

TASMANIA

BUILDING LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2018

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BUILDING LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2018

*(Brought in by the Minister for Building and Construction, the
Honourable Guy Barnett)*

A BILL FOR

An Act to amend the *Building Act 2016*, the *Occupational Licensing Act 2005*, the *Building Regulations 2016*, the *Occupational Licensing (Building Services Work) Regulations 2016*, the *Residential Building Work Contracts and Dispute Resolution Regulations 2016*, and the *Urban Drainage (General) Regulations 2016*

Be it enacted by Her 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 Legislation (Miscellaneous Amendments) Act 2018*.

2. Commencement

- (1) Except as provided for in this section, the provisions of this Act are taken to have commenced on 1 January 2017.

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Part 1 – Preliminary

- (2) Parts 5, 7 and 8 commence on the day on which this Act receives the Royal Assent.

PART 2 – BUILDING ACT 2016 AMENDED

3. Principal Act

In this Part, the *Building Act 2016** is referred to as the Principal Act.

4. Section 4 amended (Interpretation)

Section 4(1) of the Principal Act is amended by inserting after paragraph (f) in the definition of *owner* the following paragraph:

- (fa) in the case of premises where defective work is found, an occupier of the premises who has contractually authorised the performance of the building work in those premises –
 - (i) that was the defective work; or
 - (ii) that resulted in the discovery of the defective work;

5. Section 11 amended (All work must comply with Act and National Construction Code)

Section 11(5) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “State.” and substituting “State; or”;

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- (b) by inserting the following paragraph after paragraph (b):
 - (c) if the provision of the National Construction Code applies a standard, or requirement, by reference to a document that is subsequently amended – the building surveyor, or relevant permit authority, for the work certifies that substantial progress had been made in the design of the work before the document so applied was amended.

6. Section 20 amended (Director of Building Control may make determinations)

Section 20 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “when and where” and substituting “when, where and how”;
- (b) by inserting the following subsection after subsection (4):
 - (5) Despite subsection (4), a determination of the Director of Building Control made under subsection (1), or a standard or requirement applied under such a determination by reference to a document, does not apply to work if the building surveyor, or

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relevant permit authority, for the work certifies in writing that substantial progress had been made in the design of the work –

- (a) before the determination was made; or
- (b) if the determination applies a standard or requirement by reference to a document that is subsequently amended, before the document so applied was amended.

7. Section 44 amended (Minimum standards of design work)

Section 44 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) If design work under this Act requires a performance solution, a person undertaking the design work is to provide, as part of the design work, a method of assessment to ensure that the performance solution is likely to comply with the National Construction Code if it is properly completed in accordance with the design work.

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Part 2 – Building Act 2016 Amended

8. Section 53 amended (Existing buildings to be upgraded if altered)

Section 53 of the Principal Act is amended by inserting after subsection (1) the following subsections:

(1A) This section does not apply to building work performed on a building if –

(a) the building work is being performed to repair damage to the building –

(i) caused by fire, wind, flood or storm or the subsidence of land, other than a subsidence caused by a failure of the owner or occupier of the building to maintain the land; or

(ii) that has not been caused by an act, or a failure to act, of the owner or an occupier of the building; and

(b) the building work is necessary in order for the building to be made suitable for habitation or safe occupation, or for use for the purposes for which it was being used before the damage referred to in paragraph (a) was caused to the building; and

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- (c) the building work consists of work to restore the building to the condition it was in before the damage referred to in paragraph (a) was caused to the building; and
 - (d) the materials, components, installations, and equipment, that are used in the building work are substantially similar to those used, in the part of the building to which the works relate, before the damage referred to in paragraph (a) was caused to the building.
- (1B) This section does not apply to a building, or a class of buildings, that a determination of the Director of Building Control states are exempt from the requirements of this section.

9. Section 79 amended (Adjoining owner may respond to protection work notice)

Section 79 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

- (2) If an adjoining owner requests further information under subsection (1)(c), the owner of the relevant premises must –
 - (a) forward the request to –

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Part 2 – Building Act 2016 Amended

- (i) if the protection work relates only to plumbing work, the relevant permit authority; or
 - (ii) in any other case, the relevant building surveyor; and
- (b) if the person receiving the request under paragraph (a) determines that the request is reasonable, provide the adjoining owner with the further information requested within the specified period; and
- (c) if the person receiving the request under paragraph (a) determines that the request is not reasonable, notify the adjoining owner of that determination within the specified period.

10. Section 98 amended (Certificate of likely compliance (notifiable building work))

Section 98 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (c) in subsection (1):
 - (ca) if the premises where the work is performed includes a special-use building that is regulated under this Act by a function control

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authority in its capacity as a function control authority, any recommendation of the function control authority made in respect of the premises under section 98A;

(b) by inserting the following subsection after subsection (3):

(3A) Subsection (3)(c) does not apply in relation to work if –

(a) the premises where the work is performed includes a special-use building that is regulated under this Act by a function control authority in its capacity as a function control authority; and

(b) the work is to be performed in accordance with the recommendations of the function control authority made in respect of the premises under section 98A; and

(c) the building surveyor is satisfied that any non-compliance with the Act is not detrimental to the safety and health of any

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occupant, or any future
occupant, of the building.

