

Serial 152
Building Amendment (Occupancy Certification) Bill 2016
Mr Tollner

A Bill for an Act to amend the *Building Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT (OCCUPANCY CERTIFICATION) ACT 2016

Act No. [] of 2016

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2016

An Act to amend the *Building Act*, and for related purposes

[Assented to [] 2016]
[Second reading [] 2016]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Building Amendment (Occupancy Certification) Act 2016*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Building Act

3 Act amended

This Part amends the *Building Act*.

4 Section 4 amended

- (1) Section 4, definitions ***occupancy permit, related building application*** and ***substantial compliance certificate***

omit

(2) Section 4

insert (in alphabetical order)

approval to occupy a building on a temporary basis means an approval granted under Part 8, Division 4.

builder's declaration, see section 69(1).

certificate of existence means a certificate granted under Part 8, Division 3.

certificate of substantial compliance means a certificate granted under Part 8, Division 2A.

existing building work, in relation to a certificate of existence, see section 72D(2).

occupancy certification, means one of the following:

- (a) an occupancy permit;
- (b) a certificate of substantial compliance;
- (c) a certificate of existence;
- (d) an approval to occupy a building on a temporary basis.

occupancy permit means a permit granted under Part 8, Division 2.

relevant technical standards, for Part 8, in relation to building work for which a building permit has been granted, means any standards or codes, in force in the Territory during the period the building permit is in force, that regulate the building work.

(3) Section 4, definition **disability access provisions**

omit

for Part 10A,

5 Section 38 amended

(1) Section 38(1)(a)

omit

occupancy permits

insert

occupancy certification (other than certificates of existence)

- (2) Section 38(1)(b)

omit, insert

(b) to make recommendations to the Director about applications for certificates of existence;

6 Section 42 amended

- (1) Section 42, heading

omit, insert

42 Maintaining register and advice to Director

- (2) Section 42(1)

omit

an occupancy permit

insert

occupancy certification

- (3) Section 42(1)(a)

omit, insert

(a) maintain at the certifier's principal place of business in the Territory a register, in an approved form, of building permits and occupancy certification; and

- (4) Section 42(1)(b)

omit

such permit

insert

building permit and occupancy certification

(5) Section 42(1)(c)

omit, insert

(c) within 7 days after granting or amending a building permit or occupancy certification, give the Director a copy of:

(i) the permit or certification; and

(ii) any other documents prescribed by regulation.

7 Section 47 amended

(1) Section 47(1)

omit

he or she

insert

the certifier

(2) After section 47(3)

insert

(4) In this section:

related building application, in relation to an application for an occupancy permit mentioned in subsection (1), means any application under this Act that relates to the same building work as is specified in the occupancy permit application.

8 Part 8 heading amended

Part 8, heading

omit

permits

insert

certification and exemption certificates

9 Section 65 amended

- (1) Section 65, heading

omit

permit

insert

certification

- (2) Section 65(1)

omit

all words from "unless" to "is"

insert

unless occupancy certification has been granted, or the Regulations provide that occupancy certification is

- (3) Section 65(2)

omit

occupancy permit or an approval to occupy on a temporary basis

insert

occupancy certification

10 Part 8, Division 2 heading amended

Part 8, Division 2, heading

omit

Applications for occupancy

insert

Occupancy

11 Section 67 amended

- (1) Section 67, heading

omit, insert

67 Application

- (2) Section 67(1)
omit
must be in writing and

12 Section 68 repealed

Section 68
repeal

13 Part 8, Division 3 heading omitted

Part 8, Division 3, heading
omit

14 Section 69A repealed

Section 69A
repeal

15 Section 70 amended

- (1) Section 70, heading
omit, insert

70 Granting occupancy permit

- (2) Section 70, before "A"
insert

(1)

- (3) Section 70, after "the building"
insert

, or part of the building,

- (4) Section 70, at the end
insert

(2) A building certifier must not grant an occupancy permit unless:

- (a) the application for the occupancy permit was accompanied by the documents prescribed for Schedule 3, clause 3; and

-
- (b) the building work to which the occupancy permit relates is consistent with those documents; and
 - (c) if, at the time the application for the occupancy permit was made, the building permit for the building work was no longer in force:
 - (i) the building work specified in the building permit that is essential to the class of the building was carried out while the building permit was in force; and
 - (ii) the building work complies with any further criteria prescribed by regulation.

Maximum penalty: 40 penalty units.

