

Serial 260
Building Amendment Bill 2004
Dr Burns

**A BILL
for
AN ACT**

to amend the *Building Act*



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NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT ACT 2004

No. of 2004

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NORTHERN TERRITORY OF AUSTRALIA

No. of 2004

AN ACT

to amend the *Building Act*

[Assented to 2004]

[Second reading 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Building Amendment Act 2004*.

2. Commencement

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3. Principal Act

The *Building Act* is in this Act referred to as the Principal Act.

4. Objects of Act

Section 3 of the Principal Act is amended by inserting after paragraph (h) the following:

"(ha) to provide for the registration of building practitioners;

(hb) to establish a compulsory home warranty insurance scheme;"

5. Definitions

Section 4 of the Principal Act is amended –

- (a) by inserting after the definition of "approved" the following:
" 'approved form' means a form approved under section 167A;";
- (b) by omitting the definition of "building practitioner" and substituting the following:
" 'building practitioner' means a person, firm or corporation registered under Part 3;";
- (c) by inserting after the definition of "carry out" the following:
" 'category of building practitioner' has the meaning in section 4A;"; and
- (d) by inserting after the definition of "owner" the following:
" 'owner-builder' means a person to whom an owner-builder certificate is granted under Part 4B;".

6. New section 4A

The Principal Act is amended by inserting after section 4 the following:

"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)."

7. Functions and powers of Practitioners Board

Section 14 of the Principal Act is amended by omitting subsection (1)(a) and substituting the following:

"(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;"

8. Repeal of section 15

Section 15 of the Principal Act is repealed.

9. Building practitioners to be registered

Section 22 of the Principal Act is amended –

- (a) by omitting "A person" and substituting "(1) A person"; and
- (b) by inserting at the end the following:

"(2) Subsection (1)(b) does not apply to an owner-builder carrying out building work permitted to be carried under the owner-builder certificate."

10. Application for registration as building practitioner (other than as building contractor)

Section 23 of the Principal Act is amended –

- (a) by omitting "a form approved by the Practitioners Board" and substituting "the approved form"; and
- (b) by inserting at the end "in a category of building practitioner (other than the category of building contractor)".

11. Registration of building practitioner

Section 24 of the Principal Act is amended –

- (a) by omitting from subsection (1)(a) "of good character and";
- (b) by omitting from subsection (1)(b) "holds the relevant qualifications determined by the Board" and substituting "has the relevant qualifications and experience determined by the Minister";

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- (c) by omitting from subsection (2)(b) "holds the qualification determined by the Board" and substituting "has the relevant qualifications and experience determined by the Minister";
- (d) by omitting from subsection (3)(b) "holds the qualifications determined by the Board" and substituting "has the relevant qualifications and experience determined by the Minister"; and
- (e) by omitting from subsection (4) "approved by the Practitioners Board" and substituting "determined by the Minister".

12. New sections 24A to 24H

The Principal Act is amended by inserting after section 24 the following:

"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;

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- (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

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(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.

"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 polices 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."

13. Function of building practitioner to be carried out by natural person

Section 25 of the Principal Act is amended by inserting after subsection (2) the following:

"(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)."

14. New section 25A

The Principal Act is amended by inserting after section 25 the following:

"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) the nominee of the corporation ceases to act for the corporation or his or her registration as a building contractor is cancelled or suspended; or

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- (b) the 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.

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 ceases to act for the corporation or his or her registration as a building contractor is cancelled or suspended; or
- (b) the 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,

notification under subsection (1) must be given immediately.

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

15. New sections 26A and 26B

The Principal Act is amended by inserting after section 26 the following:

"26A. 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.

"26B. 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."

16. New Parts 4A, 4B and 4C

The Principal Act is amended by inserting after Part 4 the following:

"PART 4A – BUILDING CONTRACTORS

"48A. Building work by building contractors

"(1) A person must not commence or continue to carry out prescribed building work unless the person is –

- (a) a prescribed building contractor; or
- (b) being supervised by a prescribed building contractor in accordance with the Regulations.

Penalty: If the offender is a natural person – \$10 000.

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

"(2) Subsection (1) does not apply if –

- (a) the value of the building work is less than the prescribed amount; or
- (b) the person is an owner-builder carrying out building work that he or she is permitted to carry out under the owner-builder certificate.

