

## **FACT SHEET**

### **Building Amendment Bill 2012**

The purpose of the Bill is to make miscellaneous amendments of the *Building Act 2000*:

1. Strengthen the accreditation provisions of the Act by creation of new offences, in particular to ban the lending of, or the misuse by others, of an accredited building practitioner's licence.
2. Clearer processes for the compliance and enforcement of the Act by building surveyors and councils.
3. Improved processes for the conduct of audits of building practitioners, owner builders and councils by the Director of Building Control.
4. Strengthen the powers of the Director of Building Control to investigate complaints of unsatisfactory professional conduct or misconduct by accredited building practitioners.
5. Transfer the registration of owner builders from the Building Regulations into the Act and improve the administrative processes.
6. Consequential amendments as the result of the commencement of the *Commonwealth's Disability (Access to Premises) Buildings Standards 2010*.
7. Transfer the functions of the Building Appeal Board to the Resource Management and Planning Appeal Tribunal.
8. Miscellaneous amendments to clarify existing provisions in the Act and provide for consistency in the administration by council permit authorities and building surveyors.

**Proposals for amendments of the Building Act  
(Grouped by subject)**

## **Definitions – general**

Amend the definition of Accredited Building Practitioner

Clarify definition of “Authorised Person”

Clarify definition of “Builder”

Clarify definition of “Building Action”

Clarify definition of “Building Code of Australia”

Define a “Building surveyor”

Clarify definition of “Building work”

Define a “Class 1 – 9 Building”.

Define a “Class 7b Farm Building”

Define the “National Construction Code”

Clarify the definition of “Owner”.

Clarify the definition of “Owner builder”

Define the “Plumbing Code of Australia”

Define a “Unique plumbing product;”

Define a “Wet Well”.

## **Functions of the Director - Performance Audits**

Provide clearer administrative provisions and powers for the Director of Building Control to undertake performance audits of Accredited Building Practitioners, plumbers, owner builders, owners, councils, permit authorities and general managers to ensure that the provisions of the Building Act are being followed.

## **Accreditation of Building Practitioners**

- Revise and clarify the requirement to be accredited if carrying out, managing, or entering a contract, for building work over \$5,000 that needs a building permit.
- Create new offences relating to Accredited Building Practitioners lending or allowing the use of practitioner accreditation details to a non-accredited practitioner.
- Create an offence for a person to use the accreditation details of an Accredited Building Practitioner.

- Change the period of accreditation as a building practitioner from three years to one year.
- Clarify that an Accredited Building Practitioner who has had their accreditation suspended or cancelled due to misconduct cannot automatically be reinstated simply by making an application for a renewal.
- Persons must satisfy personal probity requirements to be accredited or re-accredited.

### **Owner builders**

- Move the registration of owner builders from the *Building Regulations 2004* into the Building Act.
- Maintain the current provision of two buildings in ten years for owner builders (they are not required to be registered for non-habitable buildings).
- Clarify that owners carrying out building work that needs a permit over \$5,000 must be performed by a registered owner builder (if that owner has not engaged an accredited builder).
- Clarify land interests of owner builders.
- Provide that prospective owner builders to complete a specified course of owner builder awareness.
- Provide that only natural persons and not a body corporate may apply to be an owner builder.
- Remove the ability of an owner builder to design their own building work.
- Remove the requirement that a building surveyor provide to the Director a copy of a Start Work Notice from an owner builder.
- An applicant for owner builder registration refused registration by the Director may appeal to the Resource Management and Planning Appeal Tribunal.

### **Complaints and Investigations:**

In relation to complaints against Accredited Building Practitioners;

- Provide that a complaint may be dismissed if there is found to be no case to answer by the practitioner after a preliminary investigation.
- Amend the definition of 'unsatisfactory professional conduct' to include non-compliance with the Accreditation Scheme..
- Clarify when a complaint is received by the Director of Building Control.
- Provide that an Accredited Building Practitioner who is the subject of a complaint has access to information under the *Right to Information Act 2009*.
- Allow for the Director of Building Control to investigate another matter discovered during an investigation of an Accredited Building Practitioner.
- Clarify the powers of the Director to request documents from relevant parties during an investigation, including councils, building owners and the employer of Accredited Building Practitioners.
- Where an Accredited Building Practitioner has been found guilty of unsatisfactory professional conduct, provide that the Director may make a building order against the practitioner to complete the work in accordance with the permit.
- Simplify the procedures for review of decisions of the Director in relation to complaints against Accredited Building Practitioners.
- Clarify the powers of Approved Investigators to enter premises and request documents and provide for an offence where there is obstruction of an investigator.
- Allow investigation of a complaint against a practitioner who is since the conduct complaint no longer accredited.

- Clarify the powers of authorised persons while performing audits of Accredited Building Practitioner to have access to building work, books and documents, and provide for an offence if there is non-compliance with the activities of authorised persons;

### **Building Surveyors**

- Clarify when there may be a conflict of interest by a building surveyor.
- Clarify that an owner or agent must engage a building surveyor to perform statutory functions under the Act by written authorisation.
- Provide that a building surveyor must obtain the consent of the Director before resigning from their engagement if it is less than three years since they were engaged.
- Clarify that it is the owner who engages the building surveyor to obtain a Certificate of Likely Compliance and not the builder or other person.
- Provide that the building surveyor must give their authorisation before any building work starts.

