 Building orders relating to fire hazards**

- (1) Subject to section 114(1), the Director may make a building order in relation to a building, place or temporary structure in respect of which a fire upgrading report is issued, after the time allowed under section 118 for making representations has expired.
- (2) A building order made under subsection (1) shall direct the owner of the building, place or temporary structure concerned, or the owner's agent, to carry out a program of work as directed and may contain any other prescribed matters.

**120            Failure to comply with order of building certifier**

- (1) Where an owner or an owner's agent fails to comply with a building order made by a building certifier, the building certifier shall refer the matter to the Director and give written notice of the referral to the owner or the owner's agent, as the case may be.
- (2) The Director may deal with the matter as if the building order had been made by the Director.

**121            Work may be carried out by Director**

- (1) Where an owner or an owner's agent fails to carry out work as required by a building order, the Director may carry out the work.
- (2) The costs and expenses incurred by the Director in carrying out work referred to in subsection (1) are a debt due and payable by the owner to the Territory.

**122            Police assistance**

The Director or a person performing the functions of the Director may request the assistance of a member of the Police Force, and a member of the Police Force may assist, in removing persons from a building, place or temporary structure in or on which the Director or person, or an agent of the Director or person, is carrying out or is about to carry out work in accordance with a building order.

**123            Completion of work**

- (1) On the completion of work required to be carried out under a building order, the owner, or the owner's agent, shall give written notice of the completion to the building certifier or the Director who made the order.
- (2) A person on whom a notice is served under subsection (1) shall, within 28 days after the receipt of the notice, inspect the completed work and report to the owner or the owner's agent that the order has been complied with and cancel the order, or refuse to make such a report and, in writing, require the order to be complied with.

**124            Appeals**

- (1) An owner of a building, place or temporary structure affected by a building order, or the owner's agent, may, in accordance with Part 11, not later than 28 days after the order is served on him or her, appeal to the Appeals Board against the order.

- (2) An owner, or an owner's agent, may, in accordance with Part 11, within 28 days after being advised of a refusal under section 123(2) to make a report, appeal to the Appeals Board against the refusal.
- (3) On an appeal being made under this section, the Appeals Board may confirm, amend or cancel the building order.
- (4) A building order has no effect until any appeal against the order is finally disposed of.

#### **125 Amendment or cancellation of certain building orders**

- (1) An owner, or an owner's agent, required to comply with a building order made after the issue of a fire upgrading report may, if there is a change in circumstances after the original fire upgrading report is made, request the Director to amend or cancel the building order.
- (2) On a request being made, the Director may:
  - (a) refuse to amend or cancel the building order;
  - (b) issue an amended fire upgrading report; or
  - (c) cancel the fire upgrading report.
- (3) Where, within the prescribed time, the Director has not decided the request, he or she shall be taken to have refused the request.
- (4) An owner or the owner's agent may, in accordance with Part 11, not later than 28 days after the decision of the Director under subsection (2), appeal against the decision.

#### **126 Onus of proof on appeals**

In an appeal to the Appeals Board under this Part in relation to a building order arising out of a fire upgrading notice, the onus of proving a fact on which the building order was issued is on the Director.

#### **127 Duration of order**

- (1) A building order remains in force until it has been complied with or is cancelled by the Director or person who made it or the Appeals Board.
- (2) The Director or person who made the building order shall not cancel the building order while an appeal in relation to the order is not finally disposed of.

**128 Contravention of building order**

A person who contravenes or fails to comply with a building order is guilty of an offence.

Penalty: In the case of a natural person – \$10,000.

In the case of a body corporate – \$50,000.

**129 Register of orders**

The Director shall keep, and make available for inspection at his or her office during normal business hours on payment of the prescribed fee, if any, a register of all building orders made under this Part.

**Part 11 Building appeals**

**Division 1 Appeals**

**130 Who may appeal**

- (1) An appeal referred to in section 19(1)(a) may be made by a person (other than a reporting authority) involved in the dispute (or the person's agent) or by the Director.
- (2) An appeal under subsection (1) shall be made in accordance with this Part.

**130A How appeal is commenced**

- (1) Subject to this Act, an appeal must be commenced not later than 28 days after the date on which notice of the decision appealed against is given.
- (2) An appeal must be in the approved form and lodged with the Appeals Board.

**131 Modification of application of *Building Regulations***

- (1) The Appeals Board may by determination, on application by an owner of land (including a public authority), an owner's agent or the Director, modify the application of the Regulations to land, a building or building work or determine that a provision of the Regulations shall not apply to the land, building or building work or shall apply subject to such conditions as it specifies and, on it so doing, the Regulations shall not apply, or shall apply subject to those conditions, accordingly.

- (2) The Appeals Board may, before making a determination under subsection (1), require a report from a reporting authority on the subject of the application and may not make a determination unless it is satisfied that it is not detrimental to the public interest to do so.
- (3) An application under this section shall be in accordance with this Part.

### **132 Sitings of Appeals Board**

- (1) The Appeals Board shall, for the purpose of performing its functions in relation to a particular matter, consist of such member or members as the Chairman nominates (one of whom he or she shall nominate to preside), but shall not be composed of, or include, the Director or a delegate of the Director if the Director is the appellant or if the matter the subject of the appeal involves an act or decision of the Director or a delegate of the Director.
- (2) More than one sitting of the Appeals Board may be held at any one time.