16 Section 71 repealed

Section 71

repeal

17 Part 8, Divisions 2A and 3 inserted

After section 72

insert

Division 2A Certificates of substantial compliance

72A Application

- (1) An application for a certificate of substantial compliance 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 a certificate of substantial compliance:
 - (a) after carrying out building work in or on a building of a class prescribed by regulation; and
 - (b) if all building work specified in the building permit that is essential to the class of the building was carried out while the building permit was in force.

Note for section 72A

An application for a certificate of substantial compliance may be made before or after the expiry of the building permit for the building work to which the application relates.

72B Granting certificate of substantial compliance

- (1) A building certifier must not grant a certificate of substantial compliance in relation to building work unless:
- (a) the certificate applies to a building of a class prescribed for section 72A(2)(a); and
 - (b) the building, or the part of the building to which the certificate applies, is suitable for occupation; and
 - (c) the building work meets the relevant technical standards; and
 - (d) the building work complies substantially with one or both of the following:
 - (i) the building permit granted for the work;
 - (ii) the requirements of this Act and the Regulations relevant to the work; and
 - (e) the building work complies with any further criteria prescribed by regulation.

Maximum penalty: 85 penalty units.

- (2) A building certifier must not grant a certificate of substantial compliance unless:
- (a) the application for the certificate is accompanied by the documents prescribed for Schedule 3, clause 3; and
 - (b) the certifier believes on reasonable grounds that the building work to which the certificate relates is consistent with those documents.

Maximum penalty: 40 penalty units.

72C Effect of certificate of substantial compliance

A certificate of substantial compliance certifies that the building, or part of the building, to which the certificate applies is suitable for occupation and the building work to which the certificate relates:

- (a) meets the relevant technical standards; and
- (b) complies substantially with one or both of the following:
 - (i) the building permit granted for the work;

- (ii) the requirements of this Act and the Regulations relevant to the work; and
- (c) complies with any criteria mentioned in section 72B(1)(e).

Division 3 Certificates of existence

72D Application

- (1) An application for a certificate of existence 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 a certificate of existence in relation to building work (***existing building work***):
 - (a) carried out in or on a building of a class prescribed by regulation; and
 - (b) completed before the commencement of this Division.
- (3) The application may be made if:
 - (a) a relevant building law, at the time the existing building work was carried out, required a building authorisation to be granted for the work; and
 - (b) any of the following apply:
 - (i) a building authorisation was not in force for the existing building work at the time it was carried out;
 - (ii) the existing building work was carried out while a building authorisation was in force for the work but it is not substantially compliant with the authorisation;
 - (iii) the existing building work was carried out while a building authorisation was in force for the work but it is not substantially compliant with the requirements of the relevant building law that applied to the work at that time;
 - (iv) the existing building work was carried out while a building authorisation was in force for the work but it does not meet the applicable technical standards.
- (4) In this section:

applicable technical standards, in relation to existing building work for which a building authorisation was granted, means any standards or codes, in force in the Territory during the period the building authorisation was in force, that regulated the building work.

building authorisation means a building permit or equivalent document (however described) issued under a relevant building law.

relevant building law means a law (including standards and codes under the law) in force in the Territory that, at the time existing building work was carried out, regulated the carrying out of the existing building work.

72E Building certifier's recommendation to Director

- (1) A building certifier may, in the approved form, recommend to the Director that the Director grant, or refuse to grant, a certificate of existence.
- (2) The recommendation must include the information, and be accompanied by the documents, required by the approved form.
- (3) However, the Director may request the building certifier to obtain further information or documents relevant to the recommendation.
- (4) The building certifier must not make a recommendation for the grant of a certificate of existence unless:
 - (a) the recommendation applies to a building of a class prescribed for section 72D(2)(a); and
 - (b) the application for the certificate of existence was accompanied by the documents prescribed for Schedule 3, clause 3; and
 - (c) the certifier believes on reasonable grounds that the existing building work to which the recommendation relates:
 - (i) is consistent with those documents; and
 - (ii) complies with any criteria prescribed by regulation; and
 - (d) the certifier believes on reasonable grounds that the building, or the part of the building, in or on which the existing building work was carried out is suitable for occupation.

Maximum penalty: 85 penalty units.

72F Granting certificate of existence

- (1) This section applies if, under section 72E, a building certifier recommends the grant of a certificate of existence.

- (2) The Director may grant the certificate of existence if:
- (a) the recommendation includes the information, and is accompanied by the documents, required under section 72E(2); and
 - (b) the Director has been provided with any documents requested under section 72E(3); and
 - (c) the Director believes on reasonable grounds that:
 - (i) the building, or part of the building, to which the certificate applies is suitable for occupation; and
 - (ii) the existing building work carried out in or on the building complies with the criteria mentioned in section 72E(4)(c)(ii).

