

# TASMANIA

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## BUILDING BILL 2016

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# **BUILDING BILL 2016**

*(Brought in by the Minister for Building and Construction, the  
Honourable Adam Richard Brooks)*

## **A BILL FOR**

**An Act to regulate the construction, maintenance and  
demolition of buildings and other building and plumbing  
matters**

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 Act 2016*.

### **2. Commencement**

This Act commences on a day to be proclaimed.

### **3. Object of Act**

The objects of this Act are to –

(a) ensure that –

- (i) building work, plumbing work  
and demolition work, including  
the design, and maintenance of

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domestic, commercial and industrial buildings, meets, or exceeds, the minimum national construction standards; and

- (ii) building work, plumbing work, demolition work and maintenance work do not negatively affect the health and safety of people; and
  - (iii) owners, building services providers, practitioners and councils comply with the requirements of this Act and the National Construction Code when performing work, or performing functions and exercising powers, under this Act; and
- (b) provide for –
- (i) the creation of buildings that are accessible to, and contain facilities for, people with disabilities; and
  - (ii) the creation of energy-efficient and water-efficient, and sustainable, buildings that minimise impact on the environment; and
  - (iii) the legal protection of building services providers, practitioners and owners in certain circumstances in respect of work

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performed in accordance with  
this Act; and

- (c) facilitate and promote cost-effective construction of buildings; and
- (d) encourage an efficient, innovative and competitive building industry.

#### **4. Interpretation**

(1) In this Act –

***appeal tribunal*** has the same meaning as in the *Resource Management and Planning Appeal Tribunal Act 1993*;

***approved*** means approved by the Director of Building Control;

***as-constructed plans*** means plans, in a form and containing such details as determined by the Director of Building Control, that specify how work has been constructed under this Act;

***authorised person*** includes –

- (a) the Director of Building Control;  
and
- (b) a building surveyor; and
- (c) a permit authority; and
- (d) a general manager; and
- (e) any other prescribed person;

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***builder***, in relation to building work or demolition work, means –

- (a) a person engaged, to manage or carry out building work or demolition work, by the owner of premises where the work is to be performed; and
- (b) if such a person does not exist, the owner of such premises;

***building*** includes –

- (a) a building or a proposed building; and
- (b) a part of a building or proposed building; and
- (c) a structure or a proposed structure; and
- (d) a part of a structure or proposed structure;

***building administration fee*** means the fee payable in respect of work under Division 1 of Part 21;

***building notice*** means a building notice issued under section 236;

***building order*** means a building order served under section 245, 246, 247 or 248;

***building permit*** means a building permit issued under section 142;

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***Building Regulations*** means regulations made under this Act that relate to building work or demolition work;

***building services provider*** has the same meaning as in the *Occupational Licensing Act 2005*;

***building services work*** has the same meaning as in the *Occupational Licensing Act 2005*;

***building surveyor*** – see section 28;

***building work*** means work consisting of, or 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, that is incidental to an activity referred to in paragraph (a) or (b); or
- (d) any other prescribed work;

***business day*** means a day that is not a Saturday, a Sunday, a statutory holiday as defined in the *Statutory Holidays Act 2000* or a public holiday throughout the State;

***certificate of completion*** includes –

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- (a) a certificate of completion (notifiable building work); and
- (b) a certificate of completion (notifiable plumbing work); and
- (c) a certificate of completion (notifiable demolition work); and
- (d) a certificate of completion (permit building work); and
- (e) a certificate of completion (permit plumbing work); and
- (f) a certificate of completion (permit demolition work);

***certificate of completion (notifiable building work)*** means a certificate of completion (notifiable building work) issued under section 103;

***certificate of completion (notifiable demolition work)*** means a certificate of completion (notifiable demolition work) issued under section 126;

***certificate of completion (notifiable plumbing work)*** means a certificate of completion (notifiable plumbing work) issued under section 114;

***certificate of completion (permit building work)*** means a certificate of completion (permit building work) issued under section 152;

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***certificate of completion (permit demolition work)*** means a certificate of completion (permit demolition work) issued under section 202;

***certificate of completion (permit plumbing work)*** means a certificate of completion (permit plumbing work) issued under section 177;

***certificate of final inspection (building)*** means a certificate of final inspection (building) issued under section 151;

***certificate of final inspection (demolition)*** means a certificate of final inspection (demolition) issued under section 201;

***certificate of likely compliance*** includes –

- (a) a certificate of likely compliance (notifiable building work); and
- (b) a certificate of likely compliance (notifiable plumbing work); and
- (c) a certificate of likely compliance (notifiable demolition work); and
- (d) a certificate of likely compliance (permit building work); and
- (e) a certificate of likely compliance (permit plumbing work); and
- (f) a certificate of likely compliance (permit demolition work);

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*certificate of likely compliance (notifiable building work)* means a certificate of likely compliance (notifiable building work) issued under section 97;

*certificate of likely compliance (notifiable demolition work)* means a certificate of likely compliance (notifiable demolition work) issued under section 120;

*certificate of likely compliance (notifiable plumbing work)* means a certificate of likely compliance (notifiable plumbing work) issued under section 108;

*certificate of likely compliance (permit building work)* means a certificate of likely compliance (permit building work) issued under section 133;

*certificate of likely compliance (permit demolition work)* means a certificate of likely compliance (permit demolition work) issued under section 184;

*certificate of likely compliance (permit plumbing work)* means a certificate of likely compliance (permit plumbing work) issued under section 159;

*classification* means classification under the National Construction Code;

*certificate of substantial compliance* means a certificate of substantial compliance provided under section 256;

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***defective work*** – see section 206;

***demolition order*** means a demolition order under section 266;

***demolition permit*** means a demolition permit issued under section 192;

***demolition work*** is building work that –

- (a) completely, or partially, demolishes a building or structure by pre-planned and controlled methods or procedures; and
- (b) does not include the building of any new building or structure, or associated building works;

***designer*** means the person performing design work under this Act;

***dilapidated building*** means a building that, because of neglect, disrepair, defacement or damage, is of an appearance that is unsightly, particularly in comparison with its surroundings;

***Director of Building Control*** means the person appointed under section 15(1) as the Director of Building Control;

***emergency order*** means an emergency order made under section 244;

***emergency work*** – see section 213;

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***environmental health officer*** has the same meaning as in the *Public Health Act 1997*;

***essential building services*** means the features of a building, or the measures in or associated with a building, that are prescribed for the purposes of this definition;

***farm building*** has the same meaning as in the National Construction Code;

***fire source feature*** has the same meaning as in the National Construction Code;

***function control authority*** means an authority that is prescribed for the purposes of this definition;

***Fund*** means the Building Administration Fund continued in force under section 328;

***general manager*** has the same meaning as in the *Local Government Act 1993*;

***hazardous area*** includes land that has the following attributes or risks:

- (a) land that is prone to bushfire, landslip or flooding;
- (b) land that is subject to slope instability;
- (c) land that is subject to erosion or coastal inundation;

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- (d) land that is subject to sea level rises or storm surges;
  - (e) land that is contaminated, filthy or undrainable;
  - (f) land that has any prescribed attributes or prone to any prescribed risks;

***historic building*** means a building entered in the Heritage Register under the *Historic Cultural Heritage Act 1995*;

***licensed builder***, in relation to building work, means –

- (a) the holder of a building services licence under the *Occupational Licensing Act 2005* that authorises the holder of the licence to perform the building work; or
- (b) an owner builder who holds an owner builder permit under that Act that authorises the owner builder to perform the building work;

***licensed plumber***, in relation to plumbing work, means the holder of a licence under the *Occupational Licensing Act 2005* that authorises the holder of the licence to perform the plumbing work;

***low-risk building work*** – see section 90(1)(a);

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***low-risk demolition work*** – see section 90(1)(c);

***low-risk plumbing work*** – see section 90(1)(b);

***low-risk work*** includes low-risk building work, low-risk plumbing work and low-risk demolition work;

***National Construction Code*** means the National Construction Code series published by the Australian Building Codes Board, as amended or substituted from time to time;

***notice of work*** means –

- (a) in the case of notifiable building work, a notice of work under section 96; and
- (b) in the case of notifiable plumbing work, a notice of work under section 107; and
- (c) in the case of notifiable demolition work, a notice of work under section 119;

***notifiable building work*** – see section 92;

***notifiable demolition work*** – see section 115;

***notifiable plumbing work*** – see section 104;

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***notifiable work*** includes notifiable building work, notifiable plumbing work and notifiable demolition work;

***occupancy permit*** means an occupancy permit issued under section 221;

***owner***, in relation to premises, includes the following persons:

- (a) every person who jointly or severally, whether at law or in equity, is entitled to the premises for any estate in freehold in possession;
- (b) a person who has contracted to buy the premises;
- (c) in the case of premises that are subject to a mortgage, the person for the time being holding the equity of redemption in that mortgage;
- (d) in the case of premises held under a tenancy for life, the person who is the life tenant;
- (e) in the case of premises held under a lease for a term of not less than 99 years or for a term of not less than such other prescribed period, the person who is the lessee of the premises;

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- (f) if the premises are Crown land, the Minister, authority or other person responsible for the management of the land;
- (g) any other person holding a prescribed interest in the premises;

***owner builder*** means the holder of an owner builder permit under the *Occupational Licensing Act 2005*;

***party structure*** includes –

- (a) a wall that –
  - (i) forms part of a building; and
  - (ii) separates adjoining buildings that belong to different owners or that are occupied by different persons; and
- (b) a wall, forming part of a building, that stands –
  - (i) outside the footings of the building; and
  - (ii) on lands that belong to more than one owner; and
- (c) a wall, partition, arch, floor or other structure separating buildings vertically or

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horizontally that is approached by  
a distinct staircase or separate  
entrance;

***performance solution*** has the same meaning  
as in the National Construction Code;

***permit authority*** – see section 24;

***permit building work*** – see section 127;

***permit demolition work*** – see section 178;

***permit of substantial compliance*** means a  
permit of substantial compliance granted  
under section 259;

***permit plumbing work*** – see section 153;

***permit work*** includes permit building work,  
permit plumbing work and permit  
demolition work;

***plumbing installation*** includes –

- (a) a system of water supply; and
- (b) a system of sewage or sullage  
drainage or disposal; and
- (c) a system of stormwater drainage,  
roof drainage or trade waste  
drainage; and
- (d) an on-site system, for the  
management or re-use of waste  
water, that is –

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- (i) a disposal or treatment system servicing one or more blocks; or
- (ii) an on-site composting toilet or system; or
- (iii) an on-site incinerating toilet; and

(e) any other prescribed system;