### **133 Constitution of Appeals Board in a matter**

- (1) Subject to subsection (2), the Appeals Board, while hearing and determining a particular matter, shall be constituted by the same member or members.
- (2) Where a member of the Appeals Board is not available after the Appeals Board has commenced to hear a matter, the Chairman may, on the application of a party, nominate another member (***new member***) to fill the vacancy to enable the hearing to continue.
- (3) Where a new member is nominated under subsection (2) in place of a former member:
  - (a) the new member shall treat any evidence given, document produced or thing done in the course of earlier proceedings in the same manner and in all respects as if it had been given, produced or done in the course of the proceedings by the Appeals Board as constituted with the new member;
  - (b) an interim award or order made in the course of the earlier proceedings shall be deemed to have been made as though made by the Appeals Board as constituted with the new member; and
  - (c) the Appeals Board as constituted with the new member may adopt and act on a determination of a matter made in the course of the earlier proceedings without the new member applying his or her own judgment to the matter,



and the Regulations may make provision for any other matter in relation to the hearing.

**134 Authentication of documents**

A document requiring authentication by the Appeals Board is sufficiently authenticated without the seal of the Board if it is signed by the Chairman or the Deputy Chairman.

**Division 2 Appeals, &c., and procedure**

**135 Procedure generally**

- (1) Except to the extent that they are prescribed, the Appeals Board shall determine its own procedures.
- (2) Hearings of the Appeals Board shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and the Regulations, and the proper consideration of the matters before the Board, permit.
- (3) The Appeals Board is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks fit.

**136 Appeal, &c., to be rehearing**

An appeal, a referral or an application to the Appeals Board shall be dealt with as a fresh hearing, and fresh evidence or fresh information may be given.

**137 Decisions of Appeals Board**

- (1) In addition to any other power conferred on the Appeals Board by or under this Act in relation to an appeal, referral or application, the Board may make any decision or take any action that the person making the original decision could have made or taken in relation to the matter.
- (2) In determining an appeal, referral or application, the Appeals Board is not bound by a previous determination of the Board.

**138 Decision of Appeals Board to be final**

The decision of the Appeals Board in an appeal, referral or application is final and shall have effect accordingly.

**139 Form of appeals and applications**

- (1) An appeal to the Appeals Board shall contain details of the grounds of the appeal and such other particulars, if any, as are prescribed and be accompanied by the prescribed fee.
- (2) An application or referral to the Appeals Board shall contain details of the application or referral and such other particulars, if any, as are prescribed and be accompanied by the prescribed fee.

**140 Decisions – form**

- (1) A determination by the Appeals Board shall be in writing, shall be signed by one member of the Board involved in making the determination and shall be filed in the register by the Registrar.
- (2) The Appeals Board shall, if requested to do so by a party to an appeal, referral or application, give a written statement of its reasons for the determination to the party.
- (3) A person may, on payment of the prescribed fee to the Registrar, inspect a determination of the Board.

**141 Evidence of determinations**

The production in proceedings of a document purporting to be a copy of a determination made by the Appeals Board under this Act and to be signed by the Registrar, is evidence of the due making and existence of the determination.

**142 Enforcement of determinations**

Every determination made by the Appeals Board may, by leave of the prescribed court, be enforced as if it were a judgment or order of the court to the same effect duly made by the court.

**143 Adjournments**

The Appeals Board may, from time to time, adjourn a hearing to such time, date and place, and for such reasons, as it thinks fit.

**144 Hearings to be open**

The hearings of the Appeals Board shall be open to the public, unless otherwise directed by the Board.

**145 Rights of representation**

A party to a hearing before the Appeals Board is, with the consent of the Board, entitled to be represented by another person.

**146 Attendance of witnesses**

- (1) The Appeals Board may, by notice in writing served on a person, require the person to attend at a hearing of the Board for the purpose of giving evidence, or to produce to the Board a document that is relevant to the hearing, at a time, date and place specified in the notice.
- (2) The Board may keep a document produced to it under this section for as long as it considers necessary for the purpose of completing the hearing.
- (3) A person shall not fail to comply with a requirement under this section to attend and give evidence at a hearing or to produce a document, to the extent to which the person is lawfully able to comply with the requirement.

Penalty: \$1,000.

**147 Witnesses to answer questions**

- (1) The Appeals Board may require a person who attends a hearing to answer a question that is reasonably related to the hearing.
- (2) A person shall not refuse to answer a question on the ground that the answer might tend to criminate the person.

Penalty: \$1,000.

**148 Oaths**

- (1) The Appeals Board may require a person who attends a hearing to be sworn for the purpose of giving evidence on oath.
- (2) The Appeals Board may administer an oath to a person who attends a hearing for the purpose of giving evidence.

**149 Costs**

Each party to a hearing before the Appeals Board shall bear their own costs of the hearing, unless the Board otherwise determines.

**Part 12 General enforcement provisions****150 Prosecution of offences**

- (1) Proceedings for an offence against this Act shall not be commenced without the consent of the Director.

- (2) A document purporting to be consent for the purposes of subsection (1) and to be signed by the Director is evidence of that consent.
- (3) A prosecution for an offence against this Act or the Regulations must be commenced within 2 years after the day on which a member of the Police Force, the Director or an authorised officer becomes aware of the commission of the alleged offence.