72G Effect of certificate of existence

A certificate of existence certifies that:

- (a) the building, or part of the building, to which the certificate applies is suitable for occupation; and
- (b) the existing building work complies with the criteria mentioned in section 72E(4)(c)(ii).

18 Sections 73 and 75 repealed

Sections 73 and 75

repeal

19 Part 8, Division 5 inserted

After section 76

insert

Division 5 General matters

76A Further information may be required

Before determining an application for occupancy certification, a building certifier may, in writing, require the applicant to do any of the following:

- (a) provide additional information or documents;
- (b) amend the application.

76B Application of and information in occupancy certification

Occupancy certification may apply to the whole or part of a building and must include the information required by regulation.

76C Application of Schedule 3

Schedule 3 applies in relation to an application for occupancy certification, the determination of the application and related matters.

76D Liability for offences prior to grant of occupancy certification

The granting of occupancy certification does not limit a person's liability for an offence against this Act committed by the person before the certification is granted.

20 Section 166AA inserted

After section 166

insert

166AA Acquisition on just terms

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

21 Section 170 amended

Section 170, at the end

insert

Note for section 170

The operation of this section is affected by Part 20.

22 Part 20 inserted

After section 193

insert

**Part 20 Transitional matters for Building Amendment
(Occupancy Certification) Act 2016**

194 Definitions

In this Part:

amending Act means the *Building Amendment (Occupancy Certification) Act 2016*.

commencement means the commencement of the amending Act.

repealed Act occupancy application means an application under Part V of the repealed Act for the issue of a certificate of occupancy under section 40 of that Act.

195 Applications for certificate of occupancy under repealed Act

- (1) This section:
 - (a) applies in relation to building work approved or commenced before 1 September 1993; and
 - (b) applies despite section 170.
- (2) If, before the commencement, a repealed Act occupancy application had been made in relation to building work but the application had not been determined, the application:
 - (a) is taken to be an application for occupancy certification; and
 - (b) must be determined under Part 8 of this Act as in force after the commencement.
- (3) After the commencement:
 - (a) a repealed Act occupancy application must not be made in relation to building work; but
 - (b) an application for occupancy certification under Part 8 of this Act as in force after the commencement may be made in relation to the work.

- (4) For the purposes of determining an application mentioned in subsection (2) or (3) a reference in Part 8 to:
- (a) a building permit granted for building work is taken to be a reference to a building approval given under Part III of the repealed Act; and
 - (b) the requirements of this Act and the Regulations is taken to be a reference to the requirements of the repealed Act and the regulations made under the repealed Act.

196 Relevant applications – building certifiers

- (1) This Act, as amended by the amending Act, applies in relation to the performance of a function by a building certifier to whom a relevant application has been made.

Examples for subsection (1)

- 1 *Under section 39, the building certifier must consent to the engagement of another certifier to perform the function of determining the relevant application.*
 - 2 *Under section 44, the building certifier may refer the determination of the relevant application to another building certifier if that certifier agrees to the referral.*
- (2) Despite anything to the contrary in this Act, a building certifier may refer a relevant application to the Director for determination if the building certifier has:
- (a) considered the application, documents and information provided to the certifier by the applicant; and
 - (b) assessed the building work the subject of the application; and
 - (c) made a written recommendation to the Director in relation to:
 - (i) whether or not occupancy certification should be granted in relation to the building work; and
 - (ii) if the building certifier recommends the grant of occupancy certification – the type of certification to be granted.
- (3) The building certifier or Director may require the applicant to provide further documents or information to facilitate a proper consideration of the application.
- (4) In this section:

relevant application means an application mentioned in section 195(2) or (3).

197 Application for occupancy permit if not decided before commencement

- (1) This section applies if, before the commencement:
 - (a) an application for an occupancy permit had been made to a certifier under this Act; but
 - (b) the application had not been determined.
- (2) This Act, as amended by the amending Act, applies in relation to the determination of the application.