***plumbing order*** means a plumbing order served under section 249;

***plumbing permit*** means a plumbing permit issued under section 168;

***Plumbing Regulations*** means regulations made under this Act that relate to plumbing work;

***plumbing work*** means any work relating to –

- (a) installing, altering or maintaining a plumbing installation; or
- (b) any other prescribed work;

***premises*** includes –

- (a) land or part of land; and
- (b) a building; and
- (c) any other thing as is prescribed;

***protection work*** – see section 75(1);

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***publish*** – see section 23;

***regulations*** means regulations made under this Act;

***reporting authority*** means a body or organisation prescribed for the purpose of this definition;

***required report*** means a report made by a reporting authority as part of the process of determining an application under this Act;

***responsible person*** – see section 5;

***special-use building*** means a building, or a class of buildings, that the Director has determined to be used for a special purpose;

***specified*** means specified by the Director of Building Control;

***staged permit*** means a building permit, plumbing permit or demolition permit that is issued in respect of a stage of work under this Act;

***standard of work certificate*** includes –

- (a) a standard of work certificate (notifiable building work); and
- (b) a standard of work certificate (notifiable plumbing work); and

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- (c) a standard of work certificate (notifiable demolition work); and
- (d) a standard of work certificate (permit building work); and
- (e) a standard of work certificate (permit plumbing work); and
- (f) a standard of work certificate (permit demolition work);

***standard of work certificate (notifiable building work)*** means a standard of work certificate (notifiable building work) provided in accordance with section 102;

***standard of work certificate (notifiable demolition work)*** means a standard of work certificate (notifiable demolition work) provided in accordance with section 125;

***standard of work certificate (notifiable plumbing work)*** means a standard of work certificate (notifiable plumbing work) provided in accordance with section 113;

***standard of work certificate (permit building work)*** means a standard of work certificate (permit building work) provided in accordance with section 150;

***standard of work certificate (permit demolition work)*** means a standard of

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work certificate (permit demolition work)  
provided in accordance with section 200;

***standard of work certificate (permit plumbing work)*** means a standard of work certificate (permit plumbing work) provided in accordance with section 176;

***start-work authorisation*** means authorisation to start work provided under section 98(1)(c), section 109(1)(c) or section 121(1)(c);

***temporary occupancy permit*** means a temporary occupancy permit issued under section 231;

***temporary structure*** includes –

- (a) a booth, tent or other temporary enclosure, whether or not part of the booth, tent or temporary enclosure is permanent; and
- (b) a temporary seating structure; and
- (c) a structure prescribed for the purposes of this definition;

***work*** includes building work, plumbing work and demolition work.

- (2) For the purposes of this Act, the nature, purpose or use of a building is –
- (a) to be determined from the design of the building; or

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- (b) if the building is suitable for different purposes or uses by its design, to be determined according to its most natural purpose or use as inferred from its design, its situation and the declared intention of the owner at the relevant time.
- (3) For the purposes of this Act –
  - (a) a reference in this Act to the class of a building is a reference to that class as set out in the National Construction Code; and
  - (b) if the class of a building is unclear or disputed, the relevant building surveyor for the building must classify it as belonging to the class of building it most closely resembles.

**5. Responsible person**

- (1) For the purposes of this Act, the responsible person for building work is –
  - (a) the licensed builder who is intending to perform, or who is performing or has performed, the building work; or
  - (b) if there is no such licensed builder, the owner of the premises where the building work is to be, is being or has been, performed.

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- (2) For the purposes of this Act, the responsible person for plumbing work is –
- (a) the licensed plumber who is intending to perform, or who is performing or has performed, the plumbing work; or
  - (b) if there is no such licensed plumber, the owner of the premises where the plumbing work is to be, is being or has been, performed.
- (3) For the purposes of this Act, the responsible person for demolition work is –
- (a) the licensed builder who is intending to perform, or who is performing or has performed, the demolition work; or
  - (b) if there is no such licensed builder, the owner of the premises where the demolition work is to be, is being or has been, performed.

**6. Act binds Crown**

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

**7. Act prevails**

This Act prevails over the provisions of any other Act or any regulation, rule, by-law, guidelines, planning instrument, standard, condition, determination, or directive, made

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under any other Act that relates to the design of  
any building, building work or plumbing work.

**8. Delegation**

- (1) The Minister may delegate to any person any of the Minister's powers and functions under this Act, other than this power of delegation.
- (2) The Director of Building Control may delegate to any person any of the Director's powers and functions under this Act, other than this power of delegation.
- (3) A council may delegate to any person any of its powers and functions under this Act, other than this power of delegation.
- (4) A general manager may delegate to any person any of the general manager's powers and functions under this Act, other than this power of delegation.
- (5) A delegation under this section is to be made by instrument in writing.

**9. Minister to approve certain statutory rules &c.**

- (1) A regulation, or rule or by-law, that relates to the technical requirements of the design or construction of a building, building work or plumbing work must not be made under any Act without the approval of the Minister unless that Act expressly provides to the contrary.

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- (2) A regulation, or rule or by-law, that relates to the technical requirements of the design or construction of a building, building work or plumbing work that is not made in compliance with subsection (1) is of no effect.
- (3) A condition that relates to the technical requirements of the design or construction of a building, building work or plumbing work may not be imposed on a permit issued under the *Land Use Planning and Approvals Act 1993* without the approval of the Minister unless that Act expressly provides to the contrary.
- (4) A condition that relates to the technical requirements of the design or construction of a building, building work or plumbing work that –
- (a) is imposed on a permit issued under the *Land Use Planning and Approvals Act 1993*; and
  - (b) has not been approved under subsection (3) as required before it was imposed on the permit –
- is of no effect unless the condition has been retrospectively approved by the Minister.
- (5) A person is not guilty of an offence under this Act, or the *Land Use Planning and Approvals Act 1993*, in relation to any act performed, or failure to act, by the person in accordance with a condition, that is of no effect by virtue of subsection (3), if the person has not been informed by the Minister in writing that the condition is of no effect.

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(6) The Minister may certify that –

- (a) subsection (1) does not apply to a regulation, or rule or by-law, that relates only incidentally to the technical requirements of the design or construction of a building, building work or plumbing work; or
- (b) subsection (3) does not apply to a condition, or a class of conditions, that relates to the technical requirements of the design or construction of a building, building work, plumbing work or demolition work, that may be imposed on a permit issued under the *Land Use Planning and Approvals Act 1993*.

**10. Application of Act to accretions from sea**

An authorised person may, in performing a function or exercising a power under this Act, perform the function or exercise the power in respect of –

- (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

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- (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.

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**PART 2 – WORK TO COMPLY WITH ACT AND  
NATIONAL CONSTRUCTION CODE**

**11. All work must comply with Act and National Construction Code**

- (1) A person performing building work, plumbing work or demolition work must ensure that the work complies with –

- (a) this Act; and
- (b) all of the applicable provisions of the National Construction Code, unless otherwise authorised under 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) The owner of a building where building work, plumbing work or demolition work is being performed must ensure that the work complies with –
- (a) this Act; and
  - (b) all of the applicable provisions of the National Construction Code, unless otherwise authorised under this Act.

Penalty: In the case of –

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- 
- (a) a natural person, a fine not exceeding 100 penalty units; or
    - (b) a body corporate, a fine not exceeding 500 penalty units.
  - (3) A person named on a permit must ensure that all building work, plumbing work or demolition work done under the authority of that permit complies with –
    - (a) this Act; and
    - (b) all of the applicable provisions of the National Construction Code, unless otherwise authorised under 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.
- (4) A building surveyor, as far as is reasonably practicable, is to ensure that all building work and demolition work, in respect of which he or she is engaged as a building surveyor, is performed in accordance with this Act.

Penalty: Fine not exceeding 100 penalty units.

- (5) For the purposes of this section, a provision of the National Construction Code is not an applicable provision in respect of work if –

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- (a) the building permit under which the work is performed was granted before the provision of the National Construction Code was adopted by the State; or
  - (b) the building surveyor for the work certifies in writing that substantial progress had been made in the design of the work before the provision was adopted by the State.
- (6) Nothing in subsection (5) prevents a person from complying with a provision of the National Construction Code that is not an applicable provision by virtue of that subsection.

**12. Compliance of existing buildings**

A building or structure constructed, or building work, plumbing work or demolition work performed –

- (a) before the commencement of this Act; and
- (b) in accordance with each relevant Act in force at the time the building or structure was constructed or the work was performed –

is taken to have been constructed, or performed, in compliance with this Act and the applicable provisions of the National Construction Code.

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**13. National Construction Code may be modified in certain circumstances**

- (1) An environmental health officer may determine that a provision of the National Construction Code in relation to food premises be altered in certain circumstances.
- (2) A building surveyor may determine that a provision of the National Construction Code in relation to farm buildings or historic buildings be altered in certain circumstances.
- (3) A determination under subsection (1) or (2) –
  - (a) must not impose a higher standard than the standard imposed by the provision of the National Construction Code being altered by the determination; and
  - (b) is to be in accordance with any prescribed requirements; and
  - (c) is taken to modify the National Construction Code as it applies in the circumstances to which the determination relates.
- (4) A determination under subsection (1) or (2) does not apply to work if –
  - (a) a certificate of likely compliance has been issued in respect of the work before the determination takes effect; and
  - (b) the work is completed before that certificate of likely compliance expires.

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**14. Provisions of other standards**

Unless otherwise specified, any provision of a standard, code or guideline in relation to a matter that is dealt with in the National Construction Code applies to a building, or work performed under this Act, only if it is expressly adopted by that Code.

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**PART 3 – ADMINISTRATION**

***Division 1 – Director of Building Control***

**15. Director of Building Control**

- (1) The Minister may appoint a State Service employee, or a State Service officer, as the Director of Building Control.
- (2) A person appointed as Director of Building Control under subsection (1) holds that position in conjunction with his or her State Service employment.
- (3) The Director of Building Control holds office on the terms and conditions specified in his or her instrument of appointment.

**16. Functions of Director of Building Control**

The Director of Building Control has the following functions:

- (a) to advise the Minister in relation to matters arising under this Act and the administration of this Act and on other legislation relating to building, plumbing, demolition and related matters;
- (b) to liaise with permit authorities or councils on the functions of the Director of Building Control;
- (c) to liaise with the building, plumbing and demolition industries and other interested

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groups or bodies on matters relating to building, plumbing and demolition;

- (d) to liaise with, and represent the State on, any national body established to deal with matters relating to building, plumbing and demolition;
- (e) to facilitate training in respect of matters under this Act;
- (f) to publish reports and disseminate information on matters relating to building work, plumbing work or demolition work;
- (g) to audit the performance of the following in respect of building work, plumbing work or demolition work:
  - (i) owners;
  - (ii) owner builders;
  - (iii) builders;
  - (iv) building services providers;
  - (v) plumbers;
  - (vi) designers;
  - (vii) building surveyors;
  - (viii) permit authorities;
  - (ix) general managers;
  - (x) councils;

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- (xi) other prescribed persons or prescribed organisations;
  - (h) to carry out such other functions as are specified in respect of the Director of Building Control under this Act or any other Act;
  - (i) to carry out such other functions as are determined by the Minister;
  - (j) to carry out such other functions as are prescribed for the purposes of this section.