### **151 Offences by corporations**

- (1) Where a corporation contravenes, whether by act or omission, a provision of this Act or the Regulations, each person being a director of the corporation or a person concerned in the management of the corporation shall be taken to have contravened the same provision unless the person proves that he or she had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.
- (2) A person may be proceeded against and found guilty pursuant to this section whether or not the corporation has been proceeded against or been found guilty.
- (3) Nothing in this section affects the liability imposed on a corporation for an offence committed by the corporation against this Act or the Regulations.
- (4) Without limiting any other law or practice relating to the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had at a particular time, a particular intention, is evidence that the corporation had that intention at that time.

### **152 Additional orders that may be made by the Court**

- (1) The Director may bring proceedings in a prescribed court for an order under this section in the event of a breach, or threatened or apprehended breach, of this Act or the Regulations or a notice or order issued under this Act (including a notice, order or determination of the Appeals Board).
- (2) The court may, if it is satisfied that a breach, or threatened or apprehended breach, has been or will be committed or is likely to be committed, make:
  - (a) an order to restrain the breach or other conduct by the person by whom the breach is committed or by whom the threatened or apprehended breach is likely to be committed;

- (b) an order requiring building work to be carried out;
  - (c) an order requiring the payment of money into court in respect of building work carried out by, or to be carried out by, the Director; and/or
  - (d) any necessary ancillary orders.
- (3) A person may make an application for an order under this section during proceedings for an offence against this Act or the Regulations and an order may be made instead of or in addition to a penalty imposed in those or any other proceedings.
- (4) A person shall not make an application under this section as to a notice, order or other matter that is subject to an appeal to the Appeals Board not finally disposed of.

## **Part 13            Liability**

### **153        Liability of officers, &c.**

- (1) No matter or thing done, or omitted to be done, by:
- (a) the Director;
  - (b) the Advisory Committee or a member of the Advisory Committee;
  - (c) the Practitioners Board or a member of the Practitioners Board;
  - (d) the Appeals Board or a member of the Appeals Board; or
  - (e) a person acting under the direction of the Director, the Practitioners Board or the Appeals Board,

subjects the Director, Committee, Practitioners Board, Appeals Board or person to any action, liability, claim or demand, if the matter or thing was done or omitted to be done in good faith for the purpose of performing a function or executing a power under this or any other Act, or the performance or exercise, or intended performance or exercise, of the functions or powers of the member, Director, Board, Committee or person.

- (2) No matter or thing done or omitted to be done by:
- (a) a building certifier;
  - (aa) the Director; or

- (b) a person performing a function or exercising a power of a building certifier in relation to a public authority,

under this Act in good faith or relying on a certificate under section 40 shall subject the building certifier, Director or person, or the Territory, to any action, liability, claim or demand.

- (3) No matter or thing done by a building certifier under this Act shall subject the Director or the Territory to any action, liability, claim or demand.
- (4) No action or other proceedings may be brought against the Director, the Territory or an employee, as defined in the Public Sector Employment and Management Act with respect to information included in or omitted from a register maintained under this Act.

### **159 Application of limitation on taking action**

- (1) Section 160 applies to an action for damages for economic loss and rectification costs resulting from defective construction of building work or other work carried out under this Act.
- (2) The cause of action may be founded on contract or tort (including a cause of action for damages for breach of a statutory duty) or be a cause of action to recover money recoverable by virtue of this Act.
- (3) Section 160 does not affect a right to recover damages for death or personal injury resulting from defective construction.

### **160 Limitation on time when action may be taken**

- (1) An action is not maintainable by a plaintiff or a person claiming on behalf of a plaintiff if it is brought after the end of a limitation period of 10 years after the date on which the cause of action first accrues.
- (2) The cause of action accrues on the date of the issue of the occupancy permit in respect of the work or, if an occupancy permit is not issued, on the date of first occupation of the building concerned after completion of the work.

### **161 Effect of other legislation**

To the extent to which they are inconsistent with any other law in force in the Territory, the provisions of this Part prevail.

**Part 14            Miscellaneous****162            Access to buildings and land**

- (1) The Minister may appoint persons or classes of persons to be authorised officers.
- (2) Subject to section 163(1), a member of the Police Force or an authorised officer may, at all reasonable times, for the purpose of performing a function or exercising a power of the member of the Police Force or of a building certifier or other person under this Act, or for the purpose of performing a function or exercising the powers of an authorised officer under section 164, enter any land, building, place or temporary structure if the member or person has reasonable grounds to believe that it is necessary to do so for that purpose.

**163            Access to residential premises**

- (1) A person shall not enter a part of a building used for residential purposes without the consent of the occupier of the part or a search warrant.
- (2) Where a member of the Police Force or authorised officer makes a complaint on oath to a Justice to the effect that the member or authorised officer has reason to suspect, and believes, that this Act has or the Regulations have been or is or are being contravened in residential premises, the Justice may, if satisfied that the belief is well founded, authorise by search warrant a member of the Police Force or an authorised officer to enter the premises to search for evidence in relation to the contravention in or on the premises.
- (3) Section 120B(4) to (8), inclusive, of the *Police Administration Act*, with the necessary changes, apply to and in relation to a search warrant issued under subsection (2).