198 Period of cover under approved insurance policy

- (1) This section applies in relation to building work if:
 - (a) the building work, when complete, is covered by an approved insurance policy against non-compliance with the Regulations; and
 - (b) an occupancy permit or certificate of substantial compliance is granted for the work after the commencement.
- (2) A reference in the approved insurance policy to the grant of an occupancy permit is taken to include a reference to the grant of a certificate of substantial compliance.
- (3) The entitlement to make a claim in relation to the cover provided for the building work takes effect, in accordance with the approved insurance policy, on the grant of the occupancy permit or certificate of substantial compliance.
- (4) However, despite anything to the contrary specified in the approved insurance policy, the period of cover for the building work commences on the earlier of the following:
 - (a) the day on which the initial building permit granted for the work ceased to be in force or, if renewed, would have ceased to be in force if not for the renewal;
 - (b) the day on which all the work essential to the class of the building to which the policy relates had been completed, as determined in writing by a building certifier.
- (5) The approved insurance policy does not cover any building work specified in the initial building permit granted for the work that had not been completed before the day mentioned in subsection (4)(a) or (b), as relevant.

- (6) In this section:

approved insurance policy means an approved policy of insurance issued before 1 January 2013 under section 61 as in force before that date.

199 Offences – before and after commencement

- (1) Sections 38, 42 and 65 and Schedule 3, clause 1, as amended by the amending Act, apply only in relation to offences committed after the commencement.
- (2) Sections 38, 42 and 65 and Schedule 3, clause 1, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.

23 Schedule 3 amended

- (1) Schedule 3, heading

omit, insert

Schedule 3 Building permits and occupancy certification

sections 57, 70(2)(a), 72B(2)(a), 72E(4)(b) and 76C

- (2) Schedule 3, clause 1

omit

occupancy permit

insert

occupancy certification

- (3) Schedule 3, clauses 2 and 3

omit

or occupancy permit

insert

permit or occupancy certification

(4) Schedule 3, clause 4

omit, insert

4 Form of building permit or occupancy certification

A building permit or occupancy certification must be in an approved form.

(5) Schedule 3, clause 5(1)

omit

or occupancy permit

insert

permit or occupancy certification

(6) Schedule 3, clause 5(2)

omit

permit

insert

building permit or occupancy certification

(7) Schedule 3, clause 6(1)

omit

or occupancy permit

insert

permit or occupancy certification

(8) Schedule 3, clause 6(3), after "permit"

insert

or occupancy certification

(9) Schedule 3, clause 8(1)

omit

relevant application for a permit

insert

application to which the report relates

- (10) Schedule 3, clause 9, heading

omit

applications for building permits

insert

application

- (11) Schedule 3, clause 9(1)

omit

all words after "building or"

insert

building permit or occupancy certification (other than a certificate of existence) is made to the certifier:

- (a) grant the permit or certification subject to any reasonable conditions the certifier considers appropriate; or
- (b) refuse to grant the permit or certification.

- (12) Schedule 3, clause 9(2)

omit

he or she has not granted the permit

insert

the certifier has not granted the building permit or occupancy certification

- (13) Schedule 3, after clause 9(2)

insert

- (3) A building certifier must, within the prescribed time after an application for a certificate of existence is made to the certifier, make a recommendation under section 72E.

- (4) The Director must, within the prescribed time after a recommendation is made to the Director under section 72E:
- (a) grant the certificate of existence subject to any reasonable conditions the Director considers appropriate; or
 - (b) refuse to grant the certificate.
- (5) The Director is taken to have refused an application for a certificate of existence if the Director has not granted the certificate within the prescribed time.
- (6) A building certifier or the Director must refuse to grant occupancy certification in relation to building work if satisfied that the work contravenes:
- (a) a disability access provision; or
 - (b) a requirement of a law in force in the Territory; or
 - (c) a consent or approval given under a law in force in the Territory.
- (14) Schedule 3, clause 10
- omit, insert*

10 Reasons to be given

- (1) A decision maker must notify an applicant for a building permit or occupancy certification, in writing, of the following:
- (a) a refusal to grant the permit or certification;
 - (b) if the permit or certification is granted subject to conditions – the reasons for the conditions.
- (2) In this clause:
- decision maker*** means:
- (a) in relation to an application for the grant of a certificate of existence – the Director; or
 - (b) in relation to any other application – the building certifier to whom the application was made.

- (15) Schedule 3, clause 11
- omit*
- Where a building certifier grants a building or occupancy permit
- insert*
- (1) If a building certifier grants a building permit or occupancy certification
- (16) Schedule 3, clause 11(a) and (b), after "permit"
- insert*
- or certification
- (17) Schedule 3, clause 11, at the end
- insert*
- (2) If the Director grants a certificate of existence that must be reported on or consented to by a reporting authority, the Director must, within 7 days after so doing, send to the reporting authority:
- (a) a copy of the certificate; and
- (b) where the grant of the certificate differs from or fails to require the implementation of a recommendation of the reporting authority, a copy of the Director's decision in relation to the report of the reporting authority.
- (18) Schedule 3, clause 12(2), after "permit"
- insert*
- or certificate of substantial compliance
- (19) Schedule 3, after clause 12(2)
- insert*
- (2A) The owner of a building 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 approval to occupy the building on a temporary basis.
- (2B) The owner of a building or land on which existing building work has been carried out, or the owner's agent, may, in accordance with Part 11, appeal to the Appeals Board against a refusal of the Director to grant, or against a condition imposed on, a certificate of

existence.

