

TASMANIA

BUILDING AMENDMENT BILL 2012

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BUILDING AMENDMENT BILL 2012

*(Brought in by the Minister for Workplace Relations, the
Honourable David James O'Byrne)*

A BILL FOR

**An Act to amend the *Building Act 2000* and to amend
various other Acts consequentially**

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Building
Amendment Act 2012*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

3. Effect of certain consequential amendments

The amendment by this Act of a provision of any
regulations made under any Act does not prevent
that provision or any other provision of those

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Part 1 – Preliminary

regulations from being amended or rescinded by any subsequent regulations.

PART 2 – BUILDING ACT 2000 AMENDED

4. Principal Act

In this Part, the *Building Act 2000** is referred to as the Principal Act.

5. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended as follows:

- (a) by omitting the definition of *accredited building practitioner* from subsection (1) and substituting the following definitions:

accredited building practitioner

means a building practitioner who is accredited under Part 4 and whose accreditation is in force and, for the purposes of Divisions 4, 5 and 6 of Part 4, includes a person who was accredited at the time certain building work or associated building work was done, or certain conduct engaged in, by that person;

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accreditation scheme means the accreditation scheme approved under section 19;

- (b) by omitting the definition of *Appeal Board* from subsection (1) and substituting the following definition:

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

- (c) by omitting the definitions of *authorised person* and *builder* from subsection (1) and substituting the following definitions:

authorised person means –

- (a) the Director; and
- (b) a relevant building surveyor; and
- (c) a relevant permit authority; and
- (d) a relevant general manager;

builder means –

- (a) a person engaged by the owner of land or a building to manage or

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carry out, or certify,
building work on the
building and includes a
construction manager and
a demolisher; or

- (b) if such a person does not exist or is unable to be found, the owner of that building;
- (d) by omitting “and” from paragraph (a)(i) of the definition of *building action* in subsection (1) and substituting “or”;
- (e) by omitting “and” from paragraph (a)(ii) of the definition of *building action* in subsection (1) and substituting “or”;
- (f) by omitting the definition of *Building Code of Australia* from subsection (1) and substituting the following definition:

Building Code of Australia means the code produced by the Australian Building Codes Board comprising –

- (a) Volume One of the National Construction Code Series including any variations or additions in the Tasmania Appendix set out in the Appendices to that Volume; and

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- (b) Volume Two of the National Construction Code Series including any Tasmanian variations set out in Appendix A to that Volume;
- (g) by inserting “section 40(3)(da) or” after “in” in the definition of *building order* in subsection (1);
- (h) by omitting “assistant building surveyor” from paragraph (b) of the definition of *building practitioner* in subsection (1) and substituting “building surveyor limited”;
- (i) by inserting the following definitions after the definition of *Building Regulations* in subsection (1):
 - building surveyor*** means a person engaged by an owner to perform building surveying functions under this Act and includes a building surveyor limited;
 - building surveyor limited*** means a building surveyor whose building surveying functions are limited in accordance with section 51;
- (j) by omitting the definition of *building work* from subsection (1) and substituting the following definition:

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building work means work relating to –

- (a) erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a building; or
 - (b) adding to a building; or
 - (c) excavating or filling incidental to an activity referred to in paragraph (a) or (b); or
 - (d) any other prescribed work;
- (k) by inserting the following definitions after the definition of *certificate to proceed* in subsection (1):

Class 1-9 building means a building with a classification of –

- (a) Class 1; or
- (b) Class 2; or
- (c) Class 3; or
- (d) Class 4; or
- (e) Class 5; or
- (f) Class 6; or

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(g) Class 7; or

(h) Class 8; or

(i) Class 9;

Class 7b farm building means a building which has low human occupancy and –

(a) is associated with, and located on, land devoted to the practice of farming or horticulture; and

(b) is used essentially for –

(i) housing
machinery and
equipment; or

(ii) livestock; or

(iii) storage of
agricultural or
horticultural
produce or
materials;

(1) by inserting the following definition after the definition of *mandatory notification stage* in subsection (1):

National Construction Code Series
means the National Construction Code Series published by the Australian Building Codes Board

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as amended or remade from time to time;

- (m) by omitting the definitions of *owner* and *owner builder* from subsection (1) and substituting the following definitions:

owner includes any one of the following:

- (a) in the case of a fee simple estate in land, the person in whom that estate is vested;
- (b) a person who has contracted to buy the building or land;
- (c) in the case of land that is not registered under the *Land Titles Act 1980* and is subject to a mortgage, the person for the time being holding the equity of redemption in that mortgage;
- (d) in the case of land held under a tenancy for life, the person who is the life tenant;
- (e) in the case of land held under a lease for a term of not less than 99 years or for a term of not less than

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such other prescribed period, the person who is the lessee of the land;

(f) in the case of land that has not been alienated from the Crown, the Minister, authority or other person responsible for managing the land;

(g) any other person holding a prescribed interest in a building or land;

owner builder means –

(a) a natural person who is registered under section 30D to manage or carry out work on a Class 1-9 building; and

(b) an owner who manages or carries out building work on a Class 10 building;

(n) by omitting the definition of *plumber* from subsection (1) and substituting the following definitions:

plumber means a person who holds a licence as a Plumber Practitioner (Certifier) under the *Occupational Licensing Act 2005*, authorising him or her to carry out any plumbing work that is

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prescribed work within the meaning of that Act;

Plumbing Code of Australia means the Plumbing Code of Australia set out in Volume Three of the National Construction Code Series including any variations or additions in the Tasmania Appendix set out in Appendix A to that Volume;

- (o) by inserting the following definition after the definition of *testable backflow prevention device* in subsection (1):

unique plumbing product means a plumbing product or drainage product that is –

- (a) a prototype; or
 - (b) made on-site; or
 - (c) purpose-built and the only one of its type; or
 - (d) imported from outside Australia for a one-off use; or
 - (e) determined by the Director to be a unique plumbing product;
- (p) by omitting paragraph (d) from the definition of *unsatisfactory professional*

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conduct in subsection (1) and substituting the following paragraph:

- (d) fails to comply with this or any other Act or prescribed law or the accreditation scheme;
- (q) by inserting the following definition after the definition of *unsatisfactory professional conduct* in subsection (1):

wet well means a chamber for the collection of stormwater, sewage or wastewater that is fitted with a pumping device to raise the contents to an approved disposal system.

- (r) by inserting the following subsection after subsection (2):

(3) A reference to the class of a building is a reference to that class as set out in the Building Code of Australia.

6. Section 5A inserted

After section 5 of the Principal Act, the following section is inserted in Part 1:

5A. Authorised person may exercise powers in respect of accretions from sea

An authorised person may exercise his or her powers under this Act in respect of –

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- (a) any accretion from the sea, whether natural or unnatural; and
- (b) any part of the seashore to the low-water mark; and
- (c) any bridge, jetty, wharf, boat-house or other structure; and
- (d) any area of the sea in, on, over or under which any building or building work is related to, or affects, any adjacent land.

7. Section 7 amended (General functions of Director)

Section 7 of the Principal Act is amended by omitting paragraph (h) and substituting the following paragraph:

- (h) to audit the performance of the following:
 - (i) owners;
 - (ii) owner builders;
 - (iii) plumbers;
 - (iv) building practitioners;
 - (v) permit authorities;
 - (vi) general managers;
 - (vii) councils;

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Part 2 – Building Act 2000 Amended

8. Section 7A inserted

After section 7 of the Principal Act, the following section is inserted in Division 1:

7A. Powers of Director

The Director has the power to do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of his or her functions under this Act.

9. Section 14 amended (Duties of builders and plumbers)

Section 14(3)(c) of the Principal Act is amended by omitting “building”.

10. Sections 23, 24 and 25 substituted

Sections 23, 24 and 25 of the Principal Act are repealed and the following sections are substituted:

23. Interpretation

In this Division –

accreditation card means an identification card issued under the scheme to an accredited building practitioner by the Director;

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accreditation number means a unique personal identification number issued under the scheme to an accredited building practitioner by the Director;

certificate of accreditation means a certificate issued under section 27 by the Director;

use, in relation to practitioner accreditation, includes the use of the personal particulars, accreditation certificate, accreditation number or accreditation card of an accredited building practitioner for the purpose of –

- (a) entering into a contract for building work or associated building work;
or
- (b) managing or carrying out building work or associated building work;
or
- (c) making an application for a building permit; or
- (d) obtaining authorisation to start building work.