**17. General powers of Director of Building Control**

- (1) The Director of Building Control 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.
- (2) For the purposes of this Act and without limiting subsection (1), the Director of Building Control may –
  - (a) enter any building, temporary structure or premises where building work, plumbing work or demolition work is being, is to be or has been, performed; and
  - (b) enter any premises if necessary to perform any function or exercise any power under this Act; and

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- (c) enter premises where business relating to building, plumbing or demolition is being performed or on which it is believed on reasonable grounds that documents relating to building, plumbing or demolition are kept; and
- (d) take photographs, films and video recordings in any premises lawfully entered in the performance of his or her functions under this Act or any other Act; and
- (e) require records or documents relating to a building, temporary structure, premises, building work, plumbing work or demolition work to be provided to the Director of Building Control; and
- (f) require records required to be kept under this Act to be provided to the Director of Building Control; and
- (g) search for, inspect, or require explanation in respect of, any record required to be kept, or provided, under this Act; and
- (h) either –
  - (i) take notes, copies and extracts of or from any record or document provided or made available under this section; or
  - (ii) remove, and retain in the possession of the Director of Building Control, any record or

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document provided or made  
available under this section.

- (3) If a record or document is retained by the Director of Building Control under subsection (2)(h)(ii), the Director –
  - (a) may make copies of the record or document; and
  - (b) must return the record or document as soon as practicable after the record or document is no longer required by the Director.

**18. Director of Building Control may authorise or accredit products**

- (1) The Director of Building Control may authorise or accredit a building, or plumbing, product for the purpose of this Act.
- (2) The Director of Building Control may accredit a plumbing installation for use under this Act.
- (3) An accreditation under subsection (1) or (2) may be subject to any condition the Director of Building Control determines.
- (4) The Director of Building Control must publish an accreditation under this section and any condition that applies to the accreditation before the accreditation takes effect.
- (5) A product, or plumbing installation that is accredited or authorised under this section is

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taken to be an accredited product for the purpose  
of the National Construction Code.

**19. Director of Building Control may make or adopt  
guidelines**

- (1) The Director of Building Control may make guidelines, or adopt existing guidelines, in respect of the following matters:
  - (a) providing technical guidance as to how to ensure compliance with this Act, the National Construction Code and any other relevant standards or codes;
  - (b) providing performance criteria for ensuring compliance with this Act, the National Construction Code and any other relevant standards or codes;
  - (c) providing acceptable standards and tolerances relating to the quality and standards required in relation to work under this Act;
  - (d) identifying the roles or functions of persons, or classes of persons, while performing work under this Act;
  - (e) providing guidance on procedures relating to inspections;
  - (f) such other matters as are prescribed.
- (2) Before making or adopting guidelines under subsection (1), the Director of Building Control is to consult with such organisations or

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stakeholders the Director of Building Control considers relevant to the content of the proposed guidelines.

- (3) The Director of Building Control is to ensure that guidelines made, or adopted, under subsection (1) –
- (a) are published before they come into effect; and
  - (b) remain published while the guidelines remain in effect.

**20. Director of Building Control may make determinations**

- (1) The Director of Building Control may make a determination in respect of the following matters:
- (a) types of building work, plumbing work or demolition work that is low-risk work, notifiable work or permit work;
  - (b) when and where partial compliance with the National Construction Code may be consented to under Division 1 of Part 5;
  - (c) any matter that is to be determined by the Director of Building Control under this Act;
  - (d) such other matters as are prescribed.
- (2) Before making a determination under subsection (1), the Director of Building Control

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is to consult with such organisations or stakeholders as the Director of Building Control considers relevant to the content of the proposed determination unless the circumstances require immediate action.

- (3) The Director of Building Control is to ensure that a determination made under subsection (1) –
  - (a) is published before it comes into effect; and
  - (b) specifies the period for which the determination is in effect or that the determination is in effect indefinitely; and
  - (c) remains published while the determination remains in effect.
- (4) A person must comply with a relevant determination published in accordance with subsection (3).

Penalty: Fine not exceeding 100 penalty units.

**21. Assistance to Director of Building Control**

- (1) The Director of Building Control may make arrangements with the Head of an Agency, within the meaning of the *State Service Act 2000*, for employees employed in that Agency to be made available to the Director to enable the Director to perform his or her functions and exercise his or her powers under this Act.

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- (2) A person may be made available to the Director of Building Control in conjunction with his or her employment within the State Service.

**22. Compliance audit by Director of Building Control**

- (1) The Director of Building Control may arrange for an audit to be carried out in respect of the work of any person or body specified in section 16(g).
- (2) As part of an audit under this section, the Director of Building Control may require, by written notice, a person to provide a record or document, or to make a written statement that is to be produced, at a time and place specified in the notice.
- (3) A person must comply with a written notice given to them under subsection (2).

Penalty: Fine not exceeding 100 penalty units.

- (4) If requested to do so by the Director of Building Control, a person must assist in, or cooperate with, an audit under this section as requested.

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.

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- (5) If a record, document or written statement is provided as part of an audit under this section, the Director of Building Control –
  - (a) may make copies of the record, document or statement; and
  - (b) must return the record, document or statement as soon as practicable after the Director has finished with the record, document or statement.
- (6) If, after conducting an audit, the Director of Building Control is satisfied that a person or body whose work is the subject of the audit may be guilty of unsatisfactory professional conduct, or professional misconduct, the Director may refer the matter to the Administrator appointed under the *Occupational Licensing Act 2005* as evidence that the person or body is not a fit and proper person for the purposes of that Act.

**23. Publication of documents by Director of Building Control**

If the Director of Building Control is required to publish a document under this Act, the document is taken to be published if –

- (a) the document is made available for viewing by members of the public on a website that is accessible by the public; or
- (b) the document is made available for viewing by members of the public by any

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other means the Director of Building Control considers appropriate.

***Division 2 – Permit authorities***

**24. Who is a permit authority**

- (1) A permit authority means –
  - (a) a person appointed under subsection (2) or subsection (5)(a) for a municipal area; and
  - (b) if the Minister has published a notice under subsection (6), the Director of Building Control.
- (2) The general manager of a council must appoint a person as a permit authority for the municipal area of that council.
- (3) Nothing in subsection (2) prevents a general manager of a council from appointing a person under that subsection who –
  - (a) is an employee of another council; or
  - (b) is the permit authority for the municipal area of another council.
- (4) The general manager may only appoint a person as a permit authority under subsection (2) if the person holds a licence under the *Occupational Licensing Act 2005* that authorises the person to perform the functions and exercise the powers of a permit authority.

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- (5) If the general manager of a council does not appoint a person as a permit authority under subsection (2) for the municipal area of that council –
  - (a) the Director of Building Control may appoint a person as the permit authority, for that municipal area, on the terms and conditions that are specified in the instrument of appointment; and
  - (b) the council is liable for any reasonable costs that are incurred as a result of the appointment under paragraph (a) unless the Director of Building Control otherwise determines.
- (6) The Minister may, by notice in the *Gazette*, appoint the Director of Building Control as a permit authority on the terms and conditions specified in the notice, including which functions or powers of a permit authority they are appointed to perform or exercise.

**25. Functions of permit authorities**

- (1) A permit authority has the following functions in respect of a building work, plumbing work or demolition work:
  - (a) to accept applications submitted to it under this Act and, if the application is incomplete, to seek further information before considering the application;

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- (b) to consider any application submitted to it under this Act within the relevant specified period for the application;
  - (c) to accept any other documents submitted to it under this Act and seek further information in respect of the document if required;
  - (d) to ensure that any permit issued by the permit authority is in accordance with this Act;
  - (e) to comply with this Act when issuing, or refusing to issue, a permit under this Act;
  - (f) to ensure that work performed under a permit is to be performed by appropriately qualified persons;
  - (g) if appropriate, to issue a certificate as required under this Act.
- (2) A permit authority has the following general functions:
- (a) to make the public aware of the building and plumbing requirements in the State and the application of this Act;
  - (b) to ensure compliance with this Act as required under this Act;
  - (c) to keep any registers required to be kept by a permit authority under this Act.

**26. Powers of permit authority**

(1) A permit authority may –

- (a) at all reasonable times, enter any building, temporary structure or premises where building work, plumbing work or demolition work is being, is to be or has been, performed where the permit authority is the relevant permit authority; and
- (b) at all reasonable times, enter any building or temporary structure if entry is necessary for the permit authority to perform a function or exercise a power under this Act; and
- (c) take photographs, films and video recordings in any premises lawfully entered under this Act; and
- (d) require the production of documents or records relating to a building, temporary structure, premises, building work, plumbing work or demolition work; and
- (e) require the production of records required to be kept under this Act; and
- (f) search for, inspect, or require explanation in respect of, any record required to be kept, or produced, under this Act; and
- (g) take notes, copies and extracts of or from any record, document or statement produced or required under this section.

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- (2) In performing its functions, or exercising its powers, under this Act, a permit authority has the power to scrutinise documents and ask questions about relevant matters.

**27. Records of permit authority**

- (1) A permit authority must keep the records set out in Schedule 1 as determined by the Director of Building Control.

Penalty: Fine not exceeding 100 penalty units.

- (2) A council of a municipal area must retain the records, required to be kept, under Schedule 1, by the permit authority for the municipal area –
- (a) for at least 10 years after the record is made or such other prescribed period; or
  - (b) if the record is still relevant in respect of the premises to which it relates at the expiry of the period set out in paragraph (a), until the record is no longer relevant in respect of those premises.

Penalty: Fine not exceeding 100 penalty units.

- (3) A council may only make information retained under subsection (2) available to the following persons:
- (a) the Director of Building Control or other authorised person;

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- (b) an employee of the council that appointed the permit authority, if access to the information is necessary as part of his or her employment;
  - (c) the owner of premises referred to in the information;
  - (d) a building surveyor, building services provider, or other licensed practitioner, that has been engaged by an owner of the premises referred to in the information;
  - (e) any other prescribed person.
- (4) A person may make a copy of information made available to the person under subsection (3) on payment of any reasonable fee charged by the council that has made the information available.