11. Section 98A inserted

After section 98 of the Principal Act, the
following section is inserted in Division 2:

**98A. Certificate of likely compliance (notifiable
building work) for certain special-use
buildings**

- (1) On receipt of a notice of work under section 97 that relates to the performance of proposed notifiable building work on a special-use building that is regulated under this Act by a function control authority in its capacity as a function control authority, a building surveyor is to provide, within the specified period, the relevant function control authority with –
 - (a) a copy of the notice of work for the proposed notifiable building work; and
 - (b) any other specified documents relating to the proposed notifiable building work.
- (2) Within the specified period after receiving the information referred to in subsection (1) in respect of proposed notifiable building work, the function control authority may make

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recommendations to the relevant building surveyor for alterations to be made to the proposed work, or the premises where the work is to be performed, to ensure that the work or premises comply with this Act or any other Act.

12. Section 99 amended (Performing notifiable building work)

Section 99 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “at least 5 business days before the expiry of that period” after “relevant building surveyor”;
- (b) by inserting the following subsection after subsection (4):
 - (4A) If the Director of Building Control has determined that special circumstances exist, a building surveyor may give written approval under subsection (4) whether or not that approval is given at least 5 business days before the expiry of the period specified in that subsection.

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Part 2 – Building Act 2016 Amended

13. Section 104 amended (Certificate of completion (notifiable building work))

Section 104 of the Principal Act is amended by inserting after subsection (3) the following subsections:

(3A) Despite subsection (2)(b), a building surveyor may issue a certificate of completion (notifiable building work) under subsection (3) in respect of notifiable building work that has not had a standard of work certificate (notifiable building work) issued in respect of it, if –

(a) evidence is provided to the satisfaction of the building surveyor that –

(i) the responsible person for the notifiable building work has died before, or is not locatable or otherwise incapable of, issuing the standard of work certificate (notifiable building work) for the work; or

(ii) the applicant has made a written request, to the responsible person for the notifiable building work, for a standard of work certificate (notifiable building work) and the

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responsible person has failed to provide the certificate within 21 days after the request was made; and

(b) the notifiable building work –

(i) is complete; and

(ii) has been inspected as required under section 100 and the person performing the inspection is satisfied that the work complies with this Act and the National Construction Code.

(3B) Despite subsection (3)(c), a building surveyor may issue a certificate of completion (notifiable building work) under subsection (3) in respect of notifiable building work, that included notifiable plumbing work that has not had a standard of work certificate (notifiable plumbing work) issued in respect of it, if a certificate of completion (notifiable plumbing work) has been issued in respect of the notifiable plumbing work.

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Part 2 – Building Act 2016 Amended

14. Section 110 amended (Performing notifiable plumbing work)

Section 110 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “at least 5 business days before the expiry of that period” after “relevant permit authority”;
- (b) by inserting the following subsection after subsection (4):

(4A) If the Director of Building Control has determined that special circumstances exist, a permit authority may give written approval under subsection (4) whether or not that approval is given at least 5 business days before the expiry of the period specified in that subsection.

15. Section 115 amended (Certificate of completion (notifiable plumbing work))

Section 115 of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) Despite subsection (2)(b), the relevant permit authority may issue a certificate of completion (notifiable plumbing work) under subsection (3) in respect of notifiable plumbing work that has not had a standard of work certificate

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(notifiable plumbing work) issued in respect of it, if –

(a) evidence is provided to the satisfaction of the relevant permit authority that –

(i) the responsible person for the notifiable plumbing work has died before, or is not locatable or otherwise incapable of, issuing the standard of work certificate (notifiable plumbing work) for the work; or

(ii) the applicant has made a written request, to the responsible person for the notifiable plumbing work, for a standard of work certificate (notifiable plumbing work) and the responsible person has failed to provide the certificate within 21 days after the request was made; and

(b) the notifiable plumbing work –

(i) is complete; and

(ii) has been inspected as required under section 111 and the

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person performing the inspection is satisfied that the work complies with this Act and the National Construction Code.

- (5) If the relevant permit authority issues a certificate of completion (notifiable plumbing work) under subsection (3) in respect of notifiable plumbing work that forms part of notifiable building work, the relevant permit authority is to give the relevant building surveyor for that notifiable building work a copy of the certificate of completion (notifiable plumbing work) so issued.

16. Section 122 amended (Performing notifiable demolition work)

Section 122 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “at least 5 business days before the expiry of that period” after “relevant building surveyor”;
- (b) by inserting the following subsection after subsection (4):
- (4A) If the Director of Building Control has determined that special circumstances exist, a building surveyor may give written approval under

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subsection (4) whether or not that approval is given at least 5 business days before the expiry of the period specified in that subsection.