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23A. Persons must be accredited for certain work

- (1) A person must not manage, carry out or enter into a contract to manage or carry out the work of a building practitioner in connection with building work which requires a building permit, and the cost of which exceeds \$5,000, unless the person is –
- (a) accredited under this Part in the relevant category and class as specified in the scheme; or
 - (b) a building practitioner, being a body corporate or partnership, that complies with section 25; or
 - (c) an owner builder registered under section 30D; or
 - (d) exempt from accreditation under subsection (2).

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 250 penalty units; or
 - (b) a body corporate, a fine not exceeding 750 penalty units.
- (2) The following persons are exempt from accreditation:

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- (a) a person engaged or employed by a building practitioner body corporate or partnership that complies with section 25, or an accredited building practitioner or a registered owner builder, to carry out building work on their behalf;
- (b) a plumber carrying out or managing the replacement of roof decking which requires a building permit;
- (c) a plumber carrying out or managing a class of plumbing work that requires a building permit and is prescribed work under the *Occupational Licensing Act 2005*;
- (d) a person carrying out or managing electrical work which is prescribed work under the *Occupational Licensing Act 2005* and requires a building permit.

23B. Persons must not purport to be accredited

A person who is not accredited under this Part must not purport to be an accredited building practitioner.

Penalty: In the case of –

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- (a) a natural person, a fine not exceeding 250 penalty units; or
- (b) a body corporate, a fine not exceeding 750 penalty units.

23C. Persons must be accredited to do work of building surveyor, &c.

A natural person must not carry out the work of a building surveyor or a building surveyor limited unless the person is accredited in the relevant category and class as specified in the scheme.

Penalty: Fine not exceeding 250 penalty units.

23D. Practitioners must not purport to be accredited in a particular category or class

- (1) An accredited building practitioner who is not accredited in a particular category or class must not purport to be accredited in that category or class.

Penalty: Fine not exceeding 250 penalty units.

- (2) A person must not assist a person who is not accredited in a particular category or class to purport to be accredited in that category or class.

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Penalty: Fine not exceeding 250 penalty units.

23E. Practitioners must not use another practitioner's accreditation

An accredited building practitioner must not use another accredited building practitioner's accreditation.

Penalty: Fine not exceeding 250 penalty units.

23F. Practitioners must not lend or allow use of their accreditation

- (1) Except as provided in subsection (2), an accredited building practitioner must not lend, or allow another person to use, the accredited building practitioner's accreditation.

Penalty: Fine not exceeding 250 penalty units.

- (2) Subsection (1) does not prohibit the use of practitioner accreditation for the ordinary business activities of a body corporate or partnership in accordance with section 25.

23G. Non-accredited persons must not use practitioner accreditation

- (1) Except as provided in subsection (2), a person must not use practitioner

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accreditation unless the person is accredited under this Part.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 250 penalty units; or
 - (b) a body corporate, a fine not exceeding 750 penalty units.
- (2) Subsection (1) does not prohibit the use of practitioner accreditation for the ordinary business activities of a body corporate or partnership in accordance with section 25.

24. Professional misconduct

If an accredited building practitioner commits an offence under this Division, the accredited building practitioner is guilty of professional misconduct.

25. Bodies corporate and partnerships

- (1) If a building practitioner is a body corporate (including the Crown) or a partnership, and is responsible for the carrying out or management of building work or associated building work, the person who is to be accredited under this Part is –
- (a) a director of the body; or

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- (b) a partner in the partnership; or
 - (c) a permanent employee nominated by the body, the Crown or the partners.
- (2) Notwithstanding subsection (1), a municipal council may engage through a contract for services an accredited building surveyor to perform statutory functions under this Act.
- (3) An accredited building surveyor engaged by a municipal council is not required to be a permanent employee of that council.

11. Section 26 amended (Application for accreditation)

Section 26 of the Principal Act is amended as follows:

- (a) by inserting the following subparagraphs after subparagraph (ii) in subsection (2)(b):
 - (ia) does not satisfy the prescribed personal probity requirements for accreditation; or
 - (iib) has previously had an accreditation as a building practitioner refused, suspended or cancelled, either in Tasmania or another State or a Territory; or
- (b) by omitting subsection (3).

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12. Section 27 amended (Certificate of accreditation)

Section 27 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (2) The Director may cancel a certificate of accreditation if he or she is satisfied that the certificate was obtained by fraud or the making of a false declaration.

13. Section 28 amended (Period of certificate)

Section 28 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “3 years” and substituting “one year”;
- (b) by omitting from subsection (2)(ab) “60” and substituting “28”.

14. Section 29 amended (Renewal of certificates)

Section 29(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “scheme.” and substituting “scheme; and”;
- (b) by inserting the following paragraphs after paragraph (c):

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- (d) satisfies the prescribed probity requirements for accreditation; and
- (e) is not subject to the suspension or cancellation of the applicant's accreditation.

15. Part 4, Division 3 substituted

Division 3 of Part 4 of the Principal Act is repealed and the following Division is substituted:

Division 3 – Owner builders

30. Interpretation of Division

In this Division –

building includes all buildings or parts of buildings which together are classified as a single Class 1-9 building.

30A. Owner to be registered as owner builder in certain circumstances

- (1) Subject to subsection (3), a natural person who is an owner of land or a building where building work is, or is intended to be, carried out or managed by the owner must be registered as an owner builder under section 30D if –

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- (a) the work requires a building permit; and
 - (b) the estimated cost of the work exceeds \$5,000; and
 - (c) the work is on a Class 1-9 building, other than a Class 7b farm building.
- (2) If the land or building is jointly owned, all the owners must apply for registration as an owner builder.

Penalty: Fine not exceeding 100 penalty units.

- (3) Subsection (1) does not apply if the building work is to be managed or carried out by a builder accredited under this Part in the relevant category and class as specified in the scheme.

30B. Eligibility for registration as owner builder

- (1) A person is not eligible to apply for registration as an owner builder if –
- (a) the person is not a natural person; or
 - (b) the person is not an owner or a joint owner of the particular land or building; or

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- (c) the person is not carrying out or managing, or is not intending to carry out or manage, building work on a particular building or land or is not intending to have that building work carried out or managed on their behalf by another joint owner of that building or land; or
- (d) the building work –
 - (i) does not require a building permit; and
 - (ii) has an estimated cost which does not exceed \$5,000; and
 - (iii) is not on a Class 1-9 building, or is on a Class 7b farm building; or
- (e) the person is carrying on the business of building; or
- (f) the person, other than as a builder accredited under the scheme, has already carried out or managed building work on 2 buildings of any classification other than any Class 10 buildings or Class 7b farm buildings, in the last 10 years, not including any years before 1 July 2004; or

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- (g) the person who is, or will be, responsible for carrying out or managing the building work has not successfully completed an approved owner builder training course within the 12-month period prior to the date of an application for registration as an owner builder.
- (2) If an application is made by more than one person, subsection (1)(g) is complied with if one of the applicants has successfully completed an approved course.
- (3) The Director may, by notice in the *Gazette*, approve a particular course or courses, or a course or courses provided by a particular person or body, for the purposes of subsection (1)(g).
- (4) A notice under subsection (3) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

30C. Application to be registered as owner builder

- (1) An application to the Director to be registered as an owner builder is to be made by a building surveyor, in the approved form, on behalf of a person wishing to be registered as an owner builder.

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- (2) A person must not make a false declaration in an application for owner builder registration.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

30D. Granting of registration as owner builder

- (1) If the Director is satisfied that an applicant for registration as an owner builder in respect of building work on a particular building or land –
- (a) has engaged a building surveyor for the building work and the building surveyor has applied for registration on the applicant's behalf; and
 - (b) is eligible to be granted registration as an owner builder –

he or she must grant owner builder registration to the applicant and issue a certificate in the approved form.

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- (2) If the Director is not satisfied as set out in subsection (1), he or she must refuse to grant the application.
- (3) If the Director refuses to grant an application, the Director is to provide the applicant with written reasons for the refusal.
- (4) The Director may cancel an owner builder registration certificate if he or she is satisfied that –
 - (a) the certificate was obtained by fraud or by making a false declaration; or
 - (b) the applicant did not manage or carry out any building work to which that registration application related.

30E. Subsequent building work on a particular building

Where the Director has granted owner builder registration to a person with regard to building work on a particular building, that person does not need to apply for registration for subsequent building work on that building.

