

CLAUSE NOTES

Building Legislation (Miscellaneous Amendments) Bill 2018

Part 1 - Preliminary

Clause: 1 **Short title**

Clause 2: **Commencement**

Except for Parts 5, 7 and 8, this Bill will apply retrospectively from 1 January 2017 (the date that the *Building Act 2016* and amendments to the *Occupational Licensing Act 2005* commenced).

Parts 5, 7 and 8 are to commence on Royal Assent.

Part 2 - *Building Act 2016* amended

Clause 3: **Principal Act**

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

Clause 4: **Interpretation**

Amends the definition of “owner” of premises to incorporate situations where an occupier or tenant of a premises has entered a building work contract.

They are now also deemed an “owner” for fulfilling their responsibilities under that contract. Otherwise, an occupier could walk away from a building work project and leave the property owner to be responsible for the incomplete or defective work.

Clause 5: **All work must comply with Act and National Construction Code**

Inserts new subsection 11(5)(c) to provide for transitional arrangements for the design of work.

If a designer has made substantial progress on preparing a design before an update or change to the National Construction Code (NCC) took effect, the design may still be accepted as compliant with the amended Code.

Clause 6: **Director of Building Control may make determinations**

Amends section 20 so that the Director’s determinations will now cover “how” work or inspections may be performed.

Inserts a new subsection 20(5) to provide for transitional arrangements for the design of work.

If a designer has made substantial progress on preparing a design before an update or change to a Director’s determination took effect, the design may still be accepted as compliant with the amended determination.

Clause 7: Minimum standards of design work

Amends section 44 by replacing references to “alternative solution” (which is no longer used in the National Construction Code) with “performance solutions”.

The change also clarifies that the designer is to provide to the building surveyor appropriate assessment methods of that work.

Clause 8: Existing building to be upgraded if altered

Inserts new subsection 53(1A) to exclude “like for like” repair work of buildings from the operation of section 53, which requires the upgrading of a building where the performance of new work goes over a threshold amount.

This amendment addresses the issue when repairs are required to return a building to its former condition as a result of events such as floods, fires or wind damage.

Inserts new subsection 53(1B) to allow the Director of Building Control to make determinations regarding the types of buildings that are exempt from the application of this section and do not require mandatory upgrading.

Clause 9: Adjoining owner may respond to protection work notice

Clarifies the operation of section 79 so that requests for further information may be made by adjoining owners in relation to building, demolition or plumbing work.

Clause 10: Certificate of likely compliance (notifiable building work)

Inserts two subsections into section 98 of the Act to clarify that in performing an assessment of an application for a Certification of Likely Compliance, the building surveyor is to consider any recommendations or comments received from a relevant Function Control Authority.

(see also note for Clause 11)

Clause 11: Certificate of likely compliance (notifiable building work) (for certain special-use buildings)

Inserts a new section 98A into the Act to clarify the roles of Function Control Authorities during the technical assessment of work for a certificate of likely compliance.

For example, if new work was on a private hospital, the Department of Health, which has the function of licensing such premises, is to receive copies of the plans and it may comment or make recommendations regarding their appropriateness.

Clause 12: Performing notifiable building work

Amends subsection 99(4) to clarify that owners must apply to the building surveyor for an extension of approval to perform notifiable building work at least five business days before their current approval expires.

Inserts new subsection 99(4A) to allow the Director of Building Control the ability to make a determination that the building surveyor may still accept an

extension application outside of this timeframe, when special circumstances exist.

Clause 13: Certificate of completion (notifiable building work)

Inserts new subsections 104(3A) and 104(3B) to allow an owner to make an application for a certificate of completion in the event that the responsible person for the work has not provided a standard of work certificate, and an inspection of the work by the building surveyor shows that it is complete and compliant.

This change address a problem where the responsible person for work either is unable to, or will not, issue a standard of work certificate to the owner, thereby preventing them from legally completing the work. This includes situations where the responsible person for the work has died, disappeared or has refused to give that certificate due to a dispute with the owner.

Clause 14: Performing notifiable plumbing work

Amends subsection 110(4) to clarify that owners must apply to the Permit Authority for an extension of approval to perform notifiable plumbing work at least five business days before their current approval expires.