**164            Additional powers of authorised officer**

In addition to his or her powers under this Part, an authorised officer may:

- (a) demand that the owner or occupier of any land, building, place or temporary structure produce any records relating to the building or any building work;
- (b) search for, inspect, take extracts from and make copies of such records; and

- (c) make any inquiry that the authorised officer considers necessary relating to any building work, land, building, place or temporary structure and take samples of materials for the purposes of an inquiry.

### **165 Access where safety of public at risk**

Notwithstanding section 163(1), an authorised officer may enter residential premises at any time if the safety of the public or the occupants is at risk or the residential premises are affected by an emergency order under Part 10.

### **166 Offences**

A person shall not:

- (a) fail or refuse to produce records on being required to do so by an authorised officer in pursuance of section 164;
- (b) make a false or misleading statement in answer to an inquiry in pursuance of that section; or
- (c) assault, delay, obstruct, hinder or impede an authorised officer in the performance of a function or exercise of a power under this Act.

Penalty: \$5,000.

### **166A Certified copies of documents**

- (1) The Minister or the Director may certify that a document is a copy of a document given, issued, made or served by him or her.
- (2) A person may, on application in the approved form and on payment of the prescribed fee, obtain a certified copy of a document.
- (3) A document purporting to be a certified copy of a document is evidence of the document.
- (4) In this section:

***certified copy***, of a document, means a copy of the document certified under subsection (1).

### **167 Evidentiary provisions**

- (1) In proceedings before a court, the court shall take judicial notice of a notice, order or direction purporting to have been given under this Act by the Minister, the Appeals Board or the Director.



- (2) In proceedings before a court, a copy of an adopted code or standard, or a code or standard referred to in an adopted code or standard, or of any part thereof, purporting to be certified by the Director or an officer authorised for the purpose by the Director, is admissible in evidence.

#### **167AA Service of documents**

A document may be served on a person under this Act by any of the following means:

- (a) delivering the document to the person personally;
- (b) sending the document by prepaid post to the person at his or her last-known place of residence or business or, if he or she is carrying on business at 2 or more places, at one of those places;
- (c) sending the document by prepaid post to the person at his or her last-known postal address;
- (d) leaving the document at the last-known place of residence of the person with a person who is apparently living at that place and who is apparently not less than 16 years of age;
- (e) leaving the document at the last-known place of business of the person or, if he or she is carrying on business at 2 or more places, at one of those places with a person who is apparently employed by the person and who is apparently not less than 16 years of age.

#### **167A Approved forms**

- (1) The Minister may approve forms for use under this Act.
- (2) An approved form may be a statutory declaration.

#### **168 Regulations**

- (1) The Administrator may make Regulations, not inconsistent with this Act, prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the Regulations may make provision for or with respect to the matters listed in Schedule 1.

- (3) The Regulations may:
- (a) require a matter affected by the Regulations to be:
    - (i) in accordance with a specified standard or specified requirement; or
    - (ii) approved by or to the satisfaction of a specified person or body or a person or body of a specified class of person or body;
  - (b) confer a discretionary authority on a specified person or body or a person or body of a specified class of person or body; and
  - (c) provide, in a specified case or class of case, for the exemption of persons or things from the application of the Regulations, whether unconditionally or on specified conditions or conditions additionally imposed and either wholly or to such an extent as is specified or otherwise determined.
- (4) The Regulations may contain such incidental, supplementary, savings and transitional provisions as are necessary or convenient.
- (5) The Regulations may impose a penalty not exceeding \$10,000 and, in the case of a continuing offence, an additional penalty not exceeding \$1,000 for each day during which the offence continues, for an offence against or non-compliance with a regulation.

## **Part 15                      Repeals and transitional matters for Building Act 1993**

### **169            Repeal**

The following Acts are repealed:

<i>Building Act 1983</i>	No. 31, 1983
<i>Building Amendment Act 1987</i>	No. 1, 1987
<i>Building Amendment Act 1989</i>	No. 68, 1989

### **170            Matters in process before commencement of this Act**

- (1) Subject to subsection (2) and section 172, the repealed Act shall continue to apply to and in relation to building work approved or commenced before the commencement of this Act and to and in relation to all ensuing rights and liabilities that would have resulted had this Act never commenced, as if this Act had in fact not commenced.

(2) For the purposes of subsection (1), a reference in the repealed Act to:

- (a) the Building Controller includes a reference to the Director;
- (b) the Board includes a reference to the Appeals Board; and
- (c) the Chairman includes a reference to the Chairman of the Appeals Board,

and the Director, the Board and the Chairman have, respectively, all the functions and powers of the Building Controller, the Board and the Chairman under the repealed Act.

### **171 Repeal of Regulations and savings**

- (1) The Regulations in force under the repealed Act immediately before the commencement of this Act are repealed.
- (2) Notwithstanding the repeal referred to in subsection (1), the Regulations remain in force to the extent necessary to give effect to the continued application of the repealed Act in pursuance of section 170.