30F. Special circumstances

Notwithstanding section 30B, the Director, on application by a person who is not eligible to be registered as an owner builder may register the person as an owner builder in respect of particular building work if the Director considers special circumstances exist.

16. Section 32 amended (Complaints)

Section 32 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or the Crown” after “person”;
- (b) by omitting subsections (2) and (3) and substituting the following subsections:
 - (2) A complaint is to –
 - (a) be made within 6 years after the commencement of the building work or associated building work to which it relates; and
 - (b) be in writing; and
 - (c) contain particulars of the grounds of the complaint; and

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- (d) be supported by a statutory declaration.
- (3) The Director may –
- (a) require the complainant to give further particulars of the complaint supported by a statutory declaration; and
 - (b) undertake preliminary inquiries into the particulars of the complaint.
- (c) by omitting from subsection (4)(c) “frivolous.” and substituting “frivolous; or”;
- (d) by inserting the following paragraph after paragraph (c) in subsection (4):
- (d) after preliminary inquiries the Director has determined that the building practitioner has no case to answer.
- (e) by inserting the following subsections after subsection (4):
- (5) A complaint is received by the Director if –
- (a) the requirements of subsections (2) and (3) have been met; and

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(b) the complaint is not dismissed under subsection (4).

(6) If the Director is satisfied that an accredited building practitioner is, or may be, guilty of unsatisfactory professional conduct or professional misconduct, the Director may deal with the matter as if it were a complaint made by a person other than the Director.

17. Section 33 amended (Notification to building practitioner)

Section 33(1)(b) of the Principal Act is amended by inserting “available under the *Right to Information Act 2009*” after “documents”.

18. Section 35 amended (Investigations)

Section 35(3) of the Principal Act is amended as follows:

- (a) by inserting “a” after “there is”;
- (b) by omitting “another” and substituting “a”;
- (c) by omitting “the” second occurring and substituting “an”.

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19. Section 36 amended (Production of documents)

Section 36 of the Principal Act is amended as follows:

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

(1) The Director or approved investigator, by written notice, may require a person, including the Crown, to produce a document relevant to an investigation.

(b) by omitting subsection (4) and substituting the following subsection:

(4) A person, including the Crown, must comply with a notice under subsection (1).

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units;
or
- (b) a body corporate, a fine not exceeding 500 penalty units.

20. Section 37 substituted

Section 37 of the Principal Act is repealed and the following section is substituted:

37. Powers of entry and inspection

- (1) The Director or an approved investigator, at all reasonable times, may –
 - (a) access any building, temporary structure, building work or plumbing work; and
 - (b) enter any premises for the purpose of exercising any power or performing any function under this Act.
- (2) An entry under subsection (1) may be carried out in the case of a Class 1 building or a Class 4 building, or a sole occupancy unit in a Class 2 building or Class 3 building –
 - (a) with the consent of the occupier; or
 - (b) if authorised by a search warrant under section 38.
- (3) An entry under subsection (1) may be made to any premises at any time if –
 - (a) the safety of the public or any occupant is at risk; or

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- (b) the building or temporary structure is affected by an emergency order.

21. Section 39 substituted

Section 39 of the Principal Act is repealed and the following section is substituted:

39. Misconduct and offences

- (1) An accredited building practitioner is guilty of professional misconduct if he or she –
 - (a) fails to assist and cooperate with an investigation; or
 - (b) misleads or obstructs the Director or an approved investigator in the exercise of any power or performance of any function under this Division.
- (2) A person must not –
 - (a) assault, delay, obstruct, hinder or impede the Director or an approved investigator in the exercise of any power or performance of any function under this Act; or
 - (b) forge or counterfeit any written evidence of appointment of an approved investigator; or

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- (c) make use of any forged, counterfeited or false written evidence of such an appointment; or
- (d) impersonate an approved investigator; or
- (e) falsely pretend to be an approved investigator.

Penalty: Fine not exceeding 100 penalty units.

22. Section 40 amended (Decision of Director)

Section 40 of the Principal Act is amended as follows:

- (a) by inserting the following paragraphs after paragraph (d) in subsection (3):
 - (da) order an accredited building practitioner to carry out work at the accredited building practitioner's expense as if the Director were exercising the powers of a general manager or a building surveyor under section 170(2)(b)(ii) and may issue that order without issuing a prior building notice; and
 - (db) impose reasonable and relevant conditions on an order under paragraph (da); and

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- (b) by omitting from subsection (3)(e) “50” and substituting “100”;
- (c) by inserting the following subsections after subsection (3):
 - (3A) An order under subsection (3)(da) remains in force until complied with or revoked.
 - (3B) A person who fails to comply with an order under subsection (3)(da) is guilty of professional misconduct.
- (d) by inserting the following subsections after subsection (4):
 - (5) If the Director considers it to be in the public interest to do so, he or she may publish details of a suspension or cancellation under this section in such a manner as he or she considers will best bring the suspension or cancellation to the attention of persons affected, or likely to be affected, by it.
 - (6) A building practitioner subject to an order under subsection (3)(da) must comply with the order.

Penalty: Fine not exceeding 100
penalty units.

23. Section 41 amended (Notice of decision by Director)

Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(a) “Board” and substituting “Tribunal”;
- (b) by inserting in subsection (4) “, (da)” after “(d)”.

24. Part 4, Division 6: Heading amended

Division 6 of Part 4 of the Principal Act is amended by omitting “*Appeals*” from the heading to that Division and substituting “*Review of Director’s decisions*”.

25. Sections 42 and 43 substituted

Sections 42 and 43 of the Principal Act are repealed and the following sections are substituted:

42. Application for review

- (1) A building practitioner may apply to the Appeal Tribunal for the review of any decision or action of the Director under section 26 or 40.
- (2) A complainant may apply to the Appeal Tribunal for the review of any decision or action of the Director under section 32.

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- (3) An applicant for registration as an owner builder under Division 3 of Part 4 may apply to the Appeal Board for the review of a decision of the Director in relation to the grant or refusal to grant owner builder registration under section 30D for proposed building work.
- (4) An application is to be made within 28 days after the building practitioner, complainant or applicant receives notification of the decision or action to be reviewed.

43. Review by Appeal Tribunal

- (1) In hearing an application for review in relation to a decision or action of the Director under section 26, 30D, 32 or 40, the Appeal Tribunal may exercise the same powers as if it were the Director.
- (2) Notwithstanding subsection (1), the Appeal Tribunal may rely on a report relied on by the Director in a matter being reviewed.

26. Section 44 amended (Decision of Appeal Tribunal)

Section 44 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “appeal” and substituting “application for review”;

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- (b) by omitting from subsection (1) “Board” and substituting “Tribunal”;
- (c) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (ba) in the case of a decision by the Director to grant or refuse to grant an application for owner builder registration under section 30D, quash the decision of the Director and substitute its own decision in accordance with that section; or
- (d) by omitting from subsection (2) “Board” and substituting “Tribunal”;
- (e) by inserting the following subsection after subsection (2):
 - (3) The Director must give effect to a determination of the Appeal Tribunal under this Part.

27. Section 45 amended (Notice of decision of Appeal Tribunal)

Section 45 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

- (1) The Appeal Tribunal, by service of a notice, is to give a copy of its decision to –

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- (a) the building practitioner, in respect of a review of a decision under section 32 or 40; and
- (b) the complainant, in respect of a review of a decision under section 26; and
- (c) the applicant for owner builder registration, in respect of a review of a decision under section 30D; and
- (d) the Director, in respect of the review of a decision under section 26, 30D, 32 or 40.

28. Section 46 amended (Appeal to Court)

Section 46 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “Board” and substituting “Tribunal”;
- (b) by omitting from paragraph (b) “Board” and substituting “Tribunal”.

29. Section 47 amended (Powers of Court on review)

Section 47(1)(a) of the Principal Act is amended by omitting “50” and substituting “100”.

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30. Section 48 amended (Order requiring insurance)

Section 48(1)(d) of the Principal Act is amended by omitting “under section 50(2)”.

31. Section 50 amended (Offences relating to insurance)

Section 50 of the Principal Act is amended by omitting subsection (2).