***Division 3 – Building surveyor***

**28. Who is a building surveyor**

- (1) A building surveyor is a building services provider who is engaged by the owner of premises to perform or exercise, in respect of the premises, the functions or powers of a building surveyor under this Act.
- (2) A person must not accept an engagement to perform the functions or exercise the powers of a building surveyor, in respect of work performed on premises, if the person –
  - (a) does not hold a licence under the *Occupational Licensing Act 2005* that

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authorises him or her to perform those functions, or exercise those powers, of a building surveyor; or

- (b) has performed, or is required under the Act to perform, the functions or powers of a permit authority in respect of the work; or
- (c) has provided professional advice in respect of the work in accordance with section 33; or
- (d) is the owner of the premises where the work is to be performed; or
- (e) was an employee of the owner of the premises immediately before he or she was engaged as a building surveyor for the premises; or
- (f) is named, or is to be named, on a permit in relation to the work as the licensed builder or building services provider, or is an employee of the licensed builder or building services provider so named; or
- (g) is a private consultant of a person referred to in paragraph (d) or (f) in respect of the work; or
- (h) is the employer of a person referred to in paragraph (f) or of persons performing building contracts generally; or

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- (i) has prepared, or reviewed, the design for the building work or a performance solution proposed as part of the work; or
- (j) was employed in the immediately preceding 12-month period by a designer of the work; or
- (k) has a direct, or indirect, pecuniary interest in –
  - (i) the designer of the work; or
  - (ii) the work or premises where the work is to be performed; or
  - (iii) any other person associated with the work or premises where the work is to be performed; or
- (l) has a potential conflict of interest between his or her functions as a building surveyor and his or her personal or business interests.

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.
- (3) A person must not accept an engagement as a building surveyor unless –
- (a) the prospective building surveyor has provided, to the person engaging the

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person as a building surveyor, a complete schedule of fees that may be charged by the building surveyor in the course of the engagement; and

- (b) the person engaging the building surveyor has agreed to that schedule of fees.

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.
- (4) The Minister may, by notice in the *Gazette*, appoint the Director of Building Control as building surveyor, or to undertake the functions of a building surveyor that are specified in the notice, on the terms and conditions specified in the notice.

**29. Person must not act as building surveyor**

- (1) A person must not perform any of the functions, or exercise any of the powers, of a building surveyor under this Act in respect of work unless he or she –
  - (a) is engaged, by the owner of premises where the work is being performed, to perform the functions, or exercise the powers, of a building surveyor in respect of the work; or

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- (b) is acting in accordance with a notice of the Minister under section 28(4).

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 engaged as a building surveyor under this Act must not perform any of the functions, or exercise any of the powers, of a building surveyor under this Act that he or she is not authorised to perform or exercise under the *Occupational Licensing Act 2005*.

Penalty: Fine not exceeding 250 penalty units.

**30. Functions of a building surveyor**

- (1) A building surveyor must perform the following functions in respect of the work for which he or she is engaged as a building surveyor:
  - (a) within 7 business days after granting, issuing or amending a certificate of likely compliance, a certificate of substantial compliance, an occupancy permit or a temporary occupancy permit, provide the relevant permit authority with –
    - (i) a copy of the permit or certificate, or the permit or certificate as amended; and

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- (ii) such other documents, if any, specified by the Director of Building Control;
- (b) keep a register, at his or her principal place of business, of –
  - (i) each certificate or permit granted, or amended, by the building surveyor under this Act; and
  - (ii) each determination made by the building surveyor in accordance with 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 building surveyor may perform any one or more of the following functions in respect of the work for which he or she was engaged as a building surveyor:
  - (a) review all documentation submitted as part of an application for a certificate of likely compliance or certificate of substantial compliance;
  - (b) liaise with statutory reporting authorities, councils, permit authorities and function control authorities as required;

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- (c) inspect proposed building work on special-use buildings or other specified buildings;
- (d) inspect work relating to the re-use, occupancy or re-classification of existing buildings;
- (e) give start-work authorisations to responsible persons before work commences;
- (f) grant permission to responsible persons to proceed with building work at certain stages;
- (g) inspect building work and demolition work and buildings and temporary structures where such work is to be, or is being, performed;
- (h) certify the condition of work, or proposed work, in certain circumstances;
- (i) issue permits, certificates and other documents as required under this Act;
- (j) any other function specified in this Act or required by the Director of Building Control.

**31. Powers of building surveyors**

- (1) A building surveyor may, at all reasonable times, enter any premises or land –

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- 
- (a) where there is a building, temporary structure or building work in respect of which he or she has been engaged under this Act as a building surveyor; or
  - (b) for the purpose of performing a function or exercising a power under this Act.
- (2) A building surveyor has the following powers when acting as a building surveyor:
- (a) to issue notices or orders about work started without a permit or start-work authorisation, if required;
  - (b) to issue notices or orders about non-compliance with the requirements of this Act;
  - (c) to issue directions, in certain circumstances, to rectify non-compliant work;
  - (d) to take photographs, films and video recordings in any premises lawfully entered under this Act;
  - (e) to require the production of documents or records relating to a building, temporary structure, premises or building work;
  - (f) to require the production of documents or records required to be kept under this Act as if he or she were the owner of the premises in respect of which he or she has been engaged as the building surveyor;

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- (g) to search for, inspect, or require explanation in respect of, any record required to be kept, or produced, under this Act;
  - (h) to take notes, copies and extracts of or from any record, document or statement produced or required under this section.
- (3) A person to whom a request of a building surveyor is directed under subsection (2) must not, without reasonable excuse, fail to comply with the request.

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.

**32. Building surveyor must exercise powers**

A person engaged to perform the functions, and exercise the powers, of a building surveyor under this Act must, as appropriate, perform those functions and exercise those powers while so engaged.

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.

**33. Building services provider may act as advisor**

A building services provider may provide professional advice on issues of a technical or specialised nature in respect of work without being engaged as a building surveyor for the work if –

- (a) he or she has not been engaged at any time, by the person seeking the advice, to perform the functions of a building surveyor under this Act in respect of the work; and
- (b) another person is to be, or has been, engaged to perform the functions of a building surveyor under this Act in respect of the work.

**34. Building surveyor may seek second opinion on performance solution**

- (1) If a building surveyor is assessing a performance solution in respect of work, the building surveyor may seek the opinion of another building services provider, who is qualified to review such a performance solution, as to whether both the performance solution and the work –
  - (a) comply with the relevant performance requirements of the National Construction Code; or
  - (b) do not comply with those performance requirements.

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- (2) The Director of Building Control may determine whether a person, or a class of persons, is qualified to review a performance solution.

**35. Only one building surveyor to be engaged for work**

- (1) If work is being performed on premises under this Act, the owner of the premises must engage a building surveyor, if required, for the work to be performed in accordance with this Act.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not engage a person as a building surveyor in respect of work where a building surveyor has previously been engaged in respect of the work unless the previous building surveyor has –

- (a) been removed as a building surveyor in respect of work in accordance with section 36; or
- (b) resigned as building surveyor in respect of the work in accordance with section 37; or
- (c) referred the work to the new building surveyor in accordance with section 38.

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.

**36. Change of building surveyor at owner's request**

- (1) Subject to section 38, a person who engages a building surveyor must not remove that building surveyor from that engagement without the consent of the Director of Building Control.

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) The Director of Building Control may consent under subsection (1) to the removal of a person from an engagement as a building surveyor if the Director of Building Control is satisfied on reasonable grounds that –
- (a) the person is incapable of performing the functions of building surveyor for which he or she was engaged; or
  - (b) the person is no longer the building surveyor, or is no longer suitable to be the building surveyor, due to prescribed circumstances; or
  - (c) the person is no longer qualified to perform the functions of building surveyor for which he or she was engaged; or
  - (d) the person has engaged in professional misconduct.

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**37. Change of building surveyor at building surveyor's request**

- (1) Subject to section 38, a person who has been engaged as a building surveyor by another person must not resign from that engagement without the consent of the Director of Building Control.

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) Despite subsection (1), a person who has been engaged as a building surveyor by another person may resign from that engagement, without the consent of the Director of Building Control, by notice in writing to the other person if it has been at least 3 years since his or her engagement as a building surveyor by that person.
- (3) Within 7 business days after resigning from an engagement under subsection (2), the building surveyor is to –
- (a) notify the Director of Building Control and the relevant permit authority of the resignation; and
  - (b) forward to the relevant permit authority copies of all documents, relevant to the

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building work, as specified by the  
Director of Building Control.

**38. Change of building surveyor where both parties agree**

- (1) Despite sections 36 and 37, a person who has engaged a building surveyor in respect of work and the building surveyor so engaged may agree that work is to be referred to a new building surveyor.
- (2) An agreement under subsection (1) to refer work to a new building surveyor does not require the consent of the Director of Building Control.
- (3) A building surveyor who has entered into an agreement to refer work under subsection (1) must refer, within the specified period, the work to a new building surveyor who –
  - (a) has accepted the referral; and
  - (b) is acceptable to the other parties to the agreement.

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.
- (4) A person who has previously engaged a building surveyor, in respect of work to be referred under this section, must not engage a new building

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surveyor in respect of work unless the previous building surveyor has referred the work to the new building surveyor under subsection (3).

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) Once a new building surveyor has been engaged in respect of work that is the subject of an agreement under this section, the previous building surveyor is no longer the building surveyor in respect of the work.

**39. Transfer of documents in certain circumstances**

(1) If –

- (a) the owner of premises has engaged a person as a building surveyor in respect of work at those premises; and
- (b) another building surveyor was previously engaged in respect of that work –

the owner may request, in writing, that the previous building surveyor transfer to the new building surveyor, within the period specified in the request, specified documentation held by the previous building surveyor in respect of that work.

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- (2) A person who receives a request under subsection (1) must comply with the request.

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.

- (3) If –

- (a) a person ceases to act as a building surveyor in respect of work that is yet to be completed at premises; and
- (b) the owner of the premises does not engage another person as building surveyor in respect of the work –

the person who has ceased to act as a building surveyor must provide the specified documentation held in respect of the work to the relevant permit authority for the work within 28 days after ceasing to act as building surveyor in respect 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.

**40. Notification of change of building surveyor**

A person who engages a new building surveyor in respect of work under this Division –

- (a) must notify the relevant permit authority of the details of the building surveyor so engaged and any other prescribed information; and
- (b) if requested to do so by the relevant permit authority, is to inform another person as specified of the details of the building surveyor so engaged.

***Division 4 – Other authorities***

**41. Councils**

- (1) A council of a municipal area, as far as is reasonably practicable, is to –
  - (a) ensure that the owners of property are informed of their duties under this Act –
    - (i) in relation to any building work, plumbing work or demolition work; and
    - (ii) in maintaining and using a building; and
  - (b) make itself aware of –
    - (i) building work, plumbing work or demolition work being performed in the municipal area; and

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- (ii) the use and occupation of buildings in its municipal area; and
  - (c) if applicable, ensure proceedings are instituted against any person or body failing to comply with this Act; and
  - (d) enforce an order issued by a building surveyor, if appropriate to do so.
- (2) The general manager of a council may, at all reasonable times, enter any premises or land where there is a building, temporary structure, building work, plumbing work or demolition work, if necessary to perform a function or exercise a power under this Act.