17. Section 127 amended (Certificate of completion (notifiable demolition work))

Section 127 of the Principal Act is amended by inserting after subsection (3) the following subsection:

(3A) Despite subsection (2)(b), a building surveyor may issue a certificate of completion (notifiable demolition work) under subsection (3) in respect of notifiable demolition work that has not had a standard of work certificate (notifiable demolition work) issued in respect of it, if –

(a) evidence is provided to the satisfaction of the building surveyor that –

(i) the responsible person for the notifiable demolition work has died before, or is not locatable or otherwise incapable of, issuing the standard of work certificate (notifiable demolition work) for the work; or

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(ii) the applicant has made a written request, to the responsible person for the notifiable demolition work, for a standard of work certificate (notifiable demolition work) and the responsible person has failed to provide the certificate within 21 days after the request was made; and

(b) the notifiable demolition work –

(i) is complete; and

(ii) has been inspected as required under section 123 and the person performing the inspection is satisfied that the work complies with this Act.

18. Section 132 amended (Determining application for certificate of likely compliance (permit building work))

Section 132 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (b) in subsection (1):

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- (ba) if the premises where the work is performed includes a special-use building that is regulated under this Act by a function control authority in its capacity as a function control authority, any recommendation of the function control authority made in respect of the premises under section 132A;
- (b) by inserting the following subsections after subsection (1):
 - (1A) If the application for a certificate of likely compliance (permit building work) relates to building work that includes a proposed performance solution, the building surveyor is to also require the applicant to provide one or more of the following:
 - (a) assessments of the proposed performance solution as set out in the requirement;
 - (b) information in relation to the qualification of persons who have provided the applicant with the information referred to in paragraph (a);

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(c) information in relation to the design or suitability of the proposed performance solution.

(1B) If an applicant fails to comply with a requirement of subsection (1A) within the period specified in the requirement, the application for a certificate of likely compliance (permit building work) is taken to lapse on the expiry of that period.

19. Section 132A inserted

After section 132 of the Principal Act, the following section is inserted in Subdivision 1:

132A. Certificate of likely compliance (permit building work) for certain special-use buildings

(1) On receipt of an application for a certificate of likely compliance (permit building work) that relates to the performance of proposed permit building work on a special-use building that is regulated under this Act by a function control authority in its capacity as a function control authority, a building surveyor is to provide, within the specified period, the relevant function control authority with –

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- (a) a copy of the application for the certificate of likely compliance (permit building work); and
 - (b) any other specified documents relating to the proposed permit building work.
 - (2) Within the specified period after receiving the information referred to in subsection (1) in respect of proposed permit building work, the function control authority may make recommendations to the relevant building surveyor for alterations to be made to the proposed work, or the premises where the work is to be performed, to ensure that the work or premises comply with this Act or any other Act.

20. Section 134 amended (Granting application for certificate of likely compliance (permit building work))

Section 134 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Subsection (1)(b) does not apply in relation to work if –
 - (a) the premises where the work is performed includes a special-use building that is regulated under this Act by a function control

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authority in its capacity as a
function control authority; and

- (b) the work is to be performed in
accordance with the
recommendations of the function
control authority made under
section 132A; and
- (c) the building surveyor is satisfied
that any non-compliance with the
Act is not detrimental to the
safety and health of any occupant,
or any future occupant, of the
building.

**21. Section 140 amended (Additional application
requirements for performance solutions)**

Section 140(b) of the Principal Act is amended
by inserting “, which evidence is to include the
assessment, of the performance solution, made
by the building surveyor who granted the
application for the relevant certificate of likely
compliance (permit building work) in relation to
the proposed work” after “Code”.

**22. Section 141 amended (Determining application for
building permit)**

Section 141 of the Principal Act is amended by
omitting subsections (2) and (3).

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23. Section 146 amended (Duration of building permit)

Section 146 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Despite subsection (1), if an application to extend the period for which a building permit is in effect is made under section 147 and has not been determined under section 147(4) before the permit is to expire, the permit is to remain in effect until the application is so determined.

24. Section 147 amended (Extension of duration of building permit)

Section 147 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
 - (1A) An application for an extension of the period for which a building permit is in effect must be made at least 5 business days before the building permit expires, unless the Director of Building Control has determined that special circumstances exist.
- (b) by omitting from subsection (2)(c) “authority; and” and substituting “authority.”;

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- (c) by omitting paragraph (d) from subsection (2).

25. Section 152 amended (Certificate of final inspection (building))

Section 152 of the Principal Act is amended by inserting after subsection (1) the following subsection:

(1A) Despite subsection (1)(a)(ii), a building surveyor may issue a certificate of final inspection (building), in respect of permit building work that has not had a standard of work certificate (permit building work) issued in respect of it, if –

(a) evidence is provided to the satisfaction of the building surveyor that –

(i) the responsible person for the permit building work has died before, or is not locatable or otherwise incapable of, issuing the standard of work certificate (permit building work) for the work; or

(ii) the applicant has made a written request, to the responsible person for the permit building work, for a standard of work

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certificate (permit building work) and the responsible person has failed to provide the certificate within 21 days after the request was made; and

(b) the permit building work –

(i) is complete; and

(ii) has been inspected, as required under section 149, on completion of the final notification stage for the work and the person performing the inspection is satisfied that the work complies with this Act and the National Construction Code.