32. Part 4A inserted

After section 50 of the Principal Act, the following Part is inserted:

PART 4A – AUDITS AND INVESTIGATIONS

50A. Audit by Director

- (1) The Director may arrange for audits to be carried out of the work of any person or body referred to in section 7(h).
- (2) A person must not fail to assist in and cooperate with the audit.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or

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- (b) a body corporate, a fine not exceeding 500 penalty units.
- (3) If the Director is satisfied that an audit indicates that an accredited building practitioner is or may be guilty of unsatisfactory professional conduct or professional misconduct, the Director may deal with the matter as if it were a complaint made by a person other than the Director.

50B. Powers of entry of Director during audit or investigation

- (1) For the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with by a person, the Director, or any person authorised on the Director's behalf, may –
 - (a) enter premises where the business is being carried on or on which it is believed on reasonable grounds that records relating to the business are kept; and
 - (b) require the production of records; and
 - (c) inspect and require explanations of any record; and
 - (d) either –

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- (i) take notes, copies and extracts of or from any record or statement produced or required under this section; or
 - (ii) remove any such record to the custody and control of the Director.
- (2) Where a record is removed under subsection (1)(d)(ii), the Director, or any officer authorised on the Director's behalf –
 - (a) may make copies of the record; and
 - (b) must return the record as soon as practicable.
- (3) A person must not –
 - (a) wilfully delay or obstruct the Director, or any person authorised on the Director's behalf in the exercise of their powers under this section; or
 - (b) refuse or fail to produce, or conceal or attempt to conceal, any record or statement the person is required under subsection (1) or (2) to produce; or
 - (c) refuse or fail to answer a question, or give an explanation,

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relating to any such record or statement where the question is put to the person, or the explanation is required of the person, by a person entitled to do so; or

- (d) in response to a question relating to any such record or statement, give an answer that he or she knows is false or misleading.

Penalty: Fine not exceeding 500 penalty units.

50C. Director may require production of records during audit or investigation

- (1) For the purpose of ascertaining whether the provisions of this Act are being, or have been, complied with, the Director, or any person authorised on the Director's behalf, may, by instrument in writing, require a person to produce specified records, or records of a specified class or description, to a person at a place and time specified in the instrument.
- (2) Where the Director, or any person authorised on the Director's behalf, requires production under subsection (1) of a record that is not in writing, or is not written in English, or is not decipherable on sight, the requirement to produce the

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record is to be taken to be a requirement to produce a statement, written in English and decipherable on sight, containing the whole of the information in the record.

- (3) A person must not refuse or fail to produce any record or statement in accordance with this section.

Penalty: Fine not exceeding 500 penalty units.

- (4) The Director, or any person authorised on the Director's behalf, may inspect and take notes, copies and extracts of or from any record or statement produced under this section.

33. Section 51 substituted

Section 51 of the Principal Act is repealed and the following section is substituted:

51. Exercise of powers by building surveyor

- (1) A building surveyor engaged by an owner to perform functions and exercise powers under this Act must perform those functions and exercise those powers.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or

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- (b) a body corporate, a fine not exceeding 500 penalty units.
- (2) A building surveyor limited must only exercise the powers of a building surveyor under this Act in respect of prescribed buildings or buildings of a prescribed type.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

34. Section 52 amended (Exercise of powers prohibited)

Section 52 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c)(iii) “building.” and substituting “building; or”;
- (b) by inserting the following paragraphs after paragraph (c):
 - (d) has a potential for a conflict of interest between his or her duties to owners or the public and his or

her personal or business interests;
or

- (e) has not been engaged in writing
by an owner.

35. Section 52A inserted

After section 52 of the Principal Act, the
following section is inserted in Part 5:

52A. Engagement of building surveyor

- (1) Where building work that requires the
performance of functions by a building
surveyor under this Act is to be
undertaken, the owner or his or her agent
must engage a building surveyor.

Penalty: In the case of –

- (a) a natural person, a fine
not exceeding 100 penalty
units; or
- (b) a body corporate, a fine
not exceeding 500 penalty
units.
- (2) An offer of engagement of a building
surveyor is to be in writing, signed by the
owner and provided to the building
surveyor.
- (3) If the building surveyor wishes to accept
an offer of engagement, he or she is to do

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so in writing provided to the owner within 7 days after receiving the offer of engagement.

36. Section 53A inserted

After section 53 of the Principal Act, the following section is inserted in Part 5:

53A. Building surveyor may resign from engagement

- (1) A building surveyor who has been engaged by a person may, with the consent of the Director, resign from that engagement at any time.
- (2) A building surveyor may resign from an engagement without the consent of the Director at any time after the expiration of 3 years after his or her engagement.
- (3) Within 7 days after resigning from an engagement under subsection (2), the building surveyor is to forward to the permit authority copies of all documents relevant to the building work as specified by the Director.

37. Section 55 amended (Compliance with Building Code)

Section 55 of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) In determining compliance with the provisions of the Building Code of Australia, a building surveyor is to take into account any variation or non-application of the requirements of that Code following a determination by the Appeal Tribunal under section 218 or 218A.

38. Section 58 substituted

Section 58 of the Principal Act is repealed and the following section is substituted:

58. Tasmanian Plumbing Code

- (1) The Minister may issue a code, known as the Tasmanian Plumbing Code, to provide for requirements in respect of –
- (a) plumbing work, plumbing installations and plumbing products; and
 - (b) the testing of plumbing products and plumbing systems.

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- (2) The Tasmanian Plumbing Code may adopt all, or any part or parts, of the Plumbing Code of Australia.

39. Section 60 amended (Building permit required)

Section 60 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “proposed” after “if the”;
- (b) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:
- (b) in the opinion of the building surveyor before building work commences, is either a minor alteration of, or a minor repair to, an existing building and the cost of the work does not, or is estimated to not, exceed \$5 000.
- (c) by omitting subsection (3) and substituting the following subsections:
- (3) Within a specified period of forming an opinion under subsection (2)(b), the building surveyor is to notify the permit authority in writing of that opinion and his or her reasons for it.

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- (4) Where a building surveyor has formed an opinion that work is minor alterations or minor repairs, he or she may exercise or perform any of his or her powers or functions in relation to inspections of work under Part 8 as if the work were the subject of a building permit.

40. Section 62 amended (Certificate of likely compliance required)

Section 62 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “engaged by the owner or agent” after “surveyor”;
- (b) by inserting in subsection (2) “specified by the Director or” after “or certificate”.

41. Section 66 amended (Consideration of application for certificate of likely compliance)

Section 66 of the Principal Act is amended by inserting after paragraph (f) the following paragraphs:

- (fa) the requirements of this Act and the Building Code of Australia;
- (fb) any determination made by the Appeal Tribunal under section 218 or 218A;

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(fc) a certificate of the responsible designer;

42. Section 67A inserted

After section 67 of the Principal Act, the following section is inserted in Division 2:

67A. Certificate of likely compliance not to be dated more than 12 months before application for building permit

A certificate of likely compliance granted under section 67 may not be submitted with an application for a building permit under Division 3 if that certificate was signed more than 12 months before the application for the building permit is made.

43. Section 71 substituted

Section 71 of the Principal Act is repealed and the following section is substituted:

71. Consideration of application for building permit

- (1) In considering an application for a building permit, a permit authority is to take into account the following matters:
 - (a) the stability of the site;
 - (b) the provision of water to the site;

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- (c) the means of road access to the site;
 - (d) any relevant requirements of any permit or consent granted or issued under any other Act;
 - (e) any relevant provisions of this Act or the Building Regulations.
- (2) For the purposes of performing its functions under subsection (1)(d), a permit authority may rely on any permit or consent as having been validly granted or issued under the provisions of the relevant Act and is not required to make further enquiries.

44. Section 77 amended (Special plumbing permit)

Section 77 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (j) “Regulations.” and substituting “Regulations;”;
- (b) by inserting the following paragraphs after paragraph (j):
 - (k) the installation of a greywater diversion device;
 - (l) the installation of a recycled water system;

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- (m) the installation of a unique plumbing product;
- (n) the installation of a wet well used to transfer sewage or stormwater from land or a building to an approved disposal system.

45. Section 81 amended (Consideration of application for plumbing permit)

Section 81 of the Principal Act is amended by inserting “or any determination made by the Appeal Tribunal under section 218 or 218A” after “Regulations”.