Inserts new subsection 110(4A) to allow the Director of Building Control the ability to make a determination that the Permit Authority may still accept an extension application outside of this timeframe, when special circumstances exist.

Clause 15: Certificate of completion (notifiable plumbing work)

Inserts new subsection 115(4) to allow an owner to make an application for a certificate of completion in the event that the responsible person for the work has not provided a standard of work certificate, and an inspection of the work by the permit authority shows that it is complete and compliant.

(see also note for Clause 13)

Clause 16: Performing notifiable demolition work

Amends subsection 122(4) to clarify that owners must apply to the building surveyor for an extension of approval to perform notifiable demolition work at least five business days before their current approval expires.

Inserts new subsection 122(4A) to allow the Director of Building Control the ability to make a determination that the building surveyor may still accept an extension application outside of this timeframe, when special circumstances exist.

Clause 17: Certificate of completion (notifiable demolition work)

Inserts new subsection 127(3A) to allow an owner to make an application for a certificate of completion in the event that the responsible person for the work has not provided a standard of work certificate, and an inspection of the work by the building surveyor shows that it is complete and compliant.

(see also note for Clause 13)

- Clause 18: Determining application for certificate of likely compliance (permit building work)**
- Amends section 132(1) to clarify that the building surveyor is to consider any recommendations received from a relevant Function Control Authority when assessing an application for a certificate of likely compliance for permit building work.
- Inserts new subsection 132(1A) to provide that if the design incorporates a performance solution, the designer is to provide evidence to demonstrate that the solution is suitable to comply with the National Construction Code, by way of assessments performed, expert opinions or other information relating to that design.
- Clause 19: Certificate of likely compliance (permit building work) for certain special-use buildings**
- Inserts new section 132A to clarify the role of Function Control Authorities during the technical assessment of work for a certificate of likely compliance.
- Clause 20: Granting application for certificate of likely compliance (permit building work)**
- Amends section 134 to clarify that due to the specific nature of a “Special Use Building” licensed by a Function Control Authority or any of its recommendations in relation to a particular project, the usual building standards in the National Construction Code may need to be modified.
- For example, the special requirements of the Health Services Establishments Code are appropriate for a new hospital operating theatre.
- Clause 21: Additional application requirements for performance solutions**
- Amends section 140(b) to provide that if the building design incorporates a performance solution, the evidence provided to demonstrate that the building solution is suitable, is to be included with the documents submitted with the building permit application.
- Clause 22: Determining application for building permit**
- Omits subsections 141(2) and (3), as these requirements are included in section 132 as actions required during assessment for a certificate of likely compliance.
- Clause 23: Duration of building permit**
- Inserts new subsection 146(1A) to clarify that if an application for an extension of a permit has been lodged, the permit does not expire before the application is approved.
- Clause 24: Extension of duration of building permit**
- Inserts subsection 147(1A) to clarify that owners must apply to the permit authority for an extension of a building permit at least five business days before the current approval expires, unless the Director of Building Control has made a determination that special circumstances exist.

- Clause 25: Certificate of final inspection (building)**
Inserts new subsection 152(1A) to allow an owner to make an application for a certificate of final inspection in the event that the responsible person for the work has not provided a standard of work certificate, and an inspection of the work by the building surveyor shows that it is complete and compliant.
(see also note for Clause 13)
- Clause 26: Certificate of completion (permit building work)**
Inserts new subsection 153(4) to allow an owner to make an application for a certificate of completion in the event that the responsible person for the work has not provided a standard of work certificate, and the certificate of final inspection has been issued by the building surveyor.
(see also note for Clause 13)
- Clause 27: Application for plumbing permit**
Inserts new subsection 165(3) to provide that a permit authority may allow an owner to apply for the certificate of likely compliance and plumbing permit at the same time.
- Clause 28: Duration of plumbing permit**
Inserts new subsection 172(1A) to clarify that if an application for an extension of a permit has been lodged, the permit does not expire before the application is approved.
- Clause 29: Extension of duration of plumbing permit**
Inserts subsection 173(1A) to clarify that owners must apply to the permit authority for an extension of a plumbing permit at least five business days before the current approval expires, unless the Director of Building Control has made a determination that special circumstances exist.
- Clause 30: Certificate of completion (permit plumbing work)**
Inserts new subsection 178(4) to allow an owner to make an application for a certificate of completion in the event that the responsible person for the work has not provided a standard of work certificate.
(see also note for Clause 13)
- Clause 31: Duration of demolition permit**
Inserts new subsection 196(1A) to clarify that if an application for an extension of a permit has been lodged, the permit does not expire before the application is approved.
- Clause 32: Extension of duration of demolition permit**
Inserts subsection 197(1A) to clarify that owners must apply to the permit authority for an extension of a plumbing permit at least five business days before the current approval expires, unless the Director of Building Control has made a determination that special circumstances exist.