**42. Other professionals and experts**

A person who is providing a report, certificate or opinion under this Act as a professional, or expert, must ensure that he or she acts only in his or her area of expertise.

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.

## **PART 4 – PARTIES TO WORK**

### ***Division 1 – Designers***

#### **43. Designers**

- (1) A person undertaking design work under this Act is to ensure that –
  - (a) he or she acts only within the area of his or her competence; and
  - (b) so far as is reasonably practicable –
    - (i) the design of the building work or plumbing work is in accordance with the standards and requirements of this Act; and
    - (ii) the documentation relating to the design includes sufficient information for the assessment of the work in accordance with this Act; and
    - (iii) the documentation relating to the design is sufficiently detailed for a licensed builder or a licensed plumber to perform the work in accordance with the documents and this Act.
- (2) A person must not accept an engagement as a designer in respect of work under this Act if that work requires the person to hold a licence under the *Occupational Licensing Act 2005* and the person does not hold such a licence.

Penalty: Fine not exceeding 250 penalty units.

**44. Minimum standards of design work**

- (1) A person undertaking design work under this Act is responsible for ensuring that the plans and specifications, or the advice, comprising the design work are sufficient to result in work that is likely to comply with the National Construction Code, if the work is properly completed in accordance with those plans and specifications or that advice.
- (2) If design work under this Act requires a performance solution or alternative plumbing installation, a person undertaking the design work is to provide, as part of the design work, an acceptable solution or an alternative installation, or a verification method for compliance, to ensure the performance solution or alternative plumbing installation is likely to comply with the National Construction Code if the work is properly completed in accordance with the design work.

***Division 2 – Builders***

**45. Builders**

- (1) A builder is to ensure that he or she acts only within the area of his or her expertise and experience.
- (2) A builder who performs building work is to ensure that –

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- (a) a relevant permit, authorisation or notification is issued in respect of the work before it is commenced; and
  - (b) the work is performed in accordance with the relevant permit or authorisation and this Act; and
  - (c) the quality of the materials used in the work is in accordance with the relevant permit or authorisation and this Act; and
  - (d) the work is performed on land owned by the owner; and
  - (e) the work is performed in a manner that does not cause –
    - (i) a public health risk; or
    - (ii) a danger to the public; or
    - (iii) a nuisance to an adjoining owner; or
    - (iv) damage to infrastructure; and
  - (f) any directions under this Act in respect of the building work are complied with; and
  - (g) sufficient information is supplied to the owner for the owner to maintain the building in accordance with this Act.
- (3) A builder intending to perform building work under this Act must hold the relevant licence

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under this or any other Act, if required, to perform that work.

Penalty: Fine not exceeding 250 penalty units.

**46. Owner builders**

In addition to the duties of an owner under section 50, an owner builder must ensure that he or she holds a permit, if such a permit is required to perform the proposed building work, that authorises the performance of the work intended to be performed by the owner builder.

**47. Minimum standards for building work**

A builder who performs or supervises building work must ensure that the work is –

- (a) performed in accordance with this Act and the National Construction Code; and
- (b) complies with this Act, the National Construction Code and any relevant plans and specifications.

***Division 3 – Plumbers***

**48. Licensed plumbers**

- (1) A licensed plumber who performs plumbing work is to ensure that –

- (a) a relevant permit, authorisation or notification is issued in respect of the work before it is commenced; and

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- (b) the work is performed in accordance with the relevant permit or authorisation and this Act; and
- (c) the quality of the materials used in the work is in accordance with the relevant permit or authorisation and this Act; and
- (d) the work is performed on land owned by the owner; and
- (e) the work is performed in a manner that does not cause –
  - (i) a public health risk; or
  - (ii) a danger to the public; or
  - (iii) an environmental nuisance within the meaning of the *Environmental Management and Pollution Control Act 1994*; or
  - (iv) a nuisance to an adjoining owner; or
  - (v) damage to infrastructure; and
- (f) any directions in respect of the plumbing work under this Act are complied with; and
- (g) sufficient information is supplied to the owner for the owner to maintain the plumbing work, and plumbing installations, in accordance with this Act.

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- (2) A person performing plumbing work under this Act must have the relevant licence, if required, to perform that work.

**49. Minimum standards for plumbing work**

A plumber who performs or supervises plumbing work must ensure that the work is –

- (a) performed in accordance with this Act and the National Construction Code; and
- (b) complies with this Act, the National Construction Code and any relevant plans and specifications.

***Division 4 – Owners***

**50. Owners**

- (1) The owner of premises where building work is performed, or is to be performed, is to ensure that –
- (a) any person engaged to perform the building work, or building services work, is qualified to perform the work as required under this Act or any other Act; and
  - (b) information provided to any person engaged to perform the building work, and any work associated with the building work, is correct to the owner's knowledge; and

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- (c) the premises where the building work is to be performed are clearly identifiable; and
  - (d) an adjoining premises is protected in accordance with this Act if required; and
  - (e) the building is not occupied until an occupancy permit has been issued, if required; and
  - (f) sufficient information is supplied to another owner of the premises for the other owner to maintain the premises in accordance with this Act.
- (2) An owner of premises where plumbing work is performed, or is to be performed, is to ensure that the person engaged to perform the work is qualified to perform the work as required under this Act.
- (3) An owner of premises where demolition work is performed, or is to be performed, is to ensure that the person engaged to perform the work is qualified to perform the work as required under this Act.
- (4) The owner of premises, so far as is reasonably practicable, is to –
  - (a) ensure that the premises are used and maintained in accordance with this Act; and

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- (b) ensure compliance with this Act and any permits issued under this Act in respect of the premises; and
  - (c) notify the permit authority of any changes to the responsible person or building surveyor if work is to be performed on the premises; and
  - (d) if a permit has been issued in respect of work to be performed on the premises, ensure that –
    - (i) the work is completed before the expiry of the permit; or
    - (ii) the permit is extended or renewed.

**51. Change of parties involved in certain building work**

- (1) This section applies to premises where a building permit has been issued, or a notice of work has been given, in respect of building work to be performed at the premises.
- (2) The owner of premises to which this section applies must notify the relevant building surveyor in writing, within 14 days after engaging a person as a licensed builder to perform the work, of –
  - (a) the name and current business address for the licensed builder; and
  - (b) the licence number, issued under the *Occupational Licensing Act 2005* to the

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licensed builder, under which the work is being performed; and

- (c) any other prescribed information.

Penalty: Fine not exceeding 20 penalty units.

- (3) The owner of premises to which this section applies, who intends to perform the work as an owner builder, must notify the relevant building surveyor in writing of –

- (a) the identifying details of the owner builder permit, issued under the *Occupational Licensing Act 2005*, under which he or she intend to perform the work; and

- (b) any other prescribed information.

Penalty: Fine not exceeding 20 penalty units.

- (4) If, after a building permit has been granted or a notice of work has been given to a building surveyor, but before the building work is complete –

- (a) the owner of the relevant premises where the building work is performed; or  
(b) an agent appointed by the owner; or  
(c) the designer of the building work; or  
(d) the builder of the building work –

ceases to be the owner, agent, designer or builder, as the case may be, or changes his or her

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name or address, he or she must notify the building surveyor and the permit authority in writing of that change.

Penalty: Fine not exceeding 20 penalty units.

**52. Change of parties involved in certain plumbing work**

(1) If –

- (a) a plumbing permit has been issued in respect of permit plumbing work or a notice of work in respect of notifiable plumbing work has been given to a permit authority; and
- (b) a licensed plumber is engaged to perform the plumbing work under the plumbing permit or notice of work –

the owner of the premises where the work is, or is to be, performed must, within 14 days after that engagement, give the relevant permit authority written notice of the engagement, including details of the licensed plumber's licence.

(2) If, after a plumbing permit has been granted or a start work notification in respect of plumbing work has been given to a permit authority, but before the plumbing work is complete –

- (a) the owner of the relevant premises; or
- (b) an agent appointed by the owner; or

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- (c) the designer of the plumbing work; or
- (d) the licensed plumber responsible for that plumbing work –

ceases to be the owner, agent, designer or plumber, as the case may be, or changes his or her name or address, he or she must notify the permit authority in writing of that change.

Penalty: Fine not exceeding 20 penalty units.

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**PART 5 – SPECIAL CATEGORIES OF WORK**

***Division 1 – Works on existing buildings***

**53. Existing buildings to be upgraded if altered**

- (1) This section applies to building work performed on a building if, within the previous 3 years, building work has been performed or permitted on more than half of the original volume of the building.
- (2) If building work to which this section applies is performed on an existing building, the owner of the building must ensure that the entire building, as part of that building work, is brought into compliance with this Act and the applicable provisions of the National Construction Code.
- (3) The building surveyor, engaged in respect of building work to which this section applies, may consent to partial compliance with the applicable provisions of the National Construction Code in respect of the work if the building surveyor is satisfied that the partial compliance is appropriate, after taking into account –
  - (a) the structural adequacy of the existing building; and
  - (b) the requirements necessary to make reasonable provision for –
    - (i) the amenity of the building and the safety and health of the

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people using, or intending to use,  
the building; and

(ii) appropriate measures to ensure  
that fire cannot spread to, or  
from, any adjoining building; and

(c) whether the building is a historic  
building.

(4) The relevant building surveyor must not consent to partial compliance under subsection (3) in respect of building work on an existing building to which this section applies, if that work involves the extension of the existing building –

(a) where the floor area of the extension exceeds –

(i) 25 percent of the floor area of the  
building before the  
commencement of the extension;  
or

(ii) 1 000 square metres; or

(b) that a determination of the Director of  
Building Control makes ineligible for  
partial compliance under this section.

(5) Nothing in this Act requires a building that is not the subject of work under this Act to be upgraded to comply with the National Construction Code unless the building is the subject of a notice, or an order, under Part 18.

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**54. Alteration to existing exits and paths to exits**

- (1) If proposed building work is to adversely affect any exit, or path of travel to an exit, in an existing Class 2, 3, 4, 5, 6, 7, 8 or 9 building, the building must comply with Section D of Volume One of the National Construction Code or such other provision, or standards, as may be prescribed.
- (2) The relevant building surveyor for the building work referred to in subsection (1) may consent to partial compliance with the requirements of that subsection, if the building surveyor is satisfied that the partial compliance is appropriate, after taking into account –
  - (a) the structural adequacy of the building;  
and
  - (b) the requirements necessary to make reasonable provision for –
    - (i) the amenity of the building and the safety and health of the people using, or intending to use, the building; and
    - (ii) appropriate measures to ensure that fire cannot spread to, or from, any adjoining building; and
  - (c) whether the building is a historic building.