46. Section 85 amended (Carrying out building work)

Section 85 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2)(a) “written” after “with the”;
- (b) by inserting in subsection (2)(b) “written” after “with the”;
- (c) by inserting the following subsections after subsection (2):
 - (3) The consent of a building surveyor under subsection (2)(a) or (b) may only be given if –

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- (a) amended design documentation has been submitted to the building surveyor as if it were an application for a certificate of likely compliance under Division 2 of Part 7; and
 - (b) the building surveyor has certified the amended design documentation as complying with the Act and the building permit.
- (4) A copy of any consent under subsection (2) is to be provided by the person carrying out or managing the building work to the owner within 7 days after the consent is granted.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
 - (b) a body corporate, a fine not exceeding 500 penalty units.
- (5) If the building surveyor has consented to building work that varies from the certificate of

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likely compliance, the building surveyor is to provide to the permit authority, accompanying the certificate of final inspection, a certified copy of the architectural drawings of the as-constructed building work and any certificates relied on in giving his or her consent to a variation from the certificate of likely compliance.

47. Section 87 amended (Starting building or plumbing work)

Section 87 of the Principal Act is amended as follows:

- (a) by inserting in subsection (3)(b) “, and receiving the authorisation of,” after “notifying”;
- (b) by omitting from paragraph (a) of the penalty under subsection (3) “50” and substituting “250”;
- (c) by omitting from paragraph (b) of the penalty under subsection (3) “250” and substituting “750”;
- (d) by omitting subsection (4);
- (e) by inserting the following subsections after subsection (5):

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- (6) A notification under subsection (3)(b) is to be made –
- (a) by a builder accredited under Part 4 who is engaged by the owner; or
 - (b) if an owner builder has been registered under Part 4 for that particular work, by a person who has been registered as an owner builder; or
 - (c) if the particular work is not required under Part 4 to be managed or carried out either by an accredited builder or by a registered owner builder, by the owner.
- (7) A building surveyor is not to give authorisation to start work in accordance with the Building Regulations unless –
- (a) the notification under subsection (3)(b) identifies who is the responsible builder for the work; and
 - (b) the building surveyor is satisfied that the work will be carried out in a manner that is likely to

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comply with Part 4 of the
Building Regulations.

Penalty: Fine not exceeding 10
penalty units.

- (8) If a building surveyor's
authorisation is given orally, the
building surveyor must confirm
the authorisation in writing within
7 days.

Penalty: Fine not exceeding 10
penalty units.

- (9) Within the specified period after
receiving notification under
subsection (3), the building
surveyor is to provide to the
relevant permit authority a copy
of the start work notice and his or
her authorisation.

48. Section 89 amended (Inspections)

Section 89 of the Principal Act is amended by
inserting after subsection (3) the following
subsection:

- (3A) On being notified that a mandatory
notification stage in respect of plumbing
work incorporating the installation of a
greywater reuse system, a greywater
diversion system or a recycled water
system is to be completed, the permit

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authority must, within the specified period, inspect or cause to be inspected the plumbing work.

49. Section 92 amended (Certificate of final inspection)

Section 92(1) of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:

- (c) the building work is in compliance with this Act, in so far as it is reasonably practicable to inspect.

50. Section 98 amended (Granting occupancy permit)

Section 98(1)(b) of the Principal Act is amended by inserting “and adequate provision for smoke alarms, sanitation and water supply is made” after “occupation”.

51. Section 99 amended (Refusing application for occupancy permit)

Section 99(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “and” and substituting “or”;
- (b) by inserting in paragraph (b) “or that adequate provision for smoke alarms,

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sanitation and water supply has not been made” after “occupation”.

52. Section 102 substituted

Section 102 of the Principal Act is repealed and the following section is substituted:

102. Notification to permit authority

- (1) A building surveyor who issues an occupancy permit must –
- (a) notify the permit authority in writing within the specified period; and
 - (b) provide it with a copy of the permit.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 10 penalty units; or
 - (b) a body corporate, a fine not exceeding 50 penalty units.
- (2) Where a reporting authority has provided a required report, the building surveyor is to provide a copy of the occupancy permit for the building or part of the building to the reporting authority within the specified period.

53. Section 112 amended (Completion of building work)

Section 112 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (3):
 - (ba) a certificate of completion (plumbing work) has been provided; and
- (b) by omitting subsection (4) and substituting the following subsections:
 - (4) A building permit and a permit to proceed are valid for a period of 2 years commencing from the date on which they are granted.
 - (5) A permit of substantial compliance is valid for a period of 12 months commencing from the date on which it is granted.
 - (6) The permit authority may extend either period referred to in subsection (4) or (5) on application by the owner or his or her agent before the expiration of the permit.
 - (7) Before making a decision to extend a period under subsection (6) –

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- (a) the permit authority is to request the relevant building surveyor to provide, within a specified period, advice regarding the current status of the building work; and
 - (b) the building surveyor is to provide the advice to the permit authority within the specified period.
- (8) The permit authority may impose any reasonable and relevant conditions on an extension under subsection (6) to ensure that building work is completed in accordance with current Building Code of Australia standards as soon as practicable.
- (9) The permit authority is to provide the building surveyor with a copy of any conditions imposed under subsection (8) within the specified period.
- (10) A certificate of completion (building work) is to be in an approved form.

54. Section 113 amended (Completion of plumbing work)

Section 113 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3)(a)(i) “the Plumbing Regulations” and substituting “this Act”;
- (b) by omitting from subsection (3)(a)(ii) “the Plumbing Regulations” and substituting “this Act”;
- (c) by inserting the following subsection after subsection (3):
 - (3A) In every year in which a permit authority accepts certificates under subsection (3)(a)(ii), it must, at each mandatory notification stage, inspect, or cause to be inspected, at least 20% of the work for which certificates would otherwise be accepted.
- (d) by omitting from subsection (4)(a) “the Plumbing Regulations” and substituting “this Act”;
- (e) by omitting from subsection (4)(b) “work.” and substituting “work; or”;
- (f) by inserting the following paragraph after paragraph (b) in subsection (4):

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- (c) it is satisfied that such a certificate is required but has not been provided.

55. Section 114 amended (Defective plumbing work)

Section 114(b) of the Principal Act is amended by inserting “an omission,” after “to”.

56. Section 115A inserted

After section 115 of the Principal Act, the following section is inserted in Division 1:

115A. Change to existing building boundary

- (1) Notwithstanding section 115, a person must not change the boundary of an allotment or strata title of an existing building so that the building no longer complies with the provisions of this Act.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.
- (2) A person must obtain a building permit and carry out building work if a change

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to an allotment or strata title boundary of an existing building would –

- (a) have an adverse effect on the safety, health and amenity of persons accommodated in, or using, the existing building; or
- (b) increase the risk of the spread of fire between adjacent buildings or from a fire source feature.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 50 penalty units; or
 - (b) a body corporate, a fine not exceeding 250 penalty units.
- (3) In this section –

strata title means a property title held under the *Strata Titles Act 1998*.

57. Section 120 amended (Maintenance of certain features)

Section 120 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or occupier” after “owner”;

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- (b) by inserting in subsection (1)(a) “prescribed” after “any”;
- (c) by inserting in subsection (1)(b) “prescribed” after “any”;
- (d) by omitting from subsection (1)(b) “building.” and substituting “building; and”;
- (e) by inserting the following paragraph after paragraph (b) in subsection (1):
 - (c) any other prescribed features or measures.
- (f) by inserting in subsection (2) “or occupier” after “owner”;
- (g) by inserting in subsection (2) “prescribed” after “any”;
- (h) by omitting from subsection (2)(b) “designed” and substituting “required to perform”;
- (i) by inserting the following subsection after subsection (2):
 - (3) In this section –
 - owner* includes a body corporate formed under the *Strata Titles Act 1998*.

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58. Section 127 amended (Work not to be carried out in certain cases)

Section 127(c) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

59. Section 130 amended (Protection work)

Section 130(a)(iii) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

60. Section 136 amended (Expenses of adjoining owner)

Section 136(2) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

61. Section 137 amended (Compensation)

Section 137(2) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

62. Section 147 amended (Differences)

Section 147 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

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63. Section 148 amended (Interpretation)

Section 148 of the Principal Act is amended by inserting after the definition of *B landslip area* the following definitions:

building does not include part of a building;

insubstantial building means a building that has a total floor area not exceeding 25 square metres and is not more than one storey high;

64. Section 150 amended (Effect of order in A landslip area)

Section 150(2)(a) of the Principal Act is amended by omitting subparagraph (ii) and substituting the following subparagraph:

(ii) an insubstantial building; or

65. Section 163 amended (Building notices)

Section 163 of the Principal Act is amended by inserting after subsection (4) the following subsections:

(5) Where a building surveyor issues a notice to an owner under this section, the building surveyor is to provide a copy of the notice to the relevant builder.