- Clause 33: Certificate of final inspection (demolition)**
Inserts new subsection 202(1A) to allow an owner to make an application for a certificate of final inspection in the event that the responsible person for the work has not provided a standard of work certificate, and an inspection of the work by the building surveyor shows that it is complete and compliant.
(see also note for Clause 13)
- Clause 34: Certificate of completion (permit demolition work)**
Inserts new subsection 203(4) to allow an owner to make an application for a certificate of completion in the event that the responsible person for the work has not provided a standard of work certificate, and the certificate of final inspection has been issued by the building surveyor.
(see also note for Clause 13)
- Clause 35: Interpretation**
Amends section 204 to include occupiers or tenants who have a contractual responsibility for the maintenance of any essential building services in the premises they lease or occupy, in the definition of “responsible owner”.
- Clause 36: Schedule of maintenance**
Amends section 206 to allow for the permit authority - plumbing to approve a schedule of maintenance that relates to maintaining plumbing related services only (where there has not been any associated building work, or there is no prior involvement by a building surveyor).
An example is a new or replacement septic tank, and the permit authority will require that owner to maintain that plumbing installation in proper working order, as specified in that schedule.
- Clause 37: Building notice**
Amends section 237 to replace the references to “building” with “premises”.
- Clause 38: Plumbing notice**
Amends section 238 to replace the references to “building” with “premises”.
- Clause 39: Court orders**
Amends section 251 to clarify that applications for a court order may be made to either the Supreme Court or the Magistrates Court.
This amendment addresses a court decision where it was decided that the Magistrates Court was not a court of competent jurisdiction able to grant an order under section 251.
- Clause 40: Application for certificate of substantial compliance**
Omits the unnecessary reference to “prescribed fee” in section 255(2).
“Prescribed fee” clauses were included in the Principal Act by mistake. The former Building Act 2000 made no provision for council fees. The ability of a Council to charge a fee for services, including building or plumbing matters, is not affected by this amendment as the *Local Government Act 1993* provides a

general power to councils to charge any necessary fees. There are no “prescribed fees” in the *Building Regulations 2016*.

Clause 41: Application for permit of substantial compliance

Omits the unnecessary reference to “prescribed fee” in section 258(2).

Clause 42: Duration of permit of substantial compliance

Inserts new subsection 262(1A) to clarify that if an application for an extension of a permit has been lodged, the permit does not expire before a determination has been made.

Clause 43: Extension of duration of permit of substantial compliance

Inserts section 263A to provide that owners can apply for an extension of a permit of substantial compliance.

Owners must apply to the permit authority for an extension at least five business days before the current approval expires, unless the Director of Building Control has made a determination that special circumstances exist.

Clause 44: Appeals relating to Reporting Authority

Inserts new section 280A to provide Reporting Authorities appeal rights, which were previously provided under the *Building Act 2000*.

The appeal rights may be exercised in relation to any matter raised in the required report provided by a Reporting Authority at either the certificate of likely compliance stage or occupancy permit stage.

Clause 45: Non application of building regulations

Inserts new subsection 288(1)(c) to provide for transitional arrangements for the design of work. If a designer has made substantial progress on preparing a design before an update or change to the building regulations took effect, the design may still be accepted as compliant with the amended regulations.

Clause 46: Non application of plumbing regulations

Inserts new subsection 290(1)(c) to provide for transitional arrangements for the design of work. If a designer has made substantial progress on preparing a design before an update or change to the plumbing regulations took effect, the design may still be accepted as compliant with the amended regulations.

Clause 47: Accrual of cause of action

Amends section 327(7)(b) to provide a 6 years period to commence building related litigation, to be consistent with the residential work warranty periods under the *Residential Building Work Contracts and Dispute Resolution Act 2016*.

