

NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT ACT 2005

Act No. 8 of 2005

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 8 of 2005

AN ACT

to amend the *Building Act* and for related purposes

[Assented to 17 March 2005]
[Second reading 2 December 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Building Amendment Act 2005*.

2. Commencement

(1) Parts 1 and 3 come into operation on the day on which the Administrator's assent to this Act is declared.

(2) The provisions of Part 2 (except section 18(2) to (11) (inclusive)) and the provisions of Part 4 (except section 29(2), (3) and (4)) come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

(3) Section 18(2) comes into operation on the day on which, but immediately before, section 4 of the *Building Amendment Act 2004* commences.

(4) Section 18(3) and (4) comes into operation on the day on which, but immediately before, section 11 of the *Building Amendment Act 2004* commences.

Building Amendment Act 2005

(5) Section 18(5) comes into operation on the day on which, but immediately before, section 12 of the *Building Amendment Act 2004* commences.

(6) Section 18(6) to (10) (inclusive) comes into operation on the day on which, but immediately before, section 15 of the *Building Amendment Act 2004* commences.

(7) Section 18(11) comes into operation on the day on which, but immediately before, section 31 of the *Building Amendment Act 2004* commences.

(8) Section 29(2) comes into operation on the day on which, but immediately before, section 16 of the *Building Amendment Act 2004* commences.

(9) Section 29(3) comes into operation on the day on which, but immediately before, section 33 of the *Building Amendment Act 2004* commences.

(10) Section 29(4) comes into operation on the day on which, but immediately before, section 34 of the *Building Amendment Act 2004*.

3. Principal Act amended

This Act (except sections 18, 22, 29 and 30) amends the *Building Act*.

PART 2 – AMENDMENTS RELATING TO DIRECTOR OF BUILDING CONTROL AND BUILDING PRACTITIONERS BOARD

4. Amendment of section 3 (Objects of Act)

After section 3(h) –

insert

(ha) to provide for the investigation, audit and disciplining of building practitioners;

5. Amendment of section 4 (Definitions)

Section 4 –

insert (in alphabetical order)

"registered" means registered under Part 3;

6. Amendment of section 8 (Functions and powers of Director)

Before section 8(1)(a) –

insert

Building Amendment Act 2005

- (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;

7. Amendment of section 12 (Establishment of Practitioners Board)

- (1) Section 12(1) –

omit

- (1) There

substitute

There

- (2) Section 12(2) and (3) –

omit

8. New sections 12A and 12B

After section 12 –

insert

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.

9. Amendment of section 14 (Functions and powers of Practitioners Board)

Section 14(1)(b) and (c) –

omit, insert

- (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.

10. Repeal and substitution of Part 3 heading

Part 3, heading –

repeal, substitute

PART 3 – BUILDING PRACTITIONERS

11. New Division 1AA

Before section 22 in Part 3 –

insert

Division IAA – 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.

12. Amendment of section 24 (Registration of building practitioner)

After section 24(3) –

insert

(3A) As soon as practicable after making a decision under this section to register or refuse to register a person as a building practitioner, the Practitioners Board must give written notice of the decision to the person.

(3B) The notice must set out –

- (a) the reasons for the decision; and
- (b) the procedure for commencing an appeal under Division 4.

13. Repeal and substitution of Part 3, Divisions 2, 3 and 4

Part 3, Divisions 2, 3 and 4 –

repeal, substitute

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.

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;
- (b) a decision under section 34P that a building practitioner is or is not guilty of professional misconduct;
- (c) a decision under section 34P to take or not to take action under section 34T or 34U.

36. Appeal to Local Court

(1) Subsection (2) applies to a person who is entitled to be notified of an appellable decision under section 24(3A) or 34P(2)(a) or (b).

(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.

14. Amendment of section 150 (Prosecution of offences)

Section 150(3) –

omit, substitute

(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.

15. New section 167AA

After section 167 –

insert –

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.

16. New Part 15C

After section 172B –

insert (in numerical order)

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.

17. Amendment of Schedule 2

(1) After Schedule 2, clause 5(2) –

insert

(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).

(2) After Schedule 2, clause 5 –

insert

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.

18. Amendment of Building Amendment Act 2004

(1) This section amends the *Building Amendment Act 2004*.

(2) Section 4 –

repeal, substitute

4. Objects of Act

Section 3 of the Principal Act is amended by omitting paragraph (ha) and substituting the following:

"(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;"
- (3) Section 11, paragraph (d) –
omit
Minister"; and
substitute
Minister";
- (4) Section 11, after paragraph (d) –
insert
(da) by omitting subsections (3A) and (3B); and
- (5) Section 12, after new section 24FA –
insert

"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.

- (6) Section 15 –
omit

substitute

34V

- (7) Section 15 –

omit

26A

substitute

34VA

- (8) Section 15, after new section 26A(2) –

insert

"(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.

- (9) Section 15 –

omit

26B

substitute

34VB

- (10) After section 15 –

insert

15AA. Amendment of section 35 (Appellable decisions)

Section 35 of the Principal Act is amended –

- (a) by inserting in paragraph (a) "(other than the category of building contractor)" after "practitioner"; and
- (b) by omitting paragraphs (b) and (c) and substituting the following:

- "(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."

15A. Amendment of section 36 (Appeal to Local Court)

Section 36 of the Principal Act is amended by omitting from subsection (1) "24(3A) or 34P(2)(a) or (b)" and substituting "24FB(2), 34P(2)(a) or (b) or 34VA(3)".