(6) Where a building surveyor issues a notice to a builder under this section, the

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building surveyor is to provide a copy of the notice to the relevant owner.

66. Section 164 amended (Plumbing notice)

Section 164(2)(a) of the Principal Act is amended by omitting “or” and substituting “and”.

67. Section 165 amended (Fire hazards)

Section 165(a) of the Principal Act is amended by omitting subparagraph (iii) and substituting the following subparagraphs:

- (iii) insufficient measures to detect fire and to alert occupants; or
- (iv) insufficient measures to suppress and fight fires; or
- (v) insufficient fire compartmentation or fire separation; and

68. Section 170 amended (Building orders)

Section 170 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “owner of a building or temporary structure” and substituting “person on whom it is served”;

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- (b) by inserting in subsection (2)(b)(i) “to which the order relates” after “structure”;
- (c) by omitting from subsection (2)(b)(ii) “specified”;
- (d) by omitting from subsection (2)(c) “work.” and substituting “work; and”;
- (e) by inserting the following paragraph after paragraph (c) in subsection (2):
 - (d) where an inspection direction under section 91 that has been served on a builder has not been complied with, require the builder to carry out building work or other work as specified in the inspection direction.
- (f) by inserting the following subsection after subsection (2):
 - (2A) A building order under subsection (2)(d) may be served without first issuing a building notice.
- (g) by inserting the following subsection after subsection (4):
 - (4A) An order under subsection (2)(c) may be served without first issuing a building notice if the general manager or building surveyor is of the opinion that a person may undertake or permit

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further building work which would make compliance with an order more difficult or impossible.

69. Section 172 amended (Plumbing orders)

Section 172 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “the person who was issued with the notice or, if that person cannot be found” after “order on”;
- (b) by inserting in subsection (3) “required to be done by the plumbing order” after “the plumbing work or other work”.

70. Section 179 substituted

Section 179 of the Principal Act is repealed and the following section is substituted:

179. Consideration of application for permit to proceed

- (1) In considering an application for a permit to proceed, a permit authority is to take into account the following matters:
 - (a) the stability of the site;
 - (b) the provision of water to the site;

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- (c) the means of road access to the site;
 - (d) any relevant requirements of any permit or consent granted or issued under any other Act;
 - (e) any relevant provisions of this Act or the Building Regulations.
- (2) For the purposes of performing its functions under subsection (1)(d), a permit authority may rely on any permit or consent as having been validly granted or issued under the provisions of the relevant Act and is not required to make further enquiries.

71. Section 180 amended (Granting permit to proceed)

Section 180 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) If a permit authority grants the application, it is to –
- (a) issue a permit to proceed to the applicant in the approved form; and
 - (b) provide a copy of the permit to proceed to the building surveyor.

72. Section 187 substituted

Section 187 of the Principal Act is repealed and the following section is substituted:

187. Consideration of application for permit of substantial compliance

- (1) In considering an application for a permit of substantial compliance, a permit authority is to take into account the following matters:
 - (a) the stability of the site;
 - (b) the provision of water to the site;
 - (c) the means of road access to the site;
 - (d) any relevant requirements of any permit or consent granted or issued under any other Act;
 - (e) any relevant provisions of this Act or the Building Regulations or the Plumbing Regulations.
- (2) For the purposes of performing its functions under subsection (1)(d), a permit authority may rely on any permit or consent as having been validly granted or issued under the provisions of the relevant Act and is not required to make further enquiries.

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73. Section 188 amended (Granting permit of substantial compliance)

Section 188 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

- (3) If a permit authority grants the application, it is to –
 - (a) issue a permit of substantial compliance to the applicant in the approved form; and
 - (b) provide a copy of the permit of substantial compliance to the building surveyor.

74. Section 191 amended (Demolition order)

Section 191(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c)(ii) “compliance.” and substituting “compliance; or”;
- (b) by inserting the following paragraph after paragraph (c):
 - (d) an appeal has not been instituted in respect of the building order.

75. Section 192 amended (Failure to comply with building or plumbing order)

Section 192 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “an owner” and substituting “a person”;
- (b) by inserting the following subsection after subsection (1):
 - (1A) The general manager is to take all reasonable steps to enforce a building order referred to in subsection (1) on the person who has failed to comply.
- (c) by omitting from subsection (2) “an owner” and substituting “a person”;
- (d) by inserting in subsection (2) “an emergency order,” after “required by”.

76. Section 195 amended (Endorsements on certificates)

Section 195 of the Principal Act is amended by inserting “served under section 171” after “order”.

77. Section 197 substituted

Section 197 of the Principal Act is repealed and the following section is substituted:

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197. Recovery of costs

- (1) The cost of carrying out any work not done by an owner as required under this Part is a debt payable by the owner and recoverable in a court of competent jurisdiction.
- (2) If a person fails to carry out the work required by any order under this Part within a specified time, the council may enter land or a building and perform the required work and may recover its expenses as a charge on the land and recoverable as if it were rates or charges under the *Local Government Act 1993*.

78. Section 202 amended (Duration of order)

Section 202(b) of the Principal Act is amended by omitting “or amended”.

79. Part 12, Division 1 repealed

Division 1 of Part 12 of the Principal Act is repealed.

80. Section 209 amended (Appeal relating to building and plumbing permits)

Section 209 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

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81. Section 210 amended (Appeal relating to occupancy permit)

Section 210 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Board” and substituting “Tribunal”;
- (b) by omitting from subsection (2) “Board” and substituting “Tribunal”.

82. Section 211 amended (Appeal relating to orders)

Section 211 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

83. Section 212 amended (Appeal relating to temporary occupancy permit)

Section 212 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

84. Section 213 amended (Appeal relating to protection work)

Section 213 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

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85. Section 214 amended (Appeal relating to building surveyor)

Section 214 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Board” and substituting “Tribunal”;
- (b) by omitting from subsection (2) “Board” and substituting “Tribunal”.

86. Section 215 amended (Appeal relating to permit authority)

Section 215 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

87. Section 216 amended (Appeal against change of building surveyor)

Section 216 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

88. Section 217 amended (Appeal relating to fire regulations)

Section 217 of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

89. Part 12, Division 2A: Heading inserted

Part 12 of the Principal Act is amended by inserting the following heading after section 217:

Division 2A – Application of regulations

90. Section 218 amended (Application of regulations)

Section 218 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Board” and substituting “Tribunal”;
- (b) by inserting the following subsection after subsection (1):
 - (1A) An application must not be made under this section in relation to an access provision of the Building Code of Australia, within the meaning of section 218A.
- (c) by omitting from subsection (2) “Board” and substituting “Tribunal”;
- (d) by omitting from subsection (3) “Board” and substituting “Tribunal”;
- (e) by omitting from subsection (4) “Board” and substituting “Tribunal”;
- (f) by omitting from subsection (5) “Board” and substituting “Tribunal”.

91. Section 218A inserted

After section 218 of the Principal Act, the following section is inserted in Division 2A:

218A. Application for modification of regulations relating to access for persons with disabilities

(1) An application may be made to the Appeal Tribunal for a determination that an access provision of the Building Code of Australia –

(a) does not apply; or

(b) applies with the modifications or variations specified in the application –

to a building, or land on which a building is to be constructed, specified in the application.

(2) The application may be made by –

(a) the owner of the building or land; or

(b) a lessee of the building, who proposes to have, or is having, building work carried out in respect of the building; or

(c) any person acting on behalf of a person referred to in paragraph (a) or (b), other than the relevant building surveyor.