### **172 Transitional Regulations**

- (1) For the purposes only of ensuring the continuity of rights, liabilities and obligations of persons to or in relation to whom the repealed Act applied immediately before the commencement of this Act, the Administrator may make such Regulations as he or she considers necessary or convenient to be made, notwithstanding that, but for this section, he or she may not have the power to make such Regulations.
- (2) The power given by subsection (1) may be exercised only within one year after the commencement of this Act, but a regulation made in pursuance of it shall remain in force until repealed by Regulations made under this Act.
- (3) Regulations made under this section may be made retrospective to the date of commencement of this Act or any date after that commencement, and shall have effect accordingly.
- (4) To the extent that Regulations made under this section are inconsistent with this Act or the repealed Act, the Regulations shall prevail.

## **Part 15A Building areas before 16 September 2004**

### **172A Retrospective application of declaration**

The declaration under section 6(2) dated 10 September 2004 and published in *Gazette* No. S29 of 16 September 2004, as amended and in force immediately before the commencement of this section, is taken to have come into force on 1 September 1993.

### **172B Validation of things done or omitted before 16 September 2004**

- (1) A thing done or omitted to be done under Parts 4 to 13 (inclusive) in or in relation to a part of the Territory during the validation period is not invalid because a declaration under section 6(2) was not in force (except by virtue of section 172A) in or in relation to that part of the Territory at the time the thing was done or omitted to be done.
- (2) In subsection (1):

**validation period** means the period commencing on 1 September 1993 and ending on 15 September 2004.

## **Part 15C Transitional matters for Part 2 of Building Amendment Act 2005**

### **172H Regulations may contain savings or transitional provisions**

- (1) The Regulations may contain provisions of a savings or transitional nature consequent on the enactment of Part 2 of the *Building Amendment Act 2005*.
- (2) The Regulations may provide that a savings or transitional provision takes effect from a date that is earlier than the date of its publication or notification in the *Gazette* but, if they do so, the provision does not operate so as:
  - (a) to affect in a manner prejudicial to any person (other than the Territory), the rights of that person existing before the date of its publication or notification; or
  - (b) to impose liabilities on a person (other than the Territory) in respect of anything done or omitted to be done before the date of its publication or notification.
- (3) If a regulation made under this section is inconsistent with a provision of this Act or a provision of an Act specified in the regulation, the regulation prevails to the extent of the inconsistency.

## **Part 16 Transitional matters for Building Amendment Act 2004**

### **173 Renewal of registration granted before commencement of *Building Amendment Act 2004***

- (1) Subject to subsection (2), the registration of a building practitioner in force before the commencement of section 12 of the *Building Amendment Act 2004* continues in force, subject to this Act, after that commencement:
  - (a) if the registration was granted more than 2 years before that commencement – until the anniversary of the date on which the registration was granted; or
  - (b) if the registration was granted less than 2 years before that commencement – until the second anniversary of the date on which the registration was granted.
- (2) If under subsection (1) the anniversary date is within 6 months of the commencement of this section, the registration of the building practitioner continues in force, subject to this Act, until:
  - (a) the building practitioner's application for renewal is determined by the Practitioners Board in accordance with the *Building Act* as amended by the *Building Amendment Act 2004*; or
  - (b) 6 months elapses after that commencement,whichever occurs first.
- (3) A building practitioner referred to in this section may apply to renew his or her registration in accordance with the *Building Act* as amended by the *Building Amendment Act 2004*.

### **174 Determinations under section 14 of *Building Act* to continue in force**

Despite the repeal of section 14(1)(a), a determination by the Practitioners Board under the section remains in force until a determination is made by the Minister under section 24G.

### **179 Transitional Regulations**

- (1) For ensuring the orderly implementation of Parts 4A, 4B and 4C, the Administrator may make regulations that he or she considers necessary or convenient to be made.
- (2) The power given by subsection (1) may only be exercised within 12 months after the commencement date.

- (3) Regulations made under this section may be made retrospective to the commencement date or any date after the commencement date and will have force accordingly.
- (4) To the extent that Regulations made under this section are inconsistent with this Act or a provision of an Act specified in the Regulations, the Regulations prevail.

- (5) In this section:

**commencement date** means the commencement of Part 4A, 4B or 4C, as the case requires.

## **Schedule 1 Regulations**

section 168(2)

1. Building lines to be fixed for buildings in relation to public roads.
2. Design and siting of buildings.
3. Preparation of land for building work.
4. Fire prevention, fire fighting equipment and precautions.
5. Classification of buildings and the application of the Regulations to different classes of buildings.
6. Certificates of accreditation for building products, construction methods, designs, components or systems.
7. Form and contents of plans and specifications for building work.
8. Structural strength of building work and materials.
9. Prevention of flooding of buildings and prescribing zones or areas as flood prone zones or areas and for the application of provisions of the Regulations that provide for reducing the likelihood of damage that may be caused to a building or structure by flooding in a zone or area so prescribed.
10. Moisture resistance of buildings.
11. Heating, cooling and air conditioning of buildings.
12. Regulating the manner of alteration and demolition of and additions to buildings.
13. Occupation of buildings and any change of classification, use and occupation of buildings.
14. Regulating fixtures projecting from buildings and dangers arising out of projections from building work.
15. Use of public space for building work.
16. Noise resistant construction of buildings.
17. Regulating the environmental efficiency of buildings.
18. Utility, safety and hygiene services located in, or related to, buildings.
19. Access to and egress from buildings.