26. Section 153 amended (Certificate of completion (permit building work))

Section 153 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (2);
- (b) by inserting the following subsection after subsection (3):

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(4) A permit authority may accept an application for, and issue, a certificate of completion (permit building work) under this section that does not include a standard of work certificate for work (*the uncertified work*) as required under this section, if –

(a) evidence is provided to the satisfaction of the permit authority that –

(i) the responsible person for the uncertified work has died before, or is not locatable or otherwise incapable of, issuing the standard of work certificate for the work; or

(ii) the applicant has made a written request, to the responsible person for the uncertified work, for a standard of work certificate and the responsible person has failed to provide the

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certificate within
21 days after the
request was made;
and

- (b) a certificate of
completion, or certificate
of final inspection, has
been issued in respect of
the uncertified work.

**27. Section 165 amended (Application for plumbing
permit)**

Section 165 of the Principal Act is amended by
inserting after subsection (2) the following
subsection:

- (3) Subsection (2)(b)(i) does not apply in
respect of an application under this
section for proposed permit plumbing
work, or a stage of proposed permit
plumbing work, if the relevant permit
authority agrees to that application being
made at the same time as an application
under section 156 for a certificate of
likely compliance (permit plumbing
work) for that proposed permit plumbing
work.

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28. Section 172 amended (Duration of plumbing permit)

Section 172 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Despite subsection (1), if an application to extend the period for which a plumbing permit is in effect is made under section 173 and has not been determined under section 173(3) before the permit is to expire, the permit is to remain in effect until the application is so determined.

29. Section 173 amended (Extension of duration of plumbing permit)

Section 173 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):
 - (1A) An application for an extension of the period for which a plumbing permit is in effect must be made at least 5 business days before the plumbing permit expires, unless the Director of Building Control has determined that special circumstances exist.

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- (b) by omitting from subsection (2)(c) “authority; and” and substituting “authority.”;
- (c) by omitting paragraph (d) from subsection (2).

30. Section 178 amended (Certificate of completion (permit plumbing work))

Section 178 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b) “work; and” and substituting “work.”;
- (b) by omitting paragraph (c) from subsection (2);
- (c) by inserting the following subsection after subsection (3):
 - (4) A permit authority may accept an application for, and issue, a certificate of completion (permit plumbing work) under this section that does not include a standard of work certificate (permit plumbing work) issued in respect of the work, if evidence is provided to the satisfaction of the permit authority that –
 - (a) the responsible person for the work has died before, or is not locatable or

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otherwise incapable of, issuing the standard of work certificate (permit plumbing work) for the work; or

- (b) the applicant has made a written request, to the responsible person for the work, for a standard of work certificate (permit plumbing work) and the responsible person has failed to provide the certificate within 21 days after the request was made.

31. Section 196 amended (Duration of demolition permit)

Section 196 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Despite subsection (1), if an application to extend the period for which a demolition permit is in effect is made under section 197 and has not been determined under section 197(4) before the permit is to expire, the permit is to remain in effect until the application is so determined.

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32. Section 197 amended (Extension of duration of demolition permit)

Section 197 of the Principal Act is amended as follows:

- (a) by inserting the following subsection after subsection (1):

- (1A) An application for an extension of the period for which a demolition permit is in effect must be made at least 5 business days before the demolition permit expires, unless the Director of Building Control has determined that special circumstances exist.

- (b) by omitting from subsection (2)(c) “authority; and” and substituting “authority.”;

- (c) by omitting paragraph (d) from subsection (2).

33. Section 202 amended (Certificate of final inspection (demolition))

Section 202 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Despite subsection (1)(a)(ii), a building surveyor may issue a certificate of final inspection (demolition) in respect of permit demolition work that has not had

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Part 2 – Building Act 2016 Amended

a standard of work certificate (permit demolition work) issued in respect of it, if –

(a) evidence is provided to the satisfaction of the building surveyor that –

(i) the responsible person for the permit demolition work has died before, or is not locatable or otherwise incapable of, issuing the standard of work certificate (permit demolition work) for the work; or

(ii) the applicant has made a written request, to the responsible person for the permit demolition work, for a standard of work certificate (permit demolition work) and the responsible person has failed to provide the certificate within 21 days after the request was made; and

(b) the permit demolition work –

(i) is complete; and

(ii) has been inspected, as required under

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Part 2 – Building Act 2016 Amended

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section 199, on completion of the final notification stage for the work and the person performing the inspection is satisfied that the work complies with this Act and the National Construction Code.