"48B. Building contract to be entered into

"(1) A prescribed building contractor must not commence or continue to carry out prescribed building work unless the building contractor has entered into a contract with the owner of the land on which the building work is to be carried out or with a person authorised by the owner to enter into the contract.

Penalty: If the offender is a natural person – \$10 000.

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

"(2) The contract must include, but is not limited to, the matters required by the Regulations.

"(3) Subsection (1) does not apply if –

- (a) the value of the building work is less than the prescribed amount; or
- (b) the prescribed building contractor is the owner of the land on which the building work is to be carried out.

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"(4) Despite subsection (3)(b), subsection (1) applies if, at any time after the building permit is granted in respect of the building work, the prescribed building contractor enters into an agreement with a person providing for –

- (a) the land to be transferred to the person before an occupancy permit is granted for the entire project; and
- (b) the person to make progress payments at times during the term of the agreement as the building work is carried out.

"(5) If subsection (1) applies because of subsection (4), the person referred to in subsection (4) is, for subsection (1), the owner of the land on which the building work is to be carried out.

"48C. Building work to be certified

"(1) A prescribed building contractor must, not later than 14 days after completing prescribed building work in respect of which he or she has entered into a contract under section 48B, make a declaration required under section 69(1).

Penalty: \$10 000.

"(2) A prescribed building contractor must not make a false statement in a declaration required under subsection (1).

Penalty: \$10 000.

"(3) Subsection (1) does not apply if the value of the building work is less than the prescribed amount.

"PART 4B – OWNER-BUILDERS

"48D. Owner-builders to hold certificate

"(1) A person must not commence or continue to carry out prescribed building work on land that he or she owns unless –

- (a) the person is an owner-builder; and
- (b) the building work is work that he or she is permitted to carry out under the owner-builder certificate.

Penalty: \$10 000.

"(2) Subsection (1) does not apply if –

- (a) the value of the building work is less than the prescribed amount; or

- (b) the person is a prescribed building contractor and owns the land on which the building work is to be carried out.

"48E. Application for owner-builder certificate

"(1) A person may, in the approved form accompanied by the prescribed fee, apply to the Practitioners Board for an owner-builder certificate or the renewal of an owner-builder certificate to carry out building work on land that he or she owns.

"(2) If the land is owned by more than one person, all the owners must apply for the owner-builder certificate.

"(3) A person must not make a false declaration in an application for an owner-builder certificate.

Penalty: \$10 000.

"(4) In this section –

'person' does not include a body corporate.

"48F. Granting of owner-builder certificate

"(1) If the Practitioners Board is satisfied that the applicant –

- (a) is the owner of the land on which the building work is to be carried out;
- (b) has successfully completed a course approved by the Minister; and
- (c) has not entered into an agreement to transfer ownership of the land to another person,

it must grant the applicant an owner-builder certificate.

"(2) If an application is made by more than one person, subsection (1)(b) is complied with if at least one of the applicants has successfully completed the course.

"(3) An owner-builder certificate remains in force for 3 years from the date it is granted and may be renewed for a further period (not longer than 3 years) on an application by the owner-builder.

"(4) The Practitioners Board must not grant an owner-builder certificate to a person granted an owner-builder certificate in respect of other land unless the prescribed period has elapsed since that owner-builder certificate was granted.

"(5) The Practitioners Board may cancel an owner-builder certificate if it is satisfied that the certificate was obtained by fraud.

"(6) The Minister may, by notice in the *Gazette*, approve a course for subsection (1).

"48G. Building work to be certified

"(1) An owner-builder must, not later than 14 days after carrying out the building work permitted under the owner-builder certificate, make a declaration required under section 69(1).

Penalty: \$10 000.

"(2) An owner-builder must not make a false statement in a declaration required under subsection (1).

Penalty: \$10 000.

"PART 4C – HOME WARRANTY INSURANCE

"48H. Application

"This Part does not apply to a prescribed building contractor carrying out prescribed building work if the work is carried out for a public authority.

"48J. Building contractor's home warranty insurance

"(1) Subject to section 48K, a prescribed building contractor must not commence or continue to carry out prescribed building work unless the building contractor has a policy of insurance required by this section.