20. The management and use of buildings, places and temporary structures used or proposed to be used for the purposes of public assembly.
21. The issue, duration, revocation and suspension of occupancy permits.
22. The imposition, variation and rescission of conditions of occupancy permits.
23. The manner and form of, and the fees payable in connection with, occupancy permits and applications for occupancy permits.
24. The variation of the application of the Regulations to or in respect of the holder of an occupancy permit or the owner or occupier of a building, place or temporary structure used for public assembly, to which an occupancy permit relates.
25. Making, keeping and production of records and returns.
26. Keeping of registers of occupancy permits.
27. Building permits.
28. Proceedings of the Practitioners Board.
29. Proceedings of the Appeals Board.
30. Proceedings of the Advisory Committee.
31. Fees payable for applications, referrals and appeals, and for other services provided and work done by the Director and other persons and bodies, under this Act.
32. Application of fees or a proportion of the fees received by building certifiers or other persons or bodies under the Act, including payment of money to the Director to be used for the purposes of the Act.
33. Procedure for making appeals under the Act or the Regulations.
34. Requiring public authorities to comply with any or all of the technical requirements of the Regulations.
35. Provision of copies of reports by reporting authorities and reports by such authorities.
36. Requiring, licensing and regulating the erection, maintenance and use of hoardings and fences on public places for the protection of the public during building work.
37. Regulation of the approval, construction and use of temporary structures.



38. Exemption of persons or classes of persons, or buildings or classes of buildings, or building work or classes of building work, from any or all of the provisions of this Act or the Regulations.
39. Insurance requirements for persons carrying out building work, building certifiers and other building practitioners.
40. Procedure for applications, referrals and appeals to the Appeals Board.
41. The seal of the Appeals Board.
42. Inspection of registers kept by the Director.
43. Service of documents under this Act.
44. The issue of building certificates relating to notices and orders under this Act and the Regulations and ancillary matters.
45. Fees to be paid for the performance of a function under the Act by the Director including amounts for the recovery of costs incurred in performing the function.
46. The criteria for establishing the suitability of buildings for occupation.
47. The type of building work that building practitioners may carry out.
48. The building work that may only be carried out by building practitioners.
49. The threshold value for building work that may only be carried out by building practitioners.
50. The threshold value for building work carried out by owner-builders.
51. The method for determining the value of building work for the purposes of this Act.
52. The procedure for issuing substantial compliance certificates, including making applications, conducting inspections and directing work to be carried out.

## **Schedule 2 Members and procedures of Advisory Committee, Practitioners Board and Appeals Board**

sections 10, 13 and 18

### **1. Period of appointment**

- (1) Subject to this Act, a member holds office until the expiration of such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Where a period of appointment is not specified in the instrument of appointment of a member, the member holds office, subject to this Act, for 3 years.

### **2. Acting appointment**

- (1) Where a member is or is expected to be absent from duty or from the Territory, the Minister may appoint a person (with, in the case of the Practitioners Board, the same qualification for appointment as the absent member) to act as the member during the absence.
- (2) The Minister may, at any time, terminate an appointment made under subclause (1).
- (3) The validity of a decision of the Committee or Board shall not be questioned in any proceedings on a ground arising from the fact that the occasion for the appointment of a person under subclause (1) had not arisen or that an appointment under subclause (1) had ceased to have effect.

### **3. Chairman and Deputy Chairman**

- (1) In the absence of the Chairman from the Territory or from duty, or when the Chairman is unable to perform his or her functions, the Deputy Chairman may exercise the powers and shall perform the functions of the Chairman under this Act.
- (2) Subject to subclause (3), a member elected or appointed as the Chairman or Deputy Chairman, while the person remains a member, holds office for a period not exceeding 3 years and is eligible for re-election or reappointment.
- (3) The Committee or Board may at any time, by resolution, elect a new Chairman or Deputy Chairman and, on the passing of such a resolution, the person who held the office immediately before the resolution was passed ceases to hold the office.

**4. Resignation of members**

A member may resign office by writing signed by him or her and given to the Minister.

**5. Dismissal of members**

(1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

(2) If a member:

(a) is absent, except by leave of the Committee or Board, from 3 consecutive meetings of the Committee or Board; or

(b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

the Minister shall terminate the appointment of the member.

(3) The Minister may terminate the appointment of a member of the Practitioners Board who was nominated under section 12B(1) if the member ceases to reside in the Territory.

(4) The Minister must terminate the appointment of a member of the Practitioners Board if:

(a) the member ceases to be registered in the category of building practitioner the interests of which the member was appointed to represent; or

(b) the member is found guilty of professional misconduct under section 34P(1)(a).

**5A. Member of Practitioners Board must stand aside if subject of inquiry**

A member of the Practitioners Board who is the subject of an inquiry under Part 3, Division 3A must stand aside until the inquiry is completed and the member has been notified under section 34P(2) of the decision on the inquiry.

**6. Disclosure of interest**

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Committee or Board (otherwise than as a member of, and in common with other members of, an incorporated company consisting of not less than

25 persons and of which he or she is not a director), shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of his or her interest at a meeting of the Committee or Board.

- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Committee or Board and, unless the Committee or Board otherwise determines, the member:
- (a) shall not, while he or she has that interest, take part after the disclosure in a deliberation or decision of the Committee or Board; and
  - (b) shall be disregarded for the purpose of constituting a quorum of the Committee or Board,

in relation to the matter.