34. Section 203 amended (Certificate of completion (permit demolition work))

Section 203 of the Principal Act is amended as follows:

- (a) by omitting from subsection (2)(b)(ii) “work); and” and substituting “work).”;
- (b) by omitting paragraph (c) from subsection (2);
- (c) by inserting the following subsection after subsection (3):
 - (4) A permit authority may accept an application for, and issue, a certificate of completion (permit demolition work) under this section in respect of permit demolition work that has not had a standard of work certificate (permit demolition work) issued in respect of it as required under this section, if –

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- (a) evidence is provided to the satisfaction of the permit authority that –
 - (i) the responsible person for the work has died before, or is not locatable or otherwise incapable of, issuing the standard of work certificate (permit demolition work) for the work; or
 - (ii) the applicant has made a written request, to the responsible person for the work, for a standard of work certificate (permit demolition work) and the responsible person has failed to provide the certificate within 21 days after the request was made; and
- (b) a certificate of final inspection (demolition)

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Part 2 – Building Act 2016 Amended

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has been issued in respect
of the work.

35. Section 204 amended (Interpretation)

Section 204 of the Principal Act is amended by inserting after paragraph (a) in the definition of *responsible owner* the following paragraph:

- (ab) an occupier who has a contractual responsibility to maintain the essential building services of the building to which the contract relates; and

36. Section 206 amended (Schedule of maintenance)

Section 206 of the Principal Act is amended as follows:

- (a) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:
 - (b) approved by –
 - (i) the relevant permit authority, if the schedule of maintenance only relates to plumbing work performed on, or a plumbing installation installed in, the premises that include the building; or

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- (ii) a building surveyor, in any other case.
- (b) by omitting from subsection (2) “building surveyor” twice occurring and substituting “permit authority, or building surveyor,”;
- (c) by omitting from subsection (3) “building surveyor” and substituting “permit authority, or building surveyor, as applicable”;
- (d) by omitting from subsection (4) “building surveyor” and substituting “permit authority, or building surveyor, as applicable”.

37. Section 237 amended (Building notice)

Section 237 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “a building or” and substituting “premises or a”;
- (b) by omitting from subsection (1) “building” fourth occurring and substituting “premises”;
- (c) by omitting from subsection (1)(a) “on the building”;
- (d) by omitting from subsection (1)(b) “building” first occurring and substituting “premises”;

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- (e) by omitting from subsection (1)(c) “building” second occurring and substituting “premises”;
 - (f) by omitting from subsection (1)(d) “building” second occurring and substituting “premises”;
 - (g) by omitting from subsection (1)(e) “building” and substituting “premises”;
 - (h) by omitting from subsection (1)(f) “building” first occurring and substituting “premises”;
 - (i) by omitting from subsection (1)(f)(ii) “building” and substituting “premises”;
 - (j) by omitting from subsection (1)(g) “building” second occurring and substituting “premises”;
 - (k) by omitting from subsection (2) “a building or” first occurring and substituting “premises or a”;
 - (l) by omitting from subsection (2) “a building” third occurring and substituting “the premises”;
 - (m) by omitting from subsection (4)(a) “building” and substituting “premises”;
 - (n) by omitting from subsection (4)(b)(i) “building” and substituting “premises”.

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s. 38

Part 2 – Building Act 2016 Amended

38. Section 238 amended (Plumbing notice)

Section 238(1) of the Principal Act is amended as follows:

- (a) by omitting “a building or” and substituting “premises or a”;
- (b) by omitting “building or” second occurring and substituting “premises or temporary”;
- (c) by omitting from paragraph (b) “building” and substituting “premises”;
- (d) by omitting from paragraph (c) “building” and substituting “premises”;
- (e) by omitting from paragraph (d) “building” and substituting “premises”;
- (f) by omitting from paragraph (f) “building” and substituting “premises”.

39. Section 251 amended (Court orders)

Section 251 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “of competent jurisdiction”;
- (b) by inserting the following paragraph after paragraph (a) in subsection (3):

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- (ab) may be made to either the Supreme Court or the Magistrates Court; and
 - (c) by inserting the following subsection after subsection (4):
 - (5) For the avoidance of doubt –
 - (a) an application made under this section to the Magistrates Court on, or after, the commencement of this Act is taken to have been validly made; and
 - (b) any decision made by the Magistrates Court in respect of such an application is taken to have been validly made.

40. Section 255 amended (Application for certificate of substantial compliance)

Section 255(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “documentation; and” and substituting “documentation.”;
- (b) by omitting paragraph (c).

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s. 41

Part 2 – Building Act 2016 Amended

41. Section 258 amended (Application for permit of substantial compliance)

Section 258(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “authority; and” and substituting “authority.”;
- (b) by omitting paragraph (d).

42. Section 262 amended (Duration of permit of substantial compliance)

Section 262 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1A) Despite subsection (1), if an application to extend the period for which a permit of substantial compliance is in effect is made under section 263A and has not been determined under section 263A(5) before the permit is to expire, the permit is to remain in effect until the application is so determined.