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**55. Change of building use or building classification**

(1) In this section –

*change of use*, in respect of the use of an existing building, includes the re-use of a building where a function control authority is required, under another Act, to provide new registration, licensing or approval for that use.

(2) A person must not cause the change of the use of an existing building, whether erected before or after the commencement of this Act, if the new use requires –

- (a) a change of classification of the building;  
or
- (b) the building to comply with different requirements within its existing classification –

and the building does not comply with this Act or the relevant provisions of the National Construction Code in respect of the changed use.

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.
- (3) If a change of the use of a building referred to in subsection (2) does not require permit building work or notifiable building work to be

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performed before the change of use, the person intending to change the use of the building must obtain a new occupancy permit for the building before changing its use.

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.

***Division 2 – Works performed on boundaries***

**56. Party walls**

- (1) An owner of property who intends to build a party wall on the boundary of adjoining premises is to give written notice to the owner of the adjoining premises of –
  - (a) the intention to the build the party wall; and
  - (b) the details of the wall that is intended to be built, including proposed materials and dimensions.
- (2) If the owner of the adjoining premises consents to the building of the party wall –
  - (a) the wall is to be built in the position on the boundary of the adjoining premises as agreed in writing by both parties; and

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- (b) the costs incurred are payable as agreed in writing by both parties; and
  - (c) if the party wall is to be built on land registered under the *Land Titles Act 1980*, an instrument creating an easement of support in respect of the wall is to be prepared, executed and registered as agreed by both parties.
- (3) An owner of property must not build a party wall on the boundary of adjoining premises if the owner of the adjoining premises –
  - (a) does not consent to the building of the wall; or
  - (b) does not agree with who is to be liable for the costs for building the wall; or
  - (c) if the party wall is to be built on land registered under the *Land Titles Act 1980*, does not agree to the preparation, execution or registration of the instrument creating an easement of support in respect of the wall as required under subsection (2)(c).
- (4) The owner of premises who builds a party wall in accordance with this section is the owner of the party wall until –
  - (a) if the owner of the adjoining premises is liable for any of the costs associated with building the wall, those costs are paid; and

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- (b) if the party wall is built on land registered under the *Land Titles Act 1980*, either party applies to the Recorder of Titles under the *Land Titles Act 1980* for a memorandum to be entered into the Register maintained under that Act to show the party wall on both certificates of title.

**57. Party structures**

- (1) An owner of premises, on which there is a party structure, may do any of the following work in relation to the party structure:
  - (a) make good, or repair, the party structure;
  - (b) pull down and rebuild the party structure;
  - (c) raise and underpin the party structure;
  - (d) perform any other necessary works incidental to the connection of the party structure to any adjoining building, structure or premises.
- (2) Before any work specified in subsection (1) is performed on premises, an owner of the premises must notify each owner of adjoining premises to the party structure in writing, at least 6 weeks before beginning to perform the work, stating –
  - (a) the nature and particulars of the proposed work; and

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- (b) the proposed program for performing the proposed 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.
- (3) An owner of premises must not commence any work specified in a notice under subsection (2) more than 6 months after the notice has been given unless the owner has given a new notice to each owner of adjoining premises to the party structure under that subsection.

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.
- (4) An owner of premises on which there is a party structure must ensure that, when performing work specified in subsection (1), he or she does not unnecessarily inconvenience an owner of adjoining premises to the party structure.

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.

**58. Rights of adjoining owners**

- (1) After receiving a notice under section 57(2), an owner of adjoining premises may request, in writing to the owner performing the work, that the works –
  - (a) be performed in a different manner as specified in the written request; or
  - (b) be performed under a different program as specified in the written request.
- (2) The owner of the premises where the work is to be performed must comply with a written request under subsection (1) if to do so will not –
  - (a) inconvenience the owner; or
  - (b) cause unnecessary inconvenience or delay.

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.

**59. Reply to notices**

If a person who receives a notice under this Division does not respond in respect of the

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notice within the relevant period, the person is taken to have agreed to the matters specified in the notice.

**60. Work on party structures to be performed if agreed**

An owner of premises on which there is a party structure must not perform work on the party structure unless all owners of adjoining premises to the party structure have agreed, or are taken to have agreed, to the work.

**61. Entry to premises**

- (1) For the purpose of performing any work referred to in this Part, an owner performing the work may –
  - (a) enter and remain on any land between 8 a.m. and 6 p.m. or at other agreed times; and
  - (b) perform any necessary work for that purpose.
- (2) Before entering any adjoining premises for the purpose of this section, the owner must give –
  - (a) at least 14 days' notice to the occupier and owner of the adjoining premises; or
  - (b) in the case of emergency, any notice as is reasonably practicable.
- (3) In taking any action under this Division, a person, without doing any unnecessary damage,

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may remove any furniture or fittings or do any other thing that may be necessary to perform that work.

**62. Expenses payable by owners**

- (1) Any expenses incurred in taking any action under this Division are payable by the owner and the owner of adjoining premises in due proportion, taking into account the use that each owner makes or may make of the structure.
- (2) Within one month after the completion of any work, the owner is to give the owner of adjoining premises an account in writing specifying the expenses incurred.
- (3) An owner of adjoining premises is liable for all expenses incurred by the owner in relation to any additional work performed by the owner at the request of the owner of adjoining premises.
- (4) An amount payable to the owner under this section is recoverable in a court of competent jurisdiction as a debt due by the owner of adjoining premises to the owner.

**63. Liability not affected**

Any liability of a person to an owner or occupier of adjoining premises because of any protection work carried out continues, but the person may complete the protection work without being subject to proceedings for an injunction.

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**64. Saving for easements**

The provisions of this Part do not affect the right of any person to –

- (a) preserve any right in respect of a party wall that is demolished or rebuilt; or
- (b) take any necessary steps for that purpose.

**65. Resolution of differences**

A difference arising between an owner and an owner of adjoining premises in respect of any matter arising out of work to which this Part relates, on application by either owner, may be heard and determined by the appeal tribunal.

***Division 3 – Works in hazardous areas***

**66. Interpretation**

In this Division –

***A landslip area*** means an area of land declared under Part 9A of the *Mineral Resources Development Act 1995* to be an A landslip area;

***B landslip area*** means an area of land declared under Part 9A of the *Mineral Resources Development Act 1995* to be a B landslip area;

***landslip area*** means an area of land declared under Part 9A of the *Mineral Resources*

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*Development Act 1995* to be an A  
landslip area or a B landslip area.

**67. Works in landslip areas**

- (1) A person must not erect, alter or add to a building in an A landslip area unless authorised under this Act.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must not erect, alter or add to a building in a B landslip area unless authorised under this Act.

Penalty: Fine not exceeding 100 penalty units.

- (3) Unless authorised under this Act, a person must not store in a B landslip area –

- (a) more than 10 000 litres of water; or
- (b) more than the prescribed quantity for any explosive, flammable liquid or other dangerous substance.

Penalty: Fine not exceeding 100 penalty units.

- (4) A person who erects, alters or adds to a building in a landslip area must not aggravate any existing landslip conditions.

Penalty: Fine not exceeding 100 penalty units.

- (5) Unless authorised under this Act, a person must not, in a landslip area –

- (a) excavate or deposit material; or

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- (b) use earthmoving or vibrating compaction equipment; or
- (c) remove any vegetation.

Penalty: Fine not exceeding 100 penalty units.

**68. Compensation not payable for certain damage to buildings erected in known landslip areas**

- (1) In this section –

*landslip order* means an order under section 161B(1) of the *Mineral Resources Development Act 1995*;

*registered* means registered in accordance with section 161C of the *Mineral Resources Development Act 1995*;

*revocation order* means an order under section 161D(1)(a) of the *Mineral Resources Development Act 1995*.

- (2) Once a landslip order declaring an area of land to be an A landslip area or B landslip area has been registered, no compensation or other relief is payable for any damage caused by earth movement to any building that is erected during the registration period in that area of land.
- (3) For the purposes of subsection (2), the registration period is the period that commences on the day on which the landslip order is registered and ends on the day on which a revocation order in respect of that landslip order is registered.

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**69. Works on contaminated or undrainable premises**

- (1) A person must not perform any building work on land that, in the opinion of the environmental health officer, is contaminated, unhealthy and not suitable for the purpose until the land is cleaned or remedied to the satisfaction of the general manager of the municipal area in which the land is situated.

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 not perform any building work on land unless the surface of the land is capable of being drained into an existing stormwater drain or channel or other suitable outlet, to the satisfaction of the general manager of the municipal area in which the land is situated.

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.

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***Division 4 – Miscellaneous works***

**70. Works on or around building line**

(1) In this section –

***building line***, in relation to a public street,  
means –

- (a) a line determined by a by-law or  
planning instrument –
  - (i) as a building line; or
  - (ii) as a building set-back; or
- (b) if a line is not so determined, a  
line which is –
  - (i) 18 metres from the centre  
of a highway or a public  
street that is not within a  
city or town; or
  - (ii) 9 metres from the middle  
of a public street, other  
than an alley, that is  
within a city or town;

***public street*** has the same meaning as in the  
*Traffic Act 1925*.

(2) A person must not erect a building between the  
building line and the boundary of a public street.

Penalty: In the case of –

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- 
- (a) a natural person, a fine not exceeding 100 penalty units; or
    - (b) a body corporate, a fine not exceeding 500 penalty units.
  - (3) For the purpose of determining fire protection requirements under the National Construction Code, the area between the building line and the boundary of a public street is not a fire source feature under the National Construction Code if buildings do not, and cannot lawfully, exist in that area.

**71. Works that amend existing building boundary**

- (1) In this section –

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

- (2) A person intending to change the boundary of an allotment, or of a strata title, of an existing building must obtain a building permit and perform work under this Act if the change would, without performing the work –
  - (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 –

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- (a) a natural person, a fine not exceeding 50 penalty units; or
  - (b) a body corporate, a fine not exceeding 250 penalty units.
- (3) Despite subsection (2), a person must not change the boundary of an allotment, or of a 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.

**72. Works involving, or in proximity of, existing drains**

- (1) A person must not perform any building work over an existing drain or within one metre from the edge of an existing drain measured horizontally, unless the owner of the building obtains written consent from the general manager of the council for the municipal area where the work is performed.

Penalty: Fine not exceeding 50 penalty units.

- (2) The general manager may impose any reasonable condition on written consent given under subsection (1).
- (3) The general manager may require an owner of a building to give a written undertaking not to hold

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the council liable for damage or inconvenience arising from the building work performed in accordance with the written consent of the general manager under this section.

**73. Works involving, or in proximity of, service easements**

A person must not perform any building work over or within a service easement unless the person obtains written consent to do so from the person on whose behalf the service easement was created.