Penalty: If the offender is a natural person – \$10 000.

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

"(2) The policy of insurance must –

(a) relate only to the building work to be carried out under the contract entered into under section 48B;

(b) provide, as a minimum, cover of a type and on conditions as specified in the Regulations that will indemnify the owner and a future owner of the building against financial loss that he or she may incur if the building contractor fails, because of his or her death, disappearance or insolvency –

(i) to complete the building work in accordance with the terms of the contract; or

(ii) to carry out the building work to the standard required by the Regulations; and

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- (c) contain a statement by the insurer that the policy is a policy of insurance required by this section.

"(3) The policy of insurance must provide continuing cover for the contingency referred to in subsection (2)(b)(ii) for the prescribed period.

"(4) Subsection (1) does not apply if the value of the building work is less than the prescribed amount.

"48K. Building contractor's home warranty insurance (when owner)

"(1) A prescribed building contractor must not commence or continue to carry out prescribed building work on land that the building contractor or a person of a prescribed class owns unless the building contractor has a policy of insurance required by this section.

Penalty: If the offender is a natural person – \$10 000.

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

"(2) The policy of insurance must –

- (a) relate only to the building work to be carried as a discrete project;
- (b) provide, as a minimum, cover of a type and on conditions as specified in the Regulations that will indemnify a future owner of the building against financial loss if the prescribed building contractor fails, because of his or her death, disappearance or insolvency, to carry out the building work to the standard required by the Regulations; and
- (c) contain a statement by the insurer that the policy is a policy of insurance required by this section.

"(3) The policy of insurance must provide continuing cover for the contingency referred to in subsection (2)(b) for the prescribed period.

"(4) Subsection (1) does not apply if the value of the building work is less than the prescribed amount.

"(5) If, at any time after the building permit is granted in respect of the prescribed building work, the prescribed building contractor as the owner of the land enters into an agreement with a person providing for –

- (a) the land to be transferred to the person before an occupancy permit is granted for the entire project; and
- (b) the person to make progress payments at times during the term of the agreement as the building work is carried out,

then section 48J applies and this section does not apply.

"48L. Owner-builder home warranty insurance

"(1) An owner-builder must not commence or continue to carry out building work permitted under the owner-builder certificate unless the owner-builder has a policy of insurance required by this section.

Penalty: \$10 000.

"(2) The policy of insurance must –

- (a) relate only to the building work to be carried out under the owner-builder certificate as a discrete project;
- (b) provide, as a minimum, cover of a type and on conditions as specified in the Regulations that will indemnify a future owner of the building against financial loss if the owner-builder fails, because of his or her death, disappearance or insolvency, to carry out the building work to the standard required by the Regulations; and
- (c) contain a statement by the insurer that the policy is a policy of insurance required by this section.

"(3) The policy of insurance must provide continuing cover for the contingency referred to in subsection (2)(b) for the prescribed period.

"(4) Subsection (1) does not apply if the value of the building work is less than the prescribed amount."

17. New section 58A

The Principal Act is amended by inserting after section 58 in Division 2 the following:

"58A. Building permits

"(1) A building permit may be granted for the whole or a part, or for a stage, of the building work specified in the application.

"(2) A building permit must not be granted unless the application specifies the nature and extent of the entire project (at least in general terms, recognising that detailed design for later stages may have to be done)."

18. Act and Building Regulations etc. to be complied with

Section 59 of the Principal Act is amended –

- (a) by inserting in subsection (1)(b) "and the building permit is consistent with those consents and approvals" after "building permit"; and
- (b) by inserting after subsection (1) the following:

"(1A) A building certifier must not grant a building permit for building work prescribed for section 48B unless the building contractor has provided evidence in the approved form to the building certifier that there is in force a contract as required by the section.

"(1B) A building certifier must not grant a building permit for building work to which Part 4C applies unless the building contractor has provided evidence in the approved form to the building certifier that there is in force a policy of insurance as required by the Part.

"(1C) A building certifier must not grant a building permit relying on a certificate under section 40 unless he or she is satisfied that the certificate was issued by a person who is registered as a building practitioner.

"(1D) A building certifier must specify in a building permit granted for building work prescribed for Part 4A or 4B the inspection stages prescribed for section 62(2)."