43. Section 263A inserted

After section 263 of the Principal Act, the following section is inserted in Subdivision 2:

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263A. Extension of duration of permit of substantial compliance

- (1) A person may apply, to the permit authority that issued a permit of substantial compliance, for an extension of the period for which that permit is in effect.
- (2) An application, for an extension of the period for which a permit of substantial compliance is in effect, must be made at least 5 business days before the permit of substantial compliance expires, unless the Director of Building Control has determined that special circumstances exist.
- (3) An application, for an extension of the period for which a permit of substantial compliance is in effect, is to –
 - (a) be in an approved form; and
 - (b) include such information as is determined by the Director of Building Control; and
 - (c) be accompanied by such documentation as is required by the Director of Building Control and the permit authority.
- (4) Before making a decision in respect of an application under subsection (1) in relation to a permit of substantial compliance –

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Part 2 – Building Act 2016 Amended

- (a) the permit authority is to request the relevant building surveyor to provide, within a specified period, advice regarding the work being performed under the permit; and
 - (b) the building surveyor must comply with the request within that period.
- (5) The permit authority that receives an application under subsection (1) in relation to a permit of substantial compliance may –
 - (a) extend the period for which the permit of substantial compliance is in effect; or
 - (b) refuse to extend the period for which the permit of substantial compliance is in effect; or
 - (c) ask the applicant for further information and, after considering the further information, extend or refuse to extend the period for which the permit of substantial compliance is in effect.

44. Section 280A inserted

After section 280 of the Principal Act, the following section is inserted in Division 1:

280A. Appeals relating to reporting authority

- (1) A reporting authority who provided a required report in respect of a certificate of likely compliance may appeal to the appeal tribunal, in relation to any matter raised in its report, against –
 - (a) the decision of the building surveyor to issue the certificate of likely compliance; or
 - (b) any condition imposed on the certificate of likely compliance other than a condition that must be imposed on the certificate of likely compliance under this Act.
- (2) A reporting authority who provided a required report in respect of an occupancy permit may appeal to the appeal tribunal, in relation to any matter raised in its report, against –
 - (a) the decision of the building surveyor to issue the permit; or
 - (b) any condition imposed on the permit other than a condition that must be imposed on the permit under this Act.

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s. 45

Part 2 – Building Act 2016 Amended

45. Section 288 amended (Non-application of Building Regulations)

Section 288(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “provision.” and substituting “provision; or”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) if the provision of the Building Regulations applies a standard or requirement by reference to a document that is subsequently amended, if the building surveyor for the work certifies that substantial progress had been made in the design of the work before the document so applied was amended.

46. Section 290 amended (Non-application of Plumbing Regulations)

Section 290(1) of the Principal Act is amended as follows:

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

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Part 2 – Building Act 2016 Amended

s. 47

- (c) if the provision of the Plumbing Regulations applies a standard or requirement by reference to a document that is subsequently amended – if the relevant permit authority for the work certifies that substantial progress had been made in the design of the work before the document so applied was amended.

47. Section 327 amended (Accrual of cause of action)

Section 327(7)(b) of the Principal Act is amended by omitting “2 years” and substituting “6 years”.

48. Section 330A inserted

After section 330 of the Principal Act, the following section is inserted in Division 6:

330A. Further amendment of regulations not prevented

The amendment of a provision of regulations made under this Act, or any other Act, by the *Building Legislation (Miscellaneous Amendments) Act 2018*, does not prevent that regulation, or any other provision of those regulations, from being amended or rescinded by a later Act or regulations.

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Part 2 – Building Act 2016 Amended

49. Schedule 2 amended (Transitional and Savings Provisions)

Clause 6 of Part 3 of Schedule 2 to the Principal Act is amended as follows:

- (a) by omitting from subclause (1) “A valid building permit” and substituting “Subject to subclause (2A), a valid building permit”;
- (b) by omitting from subclause (2) “A valid plumbing permit” and substituting “Subject to subclause (2A), a valid plumbing permit”;
- (c) by inserting the following subclause after subclause (2):
 - (2A) A permit that is taken to be issued and in force under this Act by virtue of subclause (1) or (2), continues to have effect until the first of the following:
 - (a) a certificate of completion is issued in respect of the work performed under the permit;
 - (b) the permit is cancelled;
 - (c) if the permit specifies a day on which the permit expires or ceases to have effect, that day;

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Part 2 – Building Act 2016 Amended

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- (d) if the permit does not specify a day on which the permit expires or ceases to have effect, 1 July 2020.

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Part 3 – Building Regulations 2016 Amended

PART 3 – BUILDING REGULATIONS 2016 AMENDED

50. Principal Regulations

In this Part, the *Building Regulations 2016** are referred to as the Principal Regulations.

51. Regulation 4 amended (Temporary structures)

Regulation 4 of the Principal Regulations is amended by inserting after paragraph (d) the following paragraph:

- (da) a temporary swimming pool, including any associated safety barrier or fencing;

52. Regulation 8 amended (Director of Building Control may make determinations)

Regulation 8 of the Principal Regulations is amended by inserting after paragraph (j) the following paragraph:

- (ja) the requirements and procedures, to rectify defective work or non-compliant work, that are not otherwise specified in the Act;

*S.R. 2016, No. 110

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Part 4 – Occupational Licensing (Building Services Work) Regulations 2016
Amended

s. 53

PART 4 – OCCUPATIONAL LICENSING (BUILDING SERVICES WORK) REGULATIONS 2016 AMENDED

53. Principal Regulations

In this Part, the *Occupational Licensing (Building Services Work) Regulations 2016** are referred to as the Principal Regulations.