### **Occupancy Permits**

- Clarify that before a building surveyor can issue an Occupancy Permit they must be satisfied that adequate provision for a sanitation water supply and smoke alarms are provided.
- Clarify the circumstances where an Occupancy Permit may be refused.
- Provide that the building surveyor is to provide a copy of the Occupancy Permit to the Permit Authority.

### **Completion of building work**

- New administrative processes to deal with enforcement of building permits that are more than two years old and the building work is incomplete. Permits over two years old

that are not extended will expire. Enable the Permit Authority to extend time for completion after consultation with the building surveyor.

### **Completion of plumbing work**

- Where a Permit Authority is accepting certificates of plumbing compliance from plumbers, it must inspect or cause to be inspected at least 20% of the work for which it would otherwise have accepted certificates of plumbing compliance. This will be a minimum audit of the plumbing work in that municipality.
- Clarify that an omission to perform work or an omission to fit a plumbing component is a defective work;

### **Maintenance of essential safety and health features and measures**

Clarify that: -

- Only the prescribed safety features and measures are required to be maintained (prescribed by the Director of Building Control).
- Occupiers of buildings who have a contractual responsibility to maintain the essential safety features or measures are the party who have the legal obligation under the Act to maintain those essential safety features/measures.
- The standard of performance of the features is that to which they were originally required to perform.
- Provide for other features and measures to be prescribed (e.g. disability access, water efficiency, energy efficiency, building in a bushfire prone area).

### **Enforcement of the Act – building and plumbing notices and orders**

- Provide where plumbing work that contravenes the Act, a Plumbing Notice and a Plumbing Order may be served on

the owner of the land or on the person carrying out the plumbing work, or the person apparently in charge of the site where the work has taken place.

- Clarify that a Plumbing Order can be issued without a Plumbing Notice if the work required to be done under that Order is of a minor nature.
- Provide for when a Building Notice has been served on a builder by a building surveyor, a Building Order may then be served on that builder.
- Provide that where there is a failure to comply with a Building or a Plumbing Order by an owner or by any person required to comply with an Order, the General Manager may take further action against that person. Currently only action can be taken against the owner.
- Clarify that where there has been a Building Order issued for illegal work without a permit, that information is endorsed on documents including the Certificate of Completion. Currently any Building Order issued for any matter, even very minor matters, is endorsed on documents.
- Where the council has had to perform the work required under a Building or Plumbing Order, provide for the council to recover its costs as a charge on the land and recoverable from the owner as if it were unpaid rates.
- Impose a time limit cap of two years for an authorised person to commence a prosecution for an offence under the Act.

### **Distribution of documents where illegal work have taken place**

- Provide for the Permit Authority to give a copy of a Permit to Proceed or a Permit of Substantial Compliance to the building surveyor.

### **Building Appeal Board**

- Transfer the functions of the Building Appeal Board to the Resource Management and Planning Appeal Tribunal.
- Simplify the provisions to make an application for a review of the Director's decisions regarding complaints against Accredited Building Practitioners.
- Provide that the jurisdiction of the Resource Management and Planning Tribunal extends to acting as a panel to make determinations on the application of the Disability (Access to Premises – Buildings) Standards 2010 to a particular building.

## **Building Permit Levy**

- Clarify that owners must pay the Building Permit Levy in the same way that an owner has to pay even if that work was performed illegally.
- Provide that where an owner has paid the Building Permit Levy and obtained a building Permit, if they have then made variations to the works and increased the cost of the works, they are to pay the building levy on the additional works.
- Clarify that for the calculation of the Building Permit Levy, a statement by the relevant building surveyor engaged for the works is required if there is no contract price (not 'any building surveyor').

## **Plumbing**

- Specify that some additional types of plumbing work will require the owner to obtain a Special Plumbing Permit.
- Provide that where a greywater reuse system is to be installed, the Permit Authority must inspect or cause that work to be inspected.

## **Miscellaneous**

- Provide that a Certificate of Likely Compliance will expire more than 12 months after issued if it has not been submitted as part of an application for a building permit.
- Clarify that the Crown can be a building practitioner and can make complaints against Accredited Building Practitioners.
- Clarify that council powers in relation to the issue of building permits extend to buildings and structures constructed below the low water mark.
- Amend the provision regarding minor alterations and minor repairs to limit it to work under \$5,000. This is to provide consistency with accreditation of Accredited

Building Practitioner provisions and provide clearer administrative procedures.

- Clarify that the matters that a building surveyor takes into account when issuing a Certificate of Likely Compliance includes the Building Act and the Building Code of Australia.
- Clarify the provisions relating to variations made to the approved building permit documents during construction so that amended plans are submitted to the building surveyor and the permit authority for their consideration and consent.
- Provide for a copy of the Start Work Notice from the builder to be provided to the Council Permit Authority for their information and records.
- Where a person has changed a property boundary, that may constitute a fire source feature and require that the owner undertake building work to bring that building back into compliance with the Act.
- Clarify that for a certificate given by an expert to provide the legal immunity under section 256 of the Act, it refers to a certificate given under section 266 of the Act.
- The provision for the limitation on taking building actions should use the correct terminology of an Occupancy Permit, not a certificate of occupancy.
- Clarification of the types of work permitted in an A landslip area.
- Clarify the provisions relating to the keeping of registers by the Permit Authority.