19. New Division 4

The Principal Act is amended by inserting after section 60 the following:

Division 4 – Miscellaneous

"60A. Notification of change of building contractor

"(1) If the owner of land (in respect of which a building permit has been granted for building work to which Part 4A applies) engages another building contractor to carry out the building work, he or she must, not later than 14 days after engaging the building contractor, notify the building certifier who granted the permit.

Penalty: \$10 000.

"(2) If an owner-builder who has been granted a building permit to carry out building work under the owner-builder certificate engages a building contractor to carry out the building work, he or she must, not later than 14 days

after engaging the building contractor, notify the building certifier who granted the permit.

Penalty: \$10 000.

"(3) Notification under subsection (1) or (2) must –

- (a) be in writing and include details of the building contractor's registration; and
- (b) be accompanied by –
 - (i) evidence in the approved form that, if applicable, a contract has been entered into by the building contractor under section 48B; and
 - (ii) evidence in the approved form that a policy of insurance has been taken out by the building contractor under section 48J.

"(4) The building certifier must, not later than 14 days after being notified under subsection (1) or (2), amend the building permit to include details of the building contractor engaged to carry out the building work.

Penalty: \$10 000.

"(5) For subsection (1), if the contract required by section 48B has been entered into by a person authorised by the owner of the land, a reference in subsection (1) to the owner of land includes that person.

"60B. Amendment and cancellation of building permit

"(1) A building certifier who grants a building permit may amend the permit on the application, in writing, of the owner of the land to which the permit relates.

"(2) A building certifier who grants a building permit may cancel the permit –

- (a) on the application, in writing, of the owner of the land to which the permit relates; or
- (b) if the building certifier is satisfied that the permit was obtained by misrepresentation."

20. Repeal of section 61

Section 61 of the Principal Act is repealed.

21. Notification during building work

Section 62 of the Principal Act is amended –

- (a) by omitting subsection (1) and substituting the following:

"(1) The person who is to carry out or be in charge of carrying out building work under a building permit must notify the building certifier who granted the permit or the Director when building work that is required in accordance with subsection (2) to be inspected is completed."; and

- (b) by omitting subsection (3) and substituting the following:

"(3) After completing building work to an inspection stage, the person referred to in subsection (1) must not carry out any building work under the building permit that is dependent on the inspection until –

- (a) the building work completed to the inspection stage is inspected in accordance with section 63; and
(b) the building certifier or Director has advised the person that the building work may proceed.

Penalty: \$1 000."

22. Inspections

Section 63 of the Principal Act is amended –

- (a) by omitting from subsection (1) "Subject to subsection (3), a building certifier" and substituting "A building certifier"; and
(b) by inserting after subsection (3) the following:

"(4) A building certifier or the Director may do anything that is reasonably necessary to be done to inspect building work under this section, including demolishing, opening, cutting into and testing the building work.

"(5) A building certifier or the Director must, after inspecting building work under this section, issue an inspection certificate to the person who carried out the building work or who is in charge of carrying out the building work.

"(6) A building certifier or the Director must not issue an inspection certificate after the final inspection stage of the building work unless he or she is satisfied that –

- (a) the building work is completed;
(b) directions (if any) given under this Act have been complied with;
and

- (c) the building work complies in all material respects with the Regulations.

"(7) An inspection certificate must be in the approved form."

23. Directions as to work

Section 64 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) A direction under this section may be given orally or in writing.

"(1B) An oral direction must be confirmed in writing as soon as practicable after it is given."

24. Declaration to accompany application

Section 69 of the Principal Act is amended –

- (a) by omitting from subsection (1) "in accordance with the permit" and substituting "in accordance with the building permit granted in respect of the building work"; and

- (b) by omitting subsection (2) and substituting the following:

"(2) Subject to sections 48C and 48G, a declaration under subsection (1) must be made by the person who carried out the building work or was in charge of carrying out the work."

25. New section 69A

The Principal Act is amended by inserting after section 69 in Division 3 the following:

"69A. Documents to accompany application for occupancy permit

"(1) A building certifier must not grant an occupancy permit unless the application for the permit is accompanied by –

- (a) a copy of each certificate relied on by the building certifier in accordance with section 40;
- (b) a copy of each inspection certificate issued following inspections conducted under section 63(1);
- (c) if work to which section 69 of the *Electricity Reform Act* applies was carried out in conjunction with the building work – a copy of the certificate of compliance required to be completed and signed under that Act;

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- (d) a copy of each relevant planning or other prescribed consent, report or approval, if any, including consents or reports referred to in clause 5 of Schedule 3; and
- (e) a copy of any other prescribed document.