54. Regulation 9 amended (Prescribed criteria)

Regulation 9(2) of the Principal Regulations is amended by omitting paragraph (e) and substituting the following paragraph:

- (e) other than building work carried out or managed under a building authority, the person and each other owner of the premises, in aggregate, have not already carried out or managed building work, under an authorisation as an owner builder, on 2 or more buildings in the 10 years immediately before the person made the application for the proposed permit; and

55. Schedule 1 amended (Building services work)

Schedule 1 to the Principal Regulations is amended by omitting paragraph (b) from clause 1 of Part 2.

*S.R. 2016, No. 112

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s. 56 Part 5 – Occupational Licensing (Building Services Work) Regulations
2016 Further Amended

**PART 5 – OCCUPATIONAL LICENSING (BUILDING
SERVICES WORK) REGULATIONS 2016 FURTHER
AMENDED**

56. Principal Regulations

In this Part, the *Occupational Licensing
(Building Services Work) Regulations 2016** are
referred to as the Principal Regulations.

57. Schedule 2 amended (Fees)

Clause 1 of Schedule 2 to the Principal
Regulations is amended by omitting item 2 from
the table in the definition of *architect* and
substituting:

2.	Section 29C(c)	Fee for owner builder permit –	
		(a) if work intended to be performed under the permit by the holder of the permit involves work on a Class 1a or 1b building; or	240
		(b) if work intended to be performed under the permit by the holder of the permit does not involve work on a Class 1a or 1b building	120

*S.R. 2016, No. 112

**PART 6 – OCCUPATIONAL LICENSING ACT 2005
AMENDED**

58. Principal Act

In this Part, the *Occupational Licensing Act 2005** is referred to as the Principal Act.

59. Section 37C amended (Certain organisations may apply for building services licence)

Section 37C of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) “(including the Crown)” after “corporate”;
- (b) by inserting the following subsection after subsection (5):
 - (6) For the avoidance of doubt, nothing in this section requires an organisation to hold a building services licence as a licensed entity if each person who manages or carries out building services work, including entering into a contract for building services work, for that organisation holds a licence under section 22A, or this section, that

*No. 47 of 2005

Building Legislation (Miscellaneous Amendments) Act 2018
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s. 60

Part 6 – Occupational Licensing Act 2005 Amended

authorises the person to perform
the work.

60. Section 38 amended (Offences)

Section 38 of the Principal Act is amended as follows:

- (a) by omitting from subsection (7) “building work” and substituting “building services work”;
- (b) by omitting from subsection (8) “building work” and substituting “building services work”.

61. Schedule 2 amended (Occupations, Trades and Callings to Which this Act Applies)

Schedule 2 to the Principal Act is amended by inserting in clause 4 of Part 4 “or demolition work” after “building work,”.

**PART 7 – OCCUPATIONAL LICENSING ACT 2005
FURTHER AMENDED**

62. Principal Act

In this Part, the *Occupational Licensing Act 2005** is referred to as the Principal Act.

63. Section 22A amended (Obligation to hold building services licence)

Section 22A(2)(b) of the Principal Act is amended by omitting “work,” and substituting “work, or entering into a contract to manage or carry out building services work,”.

64. Section 29A amended (Building work for which an owner builder permit may be issued)

Section 29A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “on a Class 1a building under the authority of the permit” and substituting “on a class of building, or type of building, determined by the Administrator under subsection (1A)”;
- (b) by inserting the following subsections after subsection (1):

*No. 47 of 2005

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s. 64

Part 7 – Occupational Licensing Act 2005 Further Amended

- (1A) For the purposes of subsection (1), the Administrator may determine the classes of building, or types of building, in respect of which a person may manage or carry out building work as an owner builder.
- (1B) Before making a determination under subsection (1A), the Administrator may consult with any person or organisation that he or she considers appropriate.
- (c) by inserting the following subsections after subsection (2):
 - (3) The Administrator is to notify any determination under subsection (1A) in the *Gazette* and in such daily newspapers circulating generally in Tasmania as the Administrator thinks fit and the notification is to be available for public inspection –
 - (a) at the office of the Administrator during normal business hours; and
 - (b) by means of the World Wide Web; and
 - (c) by any other means determined by the Administrator.

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Act No. of 2018

Part 7 – Occupational Licensing Act 2005 Further Amended

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- (4) The Administrator may amend a determination under subsection (1A) by –
- (a) omitting, substituting or adding a provision; and
 - (b) notifying the amended determination, and making it available for public inspection, in accordance with subsection (3).
- (5) For the avoidance of doubt, the making of a determination under subsection (1A), or the amending of such a determination under subsection (4), does not affect the validity of an owner builder permit issued before the determination, or amended determination, is notified in accordance with subsection (3).