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- (3) An application must be made on the ground that compliance with the access provisions of the Building Code of Australia would impose unjustifiable hardship on the applicant.
- (4) Before determining a matter under this section relating to disability access, the Appeal Tribunal is to notify, and seek submissions from –
 - (a) the Director; and
 - (b) any affected reporting authority; and
 - (c) the relevant building surveyor.
- (5) In determining whether compliance with an access provision of the Building Code of Australia would impose unjustifiable hardship on the applicant, the Appeal Tribunal must take into account the objects of the *Disability Discrimination Act 1992* of the Commonwealth and all relevant circumstances of the particular case, including the following:
 - (a) any additional capital, operating or other costs, or loss of revenue, that would be directly incurred by, or be reasonably likely to result from, compliance with the provision;
 - (b) any reductions in capital, operating or other costs, or

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- increases in revenue, that would be directly achieved by, or be reasonably likely to result from, compliance with the provision;
- (c) the extent to which the construction of the building has been or will be financed by government funding;
 - (d) the extent to which the building –
 - (i) is used for public purposes; and
 - (ii) has a community function;
 - (e) the financial position of the applicant;
 - (f) any effect that compliance with the provision is reasonably likely to have on the financial viability of the applicant;
 - (g) any exceptional technical factors (such as the effect of load-bearing elements on the structural integrity of the building) or geographic factors (such as gradient or topography) affecting a person's ability to comply with the provision;
 - (h) financial, staffing, technical, information and other resources

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reasonably available to the applicant, including any grants, tax concessions, subsidies or other external assistance provided or available;

- (i) whether the cost of alterations to make any premises accessible is disproportionate to the value of the building, taking into consideration the improved value that would result from the alterations;
- (j) benefits reasonably likely to accrue from compliance with the provision, including benefits to persons with disabilities, to building users or to other affected persons, or detriment likely to result from non-compliance;
- (k) detriment reasonably likely to be suffered by the applicant, building developer, or building manager, or by persons with disabilities or other building users, including in relation to means of access, comfort and convenience, if compliance with the provision is required;
- (l) if detriment under paragraph (k) involves loss of heritage significance, the extent to which the heritage features of the

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- building are essential, or merely incidental, to the heritage significance of the building;
- (m) any evidence regarding efforts made in good faith by the applicant or a person required to comply with the provision, including consulting access consultants or the relevant building surveyor;
 - (n) whether the applicant has given an action plan (within the meaning of Part 3 of the *Disability Discrimination Act 1992* of the Commonwealth) to the Australian Human Rights Commission under section 64 of that Act, the terms of the action plan and any evidence of its implementation;
 - (o) the nature and results of any processes of consultation, including at local, regional, State, national, international, industry or other level, involving or on behalf of the applicant, a building developer, building manager or the relevant building surveyor and persons with disabilities, about means of achieving compliance with the provision, including in relation to the factors listed in this subsection.

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- (6) If a substantial issue of unjustifiable hardship is raised having regard to the factors mentioned in subsection (5), the Appeal Tribunal must consider the following additional factors:
- (a) the extent to which substantially equal access to public premises is or may be provided otherwise than by compliance with the access provisions of the Building Code of Australia;
 - (b) any measures undertaken, or to be undertaken, by, on behalf of or in association with a person or organisation in order to ensure substantially equal access.
- (7) A determination under this section must provide for compliance with the access provisions of the Building Code of Australia to the maximum extent not involving unjustifiable hardship.
- (8) For the purposes of this section, *unjustifiable hardship* is to be interpreted and applied having due regard to the rights and interests of all relevant parties.
- (9) In this section –
- access provisions of the Building Code of Australia* means a performance requirement –

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- (a) that is contained in Section D, Part E3 or Part F2 of the Building Code of Australia Volume One; and
- (b) in respect of which there is an equivalent performance requirement contained in the Access Code within the meaning of the Disability (Access to Premises - Buildings) Standards 2010 of the Commonwealth;

building developer means a person with responsibility for, or control over, the design or construction of the building;

building manager means a person with responsibility for, or control over, the management of the building.

92. Sections 219, 220, 221, 222 and 223 substituted

Sections 219, 220, 221, 222 and 223 of the Principal Act are repealed and the following section is substituted:

219. Form of applications

- (1) An application to the Appeal Tribunal is to be –
 - (a) in the approved form; and
 - (b) made within the specified period; and
 - (c) accompanied by the prescribed fee.
- (2) The Appeal Tribunal may extend the specified period referred to in subsection (1) if it considers it appropriate.

93. Sections 225, 226, 227, 228 and 229 repealed

Sections 225, 226, 227, 228 and 229 of the Principal Act are repealed.

94. Section 239A inserted

After section 239 of the Principal Act, the following section is inserted in Division 1:

239A. Prosecution of offences

Proceedings for an offence against this Act or the regulations are to be commenced by an authorised person within 2 years after the date on which evidence of the alleged offence first

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came to the attention of the authorised person.

95. Section 240 amended (False and misleading statements)

Section 240 of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) of the penalty “50” and substituting “100”;
- (b) by omitting from paragraph (b) of the penalty “100” and substituting “500”.

96. Section 251 amended (Immunity from liability)

Section 251 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Appeal Board or the” twice occurring;
- (b) by inserting in subsection (2) “, certificate issued under section 266” after “advice”.

97. Section 256 amended (Accrual of cause of action)

Section 256(1) of the Principal Act is amended as follows:

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- (a) by omitting from paragraph (a) “a certificate of occupancy” and substituting “an occupancy permit”;
- (b) by omitting from paragraph (b) “certificate” and substituting “permit”;
- (c) by omitting from paragraph (c) “certificate of occupancy” and substituting “occupancy permit”.

98. Section 258 substituted

Section 258 of the Principal Act is repealed and the following section is substituted:

258. Access to and entry into premises

- (1) An authorised person, at all reasonable times may –
 - (a) access any building, temporary structure, building work or plumbing work; and
 - (b) enter any premises for the purpose of exercising any power or performing any function under this Act.
- (2) An entry under subsection (1) may be carried out in the case of a Class 1 building or a Class 4 building, or a sole occupancy unit in a Class 2 or Class 3 building –

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- (a) with the consent of the occupier;
or
 - (b) in accordance with a search
warrant.
- (3) An entry under subsection (1) may be carried out to any premises at any time if –
- (a) the safety of the public or any occupant is at risk; or
 - (b) the premises are affected by an emergency order.

99. Section 259 amended (Powers of authorised persons)

Section 259(a) of the Principal Act is amended by omitting “the owner” and substituting “an owner, occupier or building manager”.

100. Section 261 amended (Evidentiary provisions)

Section 261(1) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

101. Section 265 amended (Authentication of documents)

Section 265 of the Principal Act is amended by omitting “Board” three times occurring and substituting “Tribunal”.

102. Section 266 substituted

Section 266 of the Principal Act is repealed and the following section is substituted:

266. Reliance on certificate issued by specialist or other person

- (1) A permit authority, building surveyor or general manager may rely on a certificate issued by a person who is not the responsible designer and who is –
 - (a) a specialist with qualifications as prescribed; or
 - (b) another person with qualifications as prescribed.
- (2) A certificate may certify that the following types of work comply, or are likely to comply, with the Act:
 - (a) design;
 - (b) document assessment;
 - (c) inspection or reporting;
 - (d) testing of components or of a building plumbing system.
- (3) The certificate may relate to –
 - (a) a building; or
 - (b) building work; or
 - (c) plumbing work; or

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- (d) a plumbing installation; or
 - (e) a temporary structure.
- (4) For the avoidance of doubt, subsection (1) does not impose a requirement on the accredited building practitioner responsible for the design or building work or plumbing work to issue a certificate.

103. Section 269 repealed

Section 269 of the Principal Act is repealed.

104. Section 270 amended (Building permit levy)

Section 270 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2)(a) “, permit to proceed or permit of substantial compliance” after “permit”;
- (b) by inserting in subsection (2)(b) “, permit to proceed or permit of substantial compliance” after “permit”;
- (c) by inserting in subsection (3) “, permit to proceed or permit of substantial compliance” after “permit”;
- (d) by omitting from subsection (3)(b) “a” second occurring and substituting “the”;

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(e) by inserting the following subsections after subsection (4):

(5) Before the issue of a certificate of completion of building work, the owner or his or her agent must notify the permit authority, if the actual cost of the work exceeds by an amount of \$25 000 or more the contract price or the statement by the building surveyor of the estimated cost of the work.

Penalty: In the case of –

(a) a natural person, a fine not exceeding 100 penalty units;
or

(b) a body corporate, a fine not exceeding 500 penalty units.

(6) Before the issue of a certificate of completion of building work, the owner or his or her agent may notify the permit authority, if the actual cost of the work was less than, by an amount of \$25 000 or more, the contract price or the statement by the building surveyor of the estimated cost of the work.

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(7) If the permit authority is satisfied that the actual cost of the building work on completion varies by an amount of \$25 000 or more from the contract price or the estimated cost –

(a) the permit authority is to refund to the owner an amount equal to the excess levy paid; or

(b) the owner must pay to the permit authority an amount equal to the additional levy that would have been payable if the contract price or the estimated cost of that work had been the actual cost of that work.