"(2) A building certifier must not grant an occupancy permit unless he or she is satisfied that the building work to which the permit relates is consistent with the documents required to accompany the application under subsection (1)(d) (other than a report referred to in that subsection).

Penalty: \$5 000."

26. Occupancy permits

Section 71 of the Principal Act is amended by inserting after paragraph (a) the following:

- "(aa) if the building work to which the permit relates was building work to which Part 4A applied – that the building work was carried out by a building contractor and the name of the building contractor;
- (ab) if the building work to which the permit relates was building work to which Part 4B applied – that the building work was carried out by an owner-builder and the name of the owner-builder;"

27. Effect of occupancy permits

Section 72 of the Principal Act is amended by omitting all the words after "suitable for occupation" and substituting "and complies in all material respects with the Regulations."

28. New section 130A

The Principal Act is amended by inserting after section 130 the following:

"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."

29. New section 167A

The Principal Act is amended by inserting after section 167 the following:

"167A. Approved forms

"(1) The Minister may approve forms for use under this Act.

"(2) An approved form may be a statutory declaration."

30. Repeal and substitution of heading to Part 15

The heading to Part 15 of the Principal Act is repealed and the following substituted:

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

31. New Part 16

The Principal Act is amended by inserting after Part 15 the following:

**"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 24 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.

"175. Commencement of Part 4A of *Building Act*

"(1) If, before the commencement of Part 4A –

- (a) a building permit had been granted in respect of building work; and
- (b) the owner of the land on which the building work was to be carried out had entered into a contract with a person to carry out the building work,

the person may, after that commencement, commence or continue to carry out the building work as if Part 4A had not commenced despite that the building work is building work to which the Part would otherwise apply.

"(2) If, before the commencement of Part 4A –

- (a) a building permit had been granted in respect of building work; and
- (b) a person had commenced to carry out the building work for the owner of the land on which the building work was to be carried out (whether or not the owner had entered into a contract with the person to carry out the building work),

the person may, after that commencement, continue to carry out the building work as if Part 4A had not commenced despite that the building work is building work to which the Part would otherwise apply.

"176. Commencement of Part 4B of *Building Act*

"If, before the commencement of Part 4B –

- (a) a building permit had been granted in respect of building work; and
- (b) the owner of the land on which the building work is to be carried out had commenced to carry out the building work,

the person may, after that commencement, continue to carry out the building work as if Part 4B had not commenced despite that the building work is building work to which the Part would otherwise apply.

"177. Commencement of Part 4C of *Building Act*

"If, on the commencement of Part 4C, building work referred to in section 175 or 176 has not been completed, a policy of insurance held by the

person carrying out the building work approved for section 61 is a policy of insurance for that Part.

"178. Commencement of section 18 of *Building Amendment Act 2004*

"(1) Subsection (2) applies if section 18 of the *Building Amendment Act 2004* (which inserts section 59(1B)) commences before Part 4C (inserted in the *Building Act* by section 16 of the *Building Amendment Act 2004*).

"(2) Until Part 4C commences, a reference in section 59(1B) to a policy of insurance under that Part is to be read as a reference to a policy of insurance approved for section 61.

"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."

32. Schedule 1

Schedule 1 to the Principal Act is amended by inserting at the end the following:

- "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.

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51. The method for determining the value of building work for the purposes of this Act."

33. Schedule 3

Schedule 3 to the Principal Act is amended –

- (a) by omitting from the heading to clause 10 "**for refusal**";
- (b) by inserting at the end of clause 10 "or, if the building or occupancy permit is granted subject to conditions, the reasons for the conditions";
- (c) by omitting from clause 12 "The owner" and substituting "(1) The owner"; and
- (d) by inserting at the end the following:

"(2) The owner of a building or land on which building work is 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, an occupancy permit for the work.

"(3) For this clause, a refusal to grant a building or occupancy permit includes where the permit is taken not to have been granted under clause 9(2)."