- (3) For the purpose of the making of a determination under subclause (2) in relation to a member who has made a disclosure under subclause (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not:
- (a) be present during the deliberations of the Committee or Board for the purpose of making the determination; or
  - (b) take part in the making of the determination by the Committee or Board.

## **7. Meetings of Committee or Board**

- (1) The Chairman shall call such meetings of the Committee or Board as are necessary for the exercise of its powers and the performance of its functions.
- (2) The Minister may, at any time, direct the Chairman to call a meeting of the Committee or Board and the Chairman shall comply with the direction.
- (3) Subject to sections 132 and 133, a meeting of the Committee or Board:
  - (a) in the case of the Practitioners Board and the Advisory Committee, 3 members constitute a quorum;
  - (b) the Chairman shall preside at all meetings of the Committee or Board at which he or she is present and, in the absence of the Chairman from a meeting, the Deputy Chairman shall preside

and, if both the Chairman and Deputy Chairman are not present, the members present may appoint one of their number to preside at the meeting;

- (c) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the Chairman or other person presiding at the meeting shall have, in addition to his or her deliberative vote, a casting vote; and
  - (d) subject to this Act, the Committee or Board shall determine the procedure to be followed at or in connection with the meeting.
- (4) If the Committee or Board so determines, a member may participate in, and form part of a quorum at, a meeting of the Board by means of:
- (a) telephone;
  - (b) closed circuit television; or
  - (c) a prescribed method of communication.
- (5) A member who participates in a meeting as provided by subclause (4) shall be taken, for the purposes of this Schedule, to be present at the meeting if the member is able to hear and be heard by each member taking part in the meeting, including for the purposes of being counted towards a quorum at the meeting.
- (6) The Committee or Board shall cause records of its meetings to be kept.

## **8. Confidentiality**

Subject to this Act, the Chairman, a member or the Registrar of the Committee or Board shall not disclose information obtained in the course of his or her duties as Chairman, member or Registrar, unless the disclosure is made in the course of those duties.

Penalty: \$2,000.

## **9. Protection of members, &c.**

No action or proceeding, civil or criminal, shall lie against the Chairman, a member or the Registrar of the Committee or Board for or in respect of an act or thing done or omitted to be done in good faith by the person in his or her capacity as Chairman, member or Registrar.

## **Schedule 3 Common provisions relating to permits, &c.**

sections 57, 68 and 75

### **1. Agent to be authorised**

A person shall not act as an agent of an owner for the purpose of making an application for a building permit or occupancy permit unless the person is authorised in writing by the owner to do so.

Penalty: \$1,000.

### **2. Building certifier not required to look beyond apparent authority**

A building certifier is not required to inquire whether an agent who makes an application for a building or occupancy permit purportedly as the agent of an owner is authorised to do so in accordance with this Act.

### **3. Form of application**

An application for a building or occupancy permit shall be in an approved form, shall contain the information required by the form and shall be accompanied by the documents, if any, prescribed for the purposes of this clause.

### **4. Form of permit**

A building or occupancy permit shall be in an approved form.

### **5. Reporting authorities to be consulted**

- (1) Unless otherwise permitted by this Schedule to do so, a building certifier shall not decide an application for a building or occupancy permit required by the Regulations or by or under any other Act to be reported on or consented to by a reporting authority unless the report or consent has been obtained and the building certifier has been supplied with a copy.

Penalty: \$10,000.

- (2) An applicant for a permit shall notify the building certifier when the application is made whether the applicant has applied or intends to apply for a report or consent referred to in subclause (1) or has such a report or consent.

**6. Applicant may obtain report or consent**

- (1) An applicant for a building or occupancy permit that must be reported on or consented to by a reporting authority may obtain a report or consent from the reporting authority.
- (2) A building certifier need not obtain a report or consent from a reporting authority if the applicant notifies the building certifier that the applicant has applied for or intends to apply for the relevant report or consent or the applicant supplies a copy of a relevant report or consent made or given in the 12 months preceding the application.
- (3) An applicant who applies for and obtains a relevant report or consent shall supply a copy of it to the building certifier when the application for the building permit is made or within such further time as is prescribed or allowed by the building certifier.

**7. Failure of reporting authority to supply report, &c.**

A reporting authority shall be taken to have responded to a request for a report or consent if the response has not been provided to the applicant within the prescribed time, and where the request was for a report, the building certifier shall be taken to have been supplied with a copy of the report.

**8. Building certifier to consider report**

- (1) A building certifier shall consider a report of a reporting authority supplied to the building certifier in accordance with this Schedule before making a decision on the relevant application for a permit.
- (2) A building certifier is not required to implement a recommendation of a reporting authority's report.

**9. Determination of applications for building permits**

- (1) A building certifier shall, within the prescribed time after an application for a building or occupancy permit is made to him or her, grant the permit subject to such reasonable conditions, if any, as he or she thinks fit, or refuse to grant the permit.
- (2) A building certifier shall be taken to have refused an application if he or she has not granted the permit within the prescribed time.

**10. Reasons for refusal to be given**

A building certifier shall notify an applicant for a building or occupancy permit, in writing, of the refusal to grant a permit and the reasons for the refusal.

Penalty: \$1,000.