Clause 48: Further amendment of regulations not prevented

Inserts section 330A to clarify that this Bill does not prevent further amendment of provisions or regulations amended by the Bill.

Clause 49: Transitional and Savings Provisions

Amends Clause 6 of Part 3 of Schedule 2 of the Act to extend the expiry date of certain existing building and plumbing permits that were transitioned into the Act, until 1 July 2020.

Part 3 - *Building Regulations 2016* amended

Clause 50: Principal Regulations

Clause 51: Temporary structures

Inserts subparagraph 4(da) to prescribe temporary swimming pools and their childproof safety barriers as temporary structures, which may be required to be subject to a temporary occupancy permit before their erection.

Clause 52: Director of Building Control may make determinations

Inserts subparagraph 8(ja) to allow the Director of Building Control to make a determination regarding processes for the rectification of defective or non-compliant work.

Part 4 - *Occupational Licensing (Building Services Work) Regulations 2016* amended

Clause 53: Principal Regulations

Clause 54: Prescribed criteria

Amends regulation 9(2)(e) by clarifying the number of owner builder permits that are permitted to be applied for in any ten-year period, and when that period starts.

Clause 55: Building services work

Amends Schedule 1 by removing the monetary value limit for Low Risk work of less than \$20,000.

Part 5 - *Occupational Licensing (Building Services Work) Regulations 2016* further amended

Clause 56: Principal Regulations

Clause 57: Schedule 2 (Fees)

Amends Schedule 2 to provide for an application fee for owner builder permits relating to certain outbuildings, sheds or similar non-habitable structures that are too large to be included in the category of Low Risk Work by an owner.

Part 6 - *Occupational Licensing Act 2005* amended

Clause 58: Principal Act

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

Clause: 59: Certain organisations may apply for building services licence

Amends section 37C to clarify that the Crown is an organisation that may apply for a licence to perform building services work.

Inserts subsection 37C(6) to clarify that an organisation performing building services work does not have to hold an “entity licence” under section 37C if each person managing or carrying out the work (whether a director, a partner, or an employee) already has a licence as a building services provider.

Clause 60: Offences

Amends subsections 38(7) and (38(8) to clarify that these offences relates to all “building services work” (including construction, design and assessment of work).

Clause 61: Schedule 2 - Occupations Trades and Callings to Which this Act Applies

Amends clause 4, Part 4 by clarifying that providing authorisation or approval of “demolition work” is prescribed work that requires a licence.

Part 7 - Occupational Licensing Act 2005 further amended

Clause 62: Principal Act

Clause 63: Obligation to hold building services licence

Amends section 22A to clarify that persons entering a contract to manage or perform building services work are required to hold a building services licence.

Clause 64: Building work for which an owner builder permit may be issued

Amends section 29A to provide a power for the Administrator of Occupational Licensing to make a determination concerning owner builder work, including the types of buildings or building work that require an owner builder permit.

Clause 65: Determination of application

Amends subsection 34(1) to clarify what matters the Administrator of Occupational Licensing may take into consideration when making a decision to refuse an application for a contractor licence.

Clause 66: Determination of application

Amends subsection 37(1) to clarify what matters the Administrator of Occupational Licensing may take into consideration when making a decision to refuse an application for a contractor licence.

Clause 67: Determination of application

Amends subsection 37B to clarify that the Administrator of Occupational Licensing has a discretion to issue or refuse an application for a building services provider licence.

Clause 68: Registers

Omits unnecessary reference to demerit points in subsection 49(4)(e).

Clause 69: Infringement Notices

Omits unnecessary reference to demerit points in subsection 62(3).

Clause 70: Part 6, Division 5 repealed

Repeals provisions relating to demerit points.

Part 8 - Residential Building Work Contracts and Dispute Resolution Regulations 2016 amended

Clause 71: Principal Regulations

Clause 72: Fees (for adjudication panel)

Amends regulation 7 to correct an incorrect reference to the Principal Act.

Clause 73: Penalties

Amends Schedule 1 to correct incorrect references to the Principal Act.

Part 9 - Urban Drainage (General) Regulations 2016 amended

Clause 74: Principal Regulations

Clause 75: Interpretation

Amends regulation 3 to remove the reference to the repealed *Building Act 2000*.

Part 10 - Miscellaneous

Clause 76: Expiry of Act