(11) Section 31 –

omit

167

substitute

167AA

PART 3 – AMENDMENTS RELATING TO BUILDING AREAS

19. New section 166A

After section 166 –

insert

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).

20. Repeal and substitution of Part 15 heading

Part 15, heading –

repeal, substitute

**PART 15 – REPEALS AND TRANSITIONAL MATTERS FOR
*BUILDING ACT 1993***

21. New Part 15A

After section 172 –

insert

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.

22. Amendment of Building Amendment Act 2004

(1) This section amends the *Building Amendment Act 2004*.

(2) Section 32 –

repeal

PART 4 – AMENDMENTS RELATING TO OCCUPANCY OF BUILDINGS

23. Amendment of section 4 (Definitions)

Section 4 –

insert (in alphabetical order)

"substantial compliance certificate" means a substantial compliance certificate issued under section 172F;

24. Amendment of section 8 (Functions and powers of Director)

Section 8(3) –

omit

building and occupancy permits

substitute

building permits, occupancy permits and substantial compliance certificates

25. Amendment of section 38 (Functions of building certifiers)

Section 38(1) –

omit, substitute

(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.

26. Repeal and substitution of section 40

Section 40 –

repeal, substitute

40. Building certifier or Director may rely on certificate

A building certifier or the Director may, in performing a function under this Act, rely on –

- (a) a certificate of a building practitioner that building work complies with this Act or the Regulations; or
- (b) a substantial compliance certificate issued by another building certifier or the Director.

27. New Part 15B

After section 172B –

insert

**PART 15B – OCCUPATION OF BUILDING WORK APPROVED
BEFORE 1 SEPTEMBER 1993**

172C. Definitions

In this Part, unless the contrary intention appears –

"1983 Act" means the *Building Act 1983* as amended and in force immediately before 1 September 1993 and applied by section 170(1) of this Act;

"occupancy permit" means –

- (a) a certificate of occupancy issued under section 40 of the 1983 Act; or
- (b) a permit to occupy granted under Part 8 of this Act;

"pre-1993 building work" has the meaning in section 172D;

"prescribed requirements", for pre-1993 building work, means –

- (a) the approval, licence or permit required by a law in force in the Territory to be given, issued or granted for the work; and
- (b) any plans and specifications relevant to that approval, licence or permit.

172D. Application

Despite section 170(1) of this Act, this Part applies in relation to the following building work ("pre-1993 building work"):

- (a) building work commenced before 1 September 1993;
- (b) building work commenced on or after 1 September 1993 to which the 1983 Act continues to apply.

172E. Occupancy permit not required for certain work

Despite section 41 of the 1983 Act and section 65 of this Act, a person may occupy a building in or on which pre-1993 building work was carried out without an occupancy permit in respect of that work if –

- (a) the work was carried out in substantial compliance with the prescribed requirements for that work; or
- (b) there were no prescribed requirements for that work.

172F. Substantial compliance

(1) For section 172E(a), pre-1993 building work is taken to have been carried out in substantial compliance with the prescribed requirements for the work if a building certifier issues a certificate in the approved form to that effect.

(2) In considering whether or not to issue the certificate, the building certifier must have regard to the matters prescribed by the Regulations.

(3) The building certifier must not issue the certificate unless the work meets the requirements for substantial compliance prescribed by the Regulations.

Penalty for an offence against subsection (3): \$10 000.

172G. Application of Parts 9 and 10 of this Act

To remove doubt, Parts 9 and 10 of this Act apply in relation to pre-1993 building work.

28. Amendment of Schedule 1

Schedule 1, at the end –

insert

52. The procedure for issuing substantial compliance certificates, including making applications, conducting inspections and directing work to be carried out.

29. Amendment of Building Amendment Act 2004

(1) This section amends the *Building Amendment Act 2004*.

(2) Section 16, new section 40(a) and (b) –

omit, substitute

- (a) a certificate of a building practitioner that building work complies with this Act or the Regulations;

Building Amendment Act 2005

- (b) an inspection certificate issued by another building practitioner or the Director under section 63; or
 - (c) a substantial compliance certificate issued by another building certifier or the Director.
- (3) Section 33 –
omit
after Part 15
substitute
before Schedule 1
- (4) Section 34 –
omit
at the end
substitute
after item 45

30. Amendment of *Unit Titles Act*

- (1) This section amends the *Unit Titles Act*.
- (2) Section 21B(4), definition of "building certificate" –
omit, substitute
"building certificate" means –
 - (a) a certificate issued under section 40(1) of the repealed Act;
 - (b) a permit to occupy granted under Part 8 of the *Building Act*;
or
 - (c) a certificate issued under section 172F(1) of the *Building Act*.
- (3) Section 21F(2), definitions of "building certificate" and "occupancy permit" –
omit, substitute
"building certificate" means –

Building Amendment Act 2005

- (a) a certificate issued under section 40(1) of the repealed Act;
- (b) a permit to occupy granted under Part 8 of the *Building Act*;
or
- (c) a certificate issued under section 172F(1) of the *Building Act*;

ALTERATION TO SECTION HEADING

On the day on which section 15 of the *Building Amendment Act 2004* is amended by this Act, the heading to that section is altered by omitting "**26A and 26B**" and substituting "**34VA and 34VB**".