Penalty: Fine not exceeding 50 penalty units.

## **PART 6 – PROTECTION WORK**

### **74. Interpretation**

In this Part –

*adjoining owner* includes –

- (a) the owner of adjoining premises;  
and
- (b) the State Service Agency, council  
or other organisation responsible  
for the management of the  
adjoining premises; and
- (c) a person appointed by the  
Director of Building Control as  
agent for such an owner under  
section 77;

*adjoining premises* means premises adjoining  
relevant premises;

*protection work notice* means a notice under  
section 76;

*relevant premises* means the premises where  
building work, plumbing work or  
demolition work is to be performed.

### **75. Protection work**

- (1) Before any building work, plumbing work or  
demolition work is performed under this Act,

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work (***protection work***) must be performed to protect –

- (a) adjoining premises; and
  - (b) persons at the premises of the work or at the adjoining premises; and
  - (c) members of the public that may be at, or near, the premises of the work.
- (2) The following persons must ensure that all appropriate protection work is performed before commencing any building work, plumbing work or demolition work under this Act:
- (a) the owner of the premises where the building work, plumbing work or demolition work is to be performed;
  - (b) the responsible person for the building work, plumbing work or demolition work;
  - (c) the person engaged by the owner to manage the building work, plumbing work or demolition work on behalf of the owner.
- (3) The regulations may prescribe protection work that must be performed in prescribed circumstances.
- (4) This Part is in addition to any requirement under this Act, or any other Act, in relation to protection of workers or the public.

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**76. Notice of proposed protection work**

- (1) Before performing protection work at relevant premises, the owner of the relevant premises must notify each of the following persons of the proposed protection work:
  - (a) each adjoining owner;
  - (b) if building work or demolition work is to be performed at the relevant premises, the building surveyor engaged in respect of the building work or demolition work;
  - (c) if plumbing work is to be performed at the relevant premises, the relevant permit authority.

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 notice under subsection (1) is to –
  - (a) be in an approved form; and
  - (b) include details of the proposed building work, plumbing work or demolition work to be performed at the relevant premises; and
  - (c) include details of the protection work to be performed in respect of the proposed

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building work, plumbing work or  
demolition work, including –

- (i) the nature and particulars of the  
protection work; and
- (ii) the proposed program for  
undertaking the protection work,  
including its duration; and
- (d) if building work or demolition work is to  
be performed at the relevant premises,  
the name of the relevant building  
surveyor; and
- (e) if plumbing work is to be performed at  
the relevant premises, the name of the  
relevant permit authority for the  
plumbing work.

**77. Absent or incapable adjoining owner**

- (1) The owner of relevant premises may apply to the  
Director of Building Control for the appointment  
of a person as agent for an adjoining owner if –
  - (a) the owner of the relevant premises is  
unable to find an adjoining owner to  
notify in accordance with section 76; or
  - (b) an adjoining owner notified in  
accordance with section 76 is not capable  
of representing himself or herself for the  
purposes of this Part.
- (2) An application under subsection (1) is to –

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- (a) be in writing; and
  - (b) specify the reasons for the application; and
  - (c) contain such information as is specified by the Director of Building Control.
- (3) If satisfied after receiving an application under subsection (1) that an adjoining owner is unable to be found or is not capable of representing himself or herself, the Director of Building Control may appoint a suitable person to act as the agent for the adjoining owner for the purposes of this Part.
- (4) If the Director of Building Control appoints a person as an agent under this section, the Director of Building Control is to notify the person in writing of –
  - (a) the appointment; and
  - (b) the nature of the duties to be performed as agent under the appointment; and
  - (c) the fees that may be payable to the agent by the adjoining owner for the performance of those duties; and
  - (d) any other terms and conditions the Director of Building Control thinks appropriate.
- (5) If the Director of Building Control appoints a person as an agent under this section –

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- 
- (a) the Director of Building Control is to notify the owner of the relevant premises of the appointment of the agent; and
  - (b) the owner of the relevant premises must notify the agent in accordance with section 76.
- (6) The appointment of an agent under this Part is according to the terms and conditions, including the payment of fees, as are specified by the Director of Building Control in the appointment.
- (7) Nothing in this section prevents an adjoining owner from appointing, on his or her own initiative, an agent to act on his or her behalf for the purpose of this Part.

**78. Adjoining owner may respond to protection work notice**

- (1) An adjoining owner who receives a protection work notice may, within the prescribed period after receiving the notice, notify the owner of the relevant premises that the adjoining owner –
  - (a) agrees to the proposed protection work as specified in the notice; or
  - (b) disagrees with all, or part, of the proposed protection work as specified in the notice and, if relevant, specifies changes to be made to the proposed protection work; or

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- (c) requests further information in respect of the proposed protection work.
- (2) If an adjoining owner requests further information under subsection (1)(c), the owner of the relevant premises must –
  - (a) forward the request to the relevant building surveyor; and
  - (b) if the building surveyor determines that the request is reasonable, provide the adjoining owner with the further information requested; and
  - (c) if the building surveyor determines that the request is not reasonable, notify the adjoining owner of that determination.
- (3) If further information is provided under subsection (2)(b), the adjoining owner must notify the owner of the relevant premises that the adjoining owner –
  - (a) agrees to the proposed protection work as specified in the notice and detailed in the further information; or
  - (b) disagrees with all, or part, of the proposed protection work as specified in the notice and, if relevant, specifies changes to be made to the proposed protection work.
- (4) If a request for further information was refused under subsection (2)(c), the adjoining owner

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must notify the owner of the relevant premises that the adjoining owner –

- (a) agrees to the proposed protection work as specified in the notice and detailed in the further information; or
- (b) disagrees with all, or part, of the proposed protection work as specified in the notice and, if relevant, specifies changes to be made to the proposed protection work.

(5) An adjoining owner who –

- (a) receives a protection work notice; and
- (b) fails to respond in respect of the notice within the prescribed period after receiving the notice, or such further period as is specified in this section –

is taken to have agreed to the proposed protection work as specified in the notice.

**79. Protection work to be performed if agreed**

An owner of relevant premises must not perform protection work, or allow protection work to be performed, in respect of the relevant premises unless all adjoining owners have agreed, or are taken to have agreed, to the protection work.

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**80. Effect of disagreement in relation to proposed protection work**

- (1) If an adjoining owner notifies the owner of relevant premises that the adjoining owner disagrees with all, or part, of the proposed protection work, the owner of the relevant premises must –
  - (a) if the protection work relates to –
    - (i) building work or demolition work to be performed at the relevant premises, refer the matter to the building surveyor engaged in respect of the work; or
    - (ii) plumbing work to be performed at the relevant premises, refer the matter to the relevant permit authority; and
  - (b) inform the adjoining owner of the referral.
- (2) If a disagreement in relation to proposed protection work is referred to a building surveyor under subsection (1)(a)(i), the building surveyor –
  - (a) may request any additional information from the owner of the relevant premises, or the adjoining owner, that the building surveyor thinks relevant; and
  - (b) is to provide a copy of any additional information received under paragraph (a)

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to the owner of the relevant premises and the adjoining owner; and

- (c) is to make a determination as to how, and what type of, proposed protection work is to be performed.
- (3) If a disagreement in relation to proposed protection work is referred to a permit authority under subsection (1)(a)(ii), the permit authority –
  - (a) may request any additional information from the owner of the relevant premises, or the adjoining owner, that the permit authority thinks relevant; and
  - (b) is to provide a copy of any additional information received under paragraph (a) to the owner of the relevant premises and the adjoining owner; and
  - (c) is to make a determination as to how, and what type of, proposed protection work is to be performed.
- (4) A person who makes a determination under subsection (2)(c), or subsection (3)(c), is to give a written copy of that determination to the owner of the relevant premises and each adjoining owner.

**81. Carrying out protection work**

A person carrying out protection work must carry out the protection work –

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- (a) as agreed under section 78 or as determined under section 80; and
- (b) in accordance with 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.

**82. Insurance cover**

- (1) An owner of relevant premises must ensure that he or she obtains insurance as required under subsection (2) in respect of the protection work before performing protection work, or allowing protection work to be performed, in respect of the relevant premises.

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) Insurance obtained in respect of protection work –
  - (a) must be for an amount that is not less than the amount agreed by the owner of the relevant premises and the adjoining owners; and

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- 
- (b) must cover damage by the proposed protection work to adjoining premises; and
  - (c) must cover any liability likely to be incurred, in respect of the protection work, to the adjoining owner and members of the public; and
  - (d) must not expire until at least 12 months after the completion of the protection work.
- (3) An owner of relevant premises is to provide each adjoining owner with a copy of the insurance policy with each adjoining owner.

**83. Condition of adjoining premises**

- (1) Before carrying out protection work or allowing protection work to be carried out, an owner of relevant premises must –
  - (a) make a full and adequate assessment of each adjoining premises with the adjoining owner; and
  - (b) make a record of all existing cracks and defects in the adjoining premises.
- (2) A record under subsection (1)(b) must be signed by the owner of the relevant premises and the adjoining owner as an agreed record of the condition of the adjoining premises.
- (3) A record under subsection (1)(b) signed in accordance with subsection (2) –

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- (a) is admissible as evidence in proceedings under this Act relating to the adjoining premises; and
- (b) is evidence of the condition of the adjoining premises at the time the record was made.

**84. Entry to carry out protection work**

- (1) An owner of relevant premises must give at least 72 hours' notice, or such other agreed period of notice, of the intention to enter adjoining premises, including any building or structure on the premises, to perform the agreed protection work.

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) For the purpose of carrying out any agreed protection work, a person may –
  - (a) enter adjoining premises between 8 a.m. and 6 p.m. or at such other times as may be agreed between the parties; and
  - (b) without doing any unnecessary damage, remove any furniture or fittings, or do any other thing, that may be necessary to perform the protection work.

**85. Offence to prevent protection work**

A person must not –

- (a) prevent a person intending to perform agreed protection work from entering adjoining premises in relation to which notification has been given under section 76; or
- (b) obstruct or hinder a person performing the protection work.

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.

**86. Plans of protection work**

- (1) After protection work is completed, the owner of relevant premises must serve a complete set of drawings and specifications, showing the protection work carried out, on –
  - (a) each adjoining owner; and
  - (b) if building work or demolition work is to be performed at the relevant premises, the relevant building surveyor; and
  - (c) if plumbing work is to be performed at the relevant premises, the relevant permit authority.

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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 building surveyor who receives a complete set of drawings and specifications under this section must provide a copy of those drawings and specifications to the relevant permit authority.