**11. Approvals where reporting body involved**

Where a building certifier grants a building or occupancy permit that must be reported on or consented to by a reporting authority, the building certifier shall, within 7 days after so doing, send to the reporting authority:

- (a) a copy of the relevant permit; and
- (b) where the grant of the permit differs from or fails to require the implementation of a recommendation of the reporting authority, a copy of the decision of the building certifier in relation to the report of the reporting authority.

Penalty: \$5,000.

**12. Appeals**

The owner of a building or land on which building work is proposed to be carried out, or the owner's agent, may, in accordance with Part 11, appeal to the Appeals Board against a refusal of a building certifier to grant, or against a condition imposed on, a building permit for the work.



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**ENDNOTES**

1

**KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

2

**LIST OF LEGISLATION*****Building Act 1993 (Act No. 29, 1993)***

Assent date            9 July 1993  
 Commenced            1 September 1993 (*Gaz S72*, 1 September 1993)

***Statute Law Revision Act (No. 2) 1993 (Act No. 70, 1993)***

Assent date            9 November 1993  
 Commenced            9 November 1993

***Statute Law Revision Act 1994 (Act No. 50, 1994)***

Assent date            20 September 1994  
 Commenced            20 September 1994

***Statute Law Revision Act 1995 (Act No. 14, 1995)***

Assent date            26 June 1995  
 Commenced            26 June 1995

***Fire and Emergency (Consequential Amendments) Act 1996 (Act No. 15, 1996)***

Assent date            19 April 1996  
 Commenced            1 May 1996 (s 2, s 2 *Fire and Emergency Act 1996* (Act No. 14, 1996) and *Gaz S10*, 1 May 1996)

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date            19 April 1996  
 Commenced            1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz S15*, 13 June 1996)

***Building Amendment Act 2003 (Act No. 42, 2003)***

Assent date            7 July 2003  
 Commenced            24 November 2004 (*Gaz G47*, 24 November 2004, p 5)

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**Building Amendment Act 2004 (Act No. 65, 2004)**

Assent date 21 December 2004  
 Commenced ss 5(d), 9, 16 to 29, 33 (to extent it inserts ss. 175, 176 and 178) and 35: nc; rem: 14 December 2005

**Amending Legislation**

**Building Amendment Act 2005 (Act No. 8, 2005)**

Assent date 17 March 2005  
 Commenced pts 1 and 3: 17 March 2005; ss 26 and 29(2) and (3): nc; rem: 14 December 2005 (Gaz G50, 14 December 2005, p 5)

**Building Amendment Act 2005 (Act No. 8, 2005)**

Assent date 17 March 2005  
 Commenced pts 1 and 3: 17 March 2005; ss 26 and 29(2) and (3): nc; rem: 14 December 2005 (Gaz G50, 14 December 2005, p 5)

**Proportionate Liability Act 2005 (Act No. 18, 2005)**

Assent date 5 May 2005  
 Commenced 1 June 2005 (Gaz S16, 16 May 2005)

**3 LIST OF AMENDMENTS**

s 3	amd No. 8, 2005, s 4; No. 65, 2004, as sub by No. 8, 2005, s 18(2)
s 4	amd No. 14, 1995, s 12; No. 42, 2003, s 4; No. 65, 2004, s 5; No. 8, 2005, ss 5 and 23
s 4A	ins No. 65, 2004, s 6
s 8	amd No. 8, 2005, ss 6 and 24
s 12	amd No. 8, 2005, s 7
ss 12A – 12B	amd No. 8, 2005, s 8
s 14	amd No. 65, 2004, s 7; No. 8, 2005, s 9
s 15	amd No. 14, 1995, s 12 rep No. 65, 2004, s 8
s 19	amd No. 14, 1995, s 12
s 20	amd No. 42, 2003, s 5
s 21	rep No. 42, 2003, s 6
pt 3 hdg	amd No. 8, 2005, s 10
pt 3	
div 1AA hdg	ins No. 8, 2005, s 11
ss 21A – 21B	ins No. 8, 2005, s 11
s 23	amd No. 65, 2004, s 10
s 24	amd No. 8, 2005, s 12; No. 65, 2004, s 11 as amd by No. 8, 2005, s 18(3) and (4)
ss 24A – 24FA	ins No. 65, 2004, s 12
s 24FB	ins No. 65, 2004, s 12 as amd by No. 8, 2005, s 18(5)
ss 24G – 24H	ins No. 65, 2004, s 12
s 25	amd No. 65, 2004, s 13
s 25A	ins No. 65, 2004, s 14
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div 2 hdg	ins No. 8, 2005, s 13
s 26	amd No. 17, 1996, s 6 sub No. 8, 2005, s 13
ss 27 – 34	sub No. 8, 2005, s 13
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div 3 hdg	sub No. 8, 2005, s 13
ss 34A – 34F	ins No. 8, 2005, s 13

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div 3B hdg	ins No. 8, 2005, s 13
ss 34S – 34V	ins No. 8, 2005, s 13
s 34VA	ins No. 65, 2004, s 15 as amd by No. 8, 2005, s.18(6) to (8)
s 34VB	ins No. 65, 2004, s 15 as amd by No. 8, 2005, s 18(9)
s 34W	ins No. 8, 2005, s 13
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div 4 hdg	ins No. 8, 2005, s 13
s 35	sub No. 8, 2005, s 13 amd No. 65, 2004, s 15AA as amd by No. 8, 2005, s 18(10)
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s 150	amd No. 8, 2005, s 14
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