(20) Schedule 3, clause 12(3)

omit

all words after "building"

insert

permit or occupancy certification includes a refusal mentioned in clause 9(2) or (5).

24 Act further amended

Schedule 1 has effect.

Part 3 Consequential amendments

25 Consequential amendments

Schedule 2 amends the laws mentioned in it.

Part 4 Repeal

26 Act repealed

The *Building Amendment Act 2005* (Act No. 8 of 2005) is repealed.

Part 5 Expiry of Act

27 Expiry of Act

This Act expires on the day after it commences.

Schedule 1 Act further amended

section 24

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
long title	and occupancy permits	permits and occupancy certification
section 3(f), after "permits"		and occupancy certification
section 8(3)	permits, occupancy permits and substantial compliance certificates	permits and occupancy certification
section 19(1)(ab)	relating to refusals by the Director to grant an exemption certificate under Part 8, Division 3A	against decisions of the Director or building certifiers made under Part 8
section 40(b)	practitioner	certifier
section 40(c)	whole paragraph	
section 48C, heading	Declaration	Builder's declaration
section 48C(2)	declaration mentioned in section 69(1) and in accordance with section 69(2)	builder's declaration
section 48C(3), before "declaration"		builder's
section 48C(4)	declaration under subsection (2)	builder's declaration
section 48CA, heading	Declaration	Builder's declaration
section 48CA(1)(b) and (3)(b), before "declaration"		builder's

section 48CA(4)(a)	declaration mentioned in section 69(1)	builder's declaration
section 48G, heading	Declaration	Builder's declaration
section 48G(1)	declaration mentioned in section 69(1) and in accordance with section 69(2)	builder's declaration
section 48G(2), before "declaration"		builder's
section 59(1)(b)	clause 5 of Schedule 3	Schedule 3, clause 5
Part 8, Division 1, heading	permits	certification
section 69, heading	Declaration	Builder's declaration
section 69(1), after "form"		(a <i>builder's declaration</i>)
section 69(2), before "declaration"		builder's
section 69(3), after "if the"		builder's
section 69(4)	declaration mentioned in subsection (1)	builder's declaration
section 69(5), after "makes a"		builder's
section 69(7), before "declaration"		builder's
section 73A(2)(a)	(a), (b) or (c)	(a) or (b)
section 73A(2)(c)	whole paragraph	(c) a builder's declaration;
section 73A(2)(d)	section 69A(1)(e)	this section
section 73D(1), after "this section"		(the <i>commencement</i>)
section 73D(1)(a), after "or (c)"		, as in force before the commencement

section 73D(1)(b), after "69(1)"		, as in force before the commencement
section 108(b)	permit	certification
section 160(2)	all words from "issue" to "issued"	grant of occupancy certification in relation to the building work that is the subject of the action or, if occupancy certification is not granted
Schedule 1, after item 20		20A. The control, regulation and standards for places of public assembly, temporary structures and related building applications.
Schedule 1, items 21 to 23	permits <i>(all references)</i>	certification
Schedule 1, item 24	an occupancy permit <i>(all references)</i>	occupancy certification
Schedule 1, item 26	permits	certification
Schedule 1, item 52	whole item	

Schedule 2 Consequential amendments

section 25

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
Local Government (Darwin Parking Local Rates) Regulations		
regulation 9(1)(c)	a certificate of occupation	occupancy certification
Unit Titles Act		
section 21B(4), definition building certificate , paragraph (a), after "Act"		as defined in section 4 of the <i>Building Act</i>
section 21B(4), definition building certificate , paragraph (b)	an occupancy permit	occupancy certification as defined in section 4 of the <i>Building Act</i>
section 21B(4), definitions occupancy permit and repealed Act	whole definition	
section 21F(2), definition building certificate , paragraph (a), after "Act"		as defined in section 4 of the <i>Building Act</i>
section 21F(2), definition building certificate , paragraph (b)	an occupancy permit	occupancy certification as defined in section 4 of the <i>Building Act</i>
section 21F(2), definitions occupancy permit and repealed Act	whole definition	