Penalty: In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(8) An amount owed under subsection (7)(b) is a debt payable by the owner and

recoverable in a court of competent jurisdiction.

105. Section 270A inserted

After section 270 of the Principal Act, the following section is inserted in Division 6:

270A. Offence for non-payment of levy

- (1) The owner must ensure that building work is not commenced before the levy due in respect of that work under section 270(1) has been paid.

Penalty: Fine not exceeding 200 penalty units.

- (2) A penalty imposed under subsection (1) does not affect the liability of an owner or applicant for payment of the levy.

106. Section 273 amended (Additional orders)

Section 273 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “permit authority” and substituting “general manager”;
- (b) by omitting from subsection (3)(b) “Board” and substituting “Tribunal”.

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107. Section 278 amended (Registers)

Section 278(1) of the Principal Act is amended as follows:

- (a) by omitting paragraph (h) and substituting the following paragraph:
 - (h) building orders received by it or issued by the general manager;
- (b) by omitting from paragraph (k) “it.” and substituting “it;”;
- (c) by inserting the following paragraph after paragraph (k):
 - (l) permits of substantial compliance issued by it.

108. Section 280A inserted

After section 280 of the Principal Act, the following section is inserted in Division 6:

280A. Savings and transitional provisions consequent on the *Building Amendment Act 2012*

Schedule 3A has effect.

109. Schedule 2 repealed

Schedule 2 to the Principal Act is repealed.

110. Schedule 3A inserted

After Schedule 3 to the Principal Act, the following Schedule is inserted:

SCHEDULE 3A – SAVINGS AND TRANSITIONAL PROVISIONS CONSEQUENT ON THE *BUILDING AMENDMENT ACT 2012*

Section 280A

1. Interpretation

In this Schedule –

amending Act means the *Building Amendment Act 2012*;

Appeal Board means the Building Appeal Board as in existence immediately before the commencement day;

commencement day means the day on which sections 109 and 111 of the amending Act commence.

2. Immunity from liability for members of Appeal Board

Section 251, as in force immediately before the commencement day, applies to a member of the Appeal Board in respect of any thing done or omission made before that day as if that section had not

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been amended by the *Building Amendment Act 2012*.

3. Matters before Appeal Board to continue

Any matter before the Appeal Board immediately before the commencement day that had not been determined by that day is to continue to be heard and determined by the Appeal Board in accordance with this Act, as in force immediately before the commencement day.

PART 3 – BUILDING REGULATIONS 2004 AMENDED

111. Principal Regulations

In this Part, the *Building Regulations 2004** are referred to as the Principal Regulations.

112. Regulation 51 amended (Appeal under regulations)

Regulation 51 of the Principal Regulations is amended by omitting “Board” and substituting “Tribunal”.

113. Regulation 52 amended (Appeal Tribunal fee)

Regulation 52(1) of the Principal Regulations is amended by omitting “Board” and substituting “Appeal Tribunal”.

114. Schedule 4 amended (Act infringement notice offences)

Schedule 4 to the Principal Regulations is amended as follows:

- (a) by omitting “Board” from column 3 of item 3 in the table and substituting “Tribunal”;

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- (b) by omitting “Board” from column 3 of item 4 in the table and substituting “Tribunal”.

PART 4 – DRAINS ACT 1954 AMENDED

115. Principal Act

In this Part, the *Drains Act 1954** is referred to as the Principal Act.

116. Section 2 amended (Interpretation)

Section 2(1) of the Principal Act is amended by omitting the definition of *Building Appeal Board* and substituting the following definition:

Building Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*;

117. Section 39 amended (Buildings not to be erected without consent over drains shown on deposited map)

Section 39(4) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

118. Section 50 amended (Drainage of new buildings)

Section 50(3) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

*No. 67 of 1954

Building Amendment Act 2012
Act No. of

s. 119

Part 4 – Drains Act 1954 Amended

119. Section 51A amended (Compulsory connection to drains)

Section 51A(4) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

PART 5 – FIRE SERVICE ACT 1979 AMENDED

120. Principal Act

In this Part, the *Fire Service Act 1979** is referred to as the Principal Act.

121. Section 133A amended (Appeals against provisions of General Fire Regulations)

Section 133A(1) of the Principal Act is amended by omitting “Building Appeal Board established under section 203 of the *Building Act 2000*” and substituting “Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*”.

*No. 35 of 1979

Building Amendment Act 2012
Act No. of

s. 122 Part 6 – Local Government (Savings and Transitional) Act 1993 Amended

**PART 6 – LOCAL GOVERNMENT (SAVINGS AND
TRANSITIONAL) ACT 1993 AMENDED**

122. Principal Act

In this Part, the *Local Government (Savings and Transitional) Act 1993** is referred to as the Principal Act.

123. Section 19 amended (Appeals, references and objections)

Section 19(4) of the Principal Act is amended by omitting “Building Appeal Board as constituted under the *Local Government (Building and Miscellaneous Provisions) Act 1993*” and substituting “Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*”.

*No. 98 of 1993

Building Amendment Act 2012
Act No. of

Part 7 – Plumbing Regulations 2004 Amended

s. 124

PART 7 – PLUMBING REGULATIONS 2004 AMENDED

124. Principal Regulations

In this Part, the *Plumbing Regulations 2004** are referred to as the Principal Regulations.

125. Regulation 55 amended (Appeal under regulations)

Regulation 55 of the Principal Regulations is amended by omitting “Board” and substituting “Tribunal”.

*S.R. 2004, No. 44

Building Amendment Act 2012
Act No. of

s. 126 Part 8 – Resource Management and Planning Appeal Tribunal Act 1993
Amended

**PART 8 – RESOURCE MANAGEMENT AND
PLANNING APPEAL TRIBUNAL ACT 1993 AMENDED**

126. Principal Act

In this Part, the *Resource Management and Planning Appeal Tribunal Act 1993** is referred to as the Principal Act.

127. Section 6 amended (Composition of Appeal Tribunal)

Section 6 of the Principal Act is amended by inserting after paragraph (h) the following paragraphs:

- (ha) such number of persons as the Governor considers necessary who possess expertise in building; and
- (hb) such number of persons as the Governor considers necessary who possess expertise in architecture; and
- (hc) such number of persons as the Governor considers necessary who possess expertise in building surveying; and
- (hd) such number of persons as the Governor considers necessary who possess expertise in plumbing; and

*No. 66 of 1993

Building Amendment Act 2012
Act No. of

Part 8 – Resource Management and Planning Appeal Tribunal Act 1993
Amended

s. 127

- (he) such number of persons as the Governor considers necessary who possess expertise in Local Government; and
- (hf) such number of persons as the Governor considers necessary who possess expertise in disability access to buildings; and
- (hg) such number of persons as the Governor considers necessary who possess expertise in environmental and public health; and

Building Amendment Act 2012
Act No. of

s. 128

Part 9 – Strata Titles Act 1998 Amended

PART 9 – STRATA TITLES ACT 1998 AMENDED

128. Principal Act

In this Part, the *Strata Titles Act 1998** is referred to as the Principal Act.

129. Section 144 amended (Right of appeal)

Section 144(1)(b) of the Principal Act is amended by omitting “Building Appeal Board” and substituting “Resource Management and Planning Appeal Tribunal established under the *Resource Management and Planning Appeal Tribunal Act 1993*”.

*No. 17 of 1998

**PART 10 – WATER AND SEWERAGE INDUSTRY ACT
2008 AMENDED**

130. Principal Act

In this Part, the *Water and Sewerage Industry Act 2008** is referred to as the Principal Act.

131. Section 56TC amended (Certificates for certifiable work)

Section 56TC(7)(b) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

132. Section 56TD amended (Certification of water and sewerage compliance)

Section 56TD(9)(b) of the Principal Act is amended by omitting “Board” and substituting “Tribunal”.

133. Section 56TE amended (Appeals to Appeal Tribunal)

Section 56TE of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Board” and substituting “Tribunal”;

*No. 13 of 2008

Building Amendment Act 2012
Act No. of

s. 133

Part 10 – Water and Sewerage Industry Act 2008 Amended

(b) by omitting subsections (3) and (4).

Building Amendment Act 2012
Act No. of

Part 11 – Repeal of Act

s. 134

PART 11 – REPEAL OF ACT

134. Repeal of Act

This Act is repealed on the ninetieth day from the day on which all of the provisions of this Act commence.