65. Section 34 amended (Determination of application)

Section 34(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “issue” and substituting “may issue”;
- (b) by omitting paragraph (b) and substituting the following paragraph:

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Part 7 – Occupational Licensing Act 2005 Further Amended

- (b) may refuse the application for any reason that the Administrator considers appropriate, including but not limited to any one or more of the following reasons:
 - (i) the applicant is not a fit and proper person;
 - (ii) the applicant does not have the qualifications, experience or competence to perform the functions of, or carry out the work of, a contractor as appropriate for the occupation and class of the licence being sought by the applicant;
 - (iii) there are not satisfactory arrangements in place, including the suitability of the nominated manager for the applicant, for the supervision of the applicant in his or her role as a contractor;
 - (iv) the applicant does not, or is not likely to have, a sound and stable financial background;
 - (v) the applicant is not, or is not likely to be, covered

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Part 7 – Occupational Licensing Act 2005 Further Amended

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by the insurance required
under section 27;

(vi) the applicant does not
satisfy, or is not likely to
satisfy, any applicable
requirement of a
determination under
section 31 or any
prescribed requirement;

(vii) the applicant has
previously had a licence,
or similar accreditation as
a contractor, refused,
suspended or cancelled, in
Tasmania or in another
State or a Territory.

66. Section 37 amended (Determination of application)

Section 37(1) of the Principal Act is amended as follows:

(a) by omitting from paragraph (a) “issue”
and substituting “may issue”;

(b) by omitting paragraph (b) and
substituting the following paragraph:

(b) may refuse the application for
any reason that the Administrator
considers appropriate, including
but not limited to any one or
more of the following reasons:

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- (i) the applicant is not a fit and proper person;
- (ii) the applicant does not have the qualifications, experience or competence to perform the functions of, or carry out the work of, a practitioner as appropriate for the occupation and class of the licence being sought by the applicant;
- (iii) the applicant is unlikely to maintain his or her skills and qualifications, or undertake any required continuing professional development, as appropriate for the occupation and class of the licence being sought by the applicant;
- (iv) the applicant does not, or is not likely to, have a sound and stable financial background;
- (v) the applicant is not, or is not likely to be, covered by the insurance required under section 27;

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- (vi) the applicant does not satisfy, or is not likely to satisfy, any applicable requirement of a determination under section 31 or any prescribed requirement;
- (vii) the applicant has previously had a licence, or similar accreditation as a practitioner, refused, suspended or cancelled, in Tasmania or in another State or a Territory.

67. Section 37B amended (Determination of application)

Section 37B(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “issue” and substituting “may issue”;
- (b) by omitting from paragraph (b) “refuse” and substituting “may refuse”.

68. Section 49 amended (Registers)

Section 49(4) of the Principal Act is amended by omitting paragraph (e).

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s. 69

Part 7 – Occupational Licensing Act 2005 Further Amended

69. Section 62 amended (Infringement notices)

Section 62 of the Principal Act is amended by omitting subsection (3).

70. Part 6, Division 5 repealed

Division 5 of Part 6 of the Principal Act is repealed.

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Part 8 – Residential Building Work Contracts and Dispute Resolution
Regulations 2016 Amended

s. 71

**PART 8 – RESIDENTIAL BUILDING WORK
CONTRACTS AND DISPUTE RESOLUTION
REGULATIONS 2016 AMENDED**

71. Principal Regulations

In this Part, the *Residential Building Work Contracts and Dispute Resolution Regulations 2016** are referred to as the Principal Regulations.

72. Regulation 7 amended (Adjudication application fee)

Regulation 7 of the Principal Regulations is amended by omitting “section 63(4)(e) of the Act” and substituting “section 62(4)(e) of the Act”.

73. Schedule 1 amended (Infringement Notice Offences)

Schedule 1 to the Principal Regulations is amended by omitting items 19 and 20 and substituting:

19.	77(2)	Compliance adjudication specified date	order	with by	20	10
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*S.R. 2016, No. 89

Building Legislation (Miscellaneous Amendments) Act 2018
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s. 74

Part 9 – Urban Drainage (General) Regulations 2016 Amended

PART 9 – URBAN DRAINAGE (GENERAL)
REGULATIONS 2016 AMENDED

74. Principal Regulations

In this Part, the *Urban Drainage (General) Regulations 2016** are referred to as the Principal Regulations.

75. Regulation 3 amended (Interpretation)

Regulation 3 of the Principal Regulations is amended as follows:

- (a) by omitting “*Building Act 2000*” from the definition of *building surveyor* and substituting “*Building Act 2016*”;
- (b) by omitting “*Building Act 2000*” from the definition of *building work* and substituting “*Building Act 2016*”.

*S.R. 2016, No. 15

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Part 10 – Miscellaneous

s. 76

PART 10 – MISCELLANEOUS

76. Expiry of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of its provisions commence.