**87. Expenses of adjoining owner**

- (1) Any costs and expenses necessarily incurred by an adjoining owner in assessing proposed protection work, and in ensuring that the protection work is carried out as agreed, are payable by the owner of the relevant premises as agreed between the parties.
- (2) If there is no agreement between the parties in respect of the payment of costs and expenses, each party may apply to the appeal tribunal to hear and determine the matter.
- (3) The costs and expenses payable to an adjoining owner are recoverable in a court of competent jurisdiction as a debt due by the owner of the relevant premises to the adjoining owner.

**88. Compensation**

- (1) An owner of relevant premises is to compensate an adjoining owner, or any other person, for any

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inconvenience, loss, or damage, suffered as a result of the protection work that has been performed.

- (2) An adjoining owner, or other person, who suffers any inconvenience, loss, or damage, as a result of protection work that has been performed may apply to the appeal tribunal to determine the amount, if any, of compensation payable.
- (3) An amount of compensation payable under this section is recoverable in a court of competent jurisdiction as a debt due by the owner of the relevant premises.

**89. Failure to perform adequate protection work**

The owner of relevant premises must ensure that all protection work agreed under section 78, or determined under section 80, is –

- (a) performed in accordance with the National Construction Code; and
- (b) performed and completed as agreed or determined.

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.

## **PART 7 – LOW-RISK WORK**

### **90. Low-risk work**

- (1) For the purposes of this Act, the Director of Building Control may determine that –
  - (a) specified building work, or a specified class of building work, is low-risk building work; and
  - (b) specified plumbing work, or a specified class of plumbing work, is low-risk plumbing work; and
  - (c) specified demolition work, or a specified class of demolition work, is low-risk demolition work.
- (2) Despite subsection (1), work is not low-risk work if any part of the work is –
  - (a) notifiable work; or
  - (b) permit work; or
  - (c) emergency work.

### **91. Application of Act to low-risk work**

Unless otherwise specified –

- (a) the relevant provisions of the National Construction Code apply to low-risk work; and
- (b) this Act applies to low-risk work.

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**PART 8 – NOTIFIABLE BUILDING WORK**

***Division 1 – General***

**92. Notifiable building work**

- (1) For the purposes of this Act, the Director of Building Control may determine that specified building work, or a specified class of building work, is notifiable building work.
- (2) Despite subsection (1), building work is not notifiable building work if any part of the building work is –
  - (a) emergency work; or
  - (b) building work that is performed as part of work performed under an emergency order or a building order.

**93. Requirements for notifiable building work**

Notifiable building work must be –

- (a) designed by a designer; and
- (b) performed in accordance with this Act by a licensed builder who is licensed to perform the building work; and
- (c) inspected in accordance with this Act by a building surveyor.

**94. Building surveyor to be engaged in respect of notifiable building work**

The owner of the premises where notifiable building work is proposed to be performed must engage a building surveyor in respect of the work before the notifiable building work commences.

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.

***Division 2 – Before performing notifiable building work***

**95. Notification before performing notifiable building work**

A person must not perform notifiable building work unless he or she ensures that –

- (a) a notice of work has been given under section 96 to the building surveyor engaged in respect of the work; and
- (b) the building surveyor engaged in respect of the work has issued a certificate of likely compliance (notifiable building work) in respect of the work; and
- (c) the work to be performed is the same as, or not materially different from, the work specified in that certificate of likely

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compliance (notifiable building work);  
and

- (d) the work is to be performed by, or under the supervision of, the responsible person for the work.

Penalty: Fine not exceeding 100 penalty units.

**96. Notice of work**

- (1) A responsible person for proposed notifiable building work must provide a notice of work to the relevant building surveyor that specifies the proposed notifiable building work to be performed.
- (2) A notice of work is to –
- (a) be in an approved form; and
  - (b) include the prescribed information.
- (3) A responsible person for notifiable building work must provide a new notice of work to the relevant building surveyor –
- (a) if the work to be performed is materially different from the work specified under the previous notice of work; or
  - (b) if the responsible person for the notifiable building work is to change, before the responsible person changes.

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**97. Certificate of likely compliance (notifiable building work)**

- (1) On receipt of a notice of work under section 96, a building surveyor is to take into account each of the following matters in relation to the proposed notifiable building work specified in the notice of work:
  - (a) whether the work is entirely within the definition of notifiable building work;
  - (b) the protection work that has been, or is to be, performed in respect of the work;
  - (c) any documents provided to the building surveyor with the notice of work;
  - (d) any further information requested under subsection (2);
  - (e) any other permits, consents, or orders, in place or required under any Act in respect of the proposed work or the premises where the work is to be performed;
  - (f) any documents relied on by the designer of the work;
  - (g) any other prescribed matter.
- (2) A building surveyor may request further information in respect of a notice of work.
- (3) After taking into account the matters specified in subsection (1) in respect of notifiable building work, a building surveyor may issue a certificate

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of likely compliance (notifiable building work) if satisfied that –

- (a) the work is not permit building work; and
  - (b) in the opinion of the building surveyor, all appropriate protection work has been performed in respect of the notifiable building work; and
  - (c) the work is likely to comply with this Act.
- (4) Within 7 business days after issuing a certificate of likely compliance (notifiable building work), the building surveyor who issued the certificate must forward a copy of the certificate to the relevant permit authority.
- (5) A building surveyor may refuse to issue a certificate of likely compliance (notifiable building work) –
  - (a) until all fees required to be paid to the building surveyor in respect of the work have been paid; or
  - (b) for any other reason that is reasonable in the circumstances.
- (6) If a building surveyor refuses to issue a certificate of likely compliance (notifiable building work) under this section, he or she must notify the person responsible for the work, in writing, of the refusal and the reason for the refusal.

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- (7) A certificate of likely compliance (notifiable building work) is to be in an approved form.
- (8) A certificate of likely compliance (notifiable building work) expires 12 months after it has been issued.

***Division 3 – Performance of notifiable building work***

**98. Performing notifiable building work**

- (1) A person must not perform any notifiable building work, or cause or permit any notifiable building work to be performed, unless he or she –
  - (a) is satisfied that a certificate of likely compliance (notifiable building work) is in force in respect of the work; and
  - (b) has notified the relevant building surveyor that he or she intends to start the notifiable building work; and
  - (c) has been provided with authorisation to start the work, and a unique authorisation number for the work, by the building surveyor.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must perform any notifiable building work in accordance with –
  - (a) the most recent notice of work provided in respect of the work to the relevant building surveyor; and

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- (b) the certificate of likely compliance (notifiable building work) provided in respect of the work.

Penalty: Fine not exceeding 100 penalty units.

- (3) If a responsible person for notifiable building work ceases to be the responsible person for the work –

- (a) the work must stop; and
- (b) the person who is to become the new responsible person for the work must notify the relevant building surveyor of that fact before permitting the work to be performed.

- (4) If notifiable building work has not been completed within 2 years after the authorisation to start the work was provided by a building surveyor under subsection (1)(c), the responsible person for the work must obtain, from the relevant building surveyor, written approval to continue with the notifiable building work after the expiry of that period.

Penalty: Fine not exceeding 100 penalty units.

- (5) The written approval of the building surveyor under subsection (4) is to specify one further period in which the notifiable building work must be completed.
- (6) If a building surveyor provides a written approval under subsection (4), he or she is to

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forward a copy of the written approval to the relevant permit authority.

**99. Inspection of notifiable building work**

- (1) For the purpose of ensuring compliance with this Act, a building surveyor responsible for notifiable building work may, in accordance with any guidelines specified by the Director of Building Control, inspect notifiable building work being performed.
- (2) A building surveyor may inspect notifiable building work more than once, if those inspections are within the guidelines specified by the Director of Building Control.

**100. Directions relating to non-compliant notifiable building work**

- (1) After inspecting notifiable building work under section 99, a building surveyor may direct the responsible person for the work to perform the building work so that it complies with –
  - (a) the certificate of likely compliance (notifiable building work) issued in respect of the work; and
  - (b) the notice of work given in respect of the work.
- (2) A direction under subsection (1) may be given orally or in writing.

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- (3) A person who gives an oral direction under subsection (1) is to confirm it in writing, to the person to whom it was given, within the prescribed period.
  - (4) If a person fails to comply with a direction under subsection (1), the building surveyor may –
    - (a) issue a building notice under section 236 in respect of the work specified in the direction; and
    - (b) take any other appropriate action under this Act.

***Division 4 – Completion of notifiable building work***

**101. Completion of notifiable building work**

- (1) A responsible person for notifiable building work must notify the relevant building surveyor for the work when the work is completed.  
  
Penalty: Fine not exceeding 100 penalty units.
- (2) After receiving notification under subsection (1), the building surveyor is to specify, to the responsible person for the notifiable building work, when the completed work is to be inspected by the building surveyor.
- (3) The responsible person for the notifiable building work must, unless it is unreasonable in the circumstances –

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- (a) ensure that the work is accessible and ready to be inspected at the time specified by the building surveyor; and
  - (b) be present, or ensure that a qualified representative of the responsible person is present, at the work during the inspection.
- (4) A representative under subsection (3)(b) is a qualified representative if –
  - (a) he or she is qualified to perform or rectify, without supervision, the notifiable building work that is being inspected; and
  - (b) the person performing the inspection is satisfied of those qualifications.

**102. Standard of work certificate (notifiable building work)**

- (1) Within the prescribed period after notifiable building work is completed, the responsible person for the work must –
  - (a) provide the relevant building surveyor with –
    - (i) a standard of work certificate (notifiable building work) for the work; and
    - (ii) a copy of any as-constructed plans for the work that have not

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previously been provided to the  
building surveyor; and

- (b) provide a copy of the standard of work certificate (notifiable building work) to the owner of the premises where the work was performed.
- (2) A standard of work certificate (notifiable building work) is to be in an approved form.
- (3) For the purposes of this section, notifiable building work is only completed after –
  - (a) the work has been inspected as required under section 99; and
  - (b) the person performing the inspection is satisfied that the work complies with this Act and the National Construction Code.

**103. Certificate of completion (notifiable building work)**

- (1) A person may apply to the relevant building surveyor for a certificate of completion (notifiable building work) in respect of completed notifiable building work.
- (2) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) is to be accompanied by the prescribed fee; and
  - (c) must include a copy of the standard of work certificate (notifiable building

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work) issued in respect of the notifiable building work; and

- (d) if the notifiable building work also included notifiable plumbing work, must include a copy of the standard of work certificate (notifiable plumbing work) issued in respect of the notifiable plumbing work.
- (3) On receipt of an application under subsection (1), a building surveyor may only issue a certificate of completion (notifiable building work) if satisfied that –
- (a) the completed notifiable building work has been performed in accordance with this Act; and
  - (b) the applicable building administration fee has been paid in respect of the work; and
  - (c) if the notifiable building work also included notifiable plumbing work, a certificate of completion (notifiable plumbing work) has been issued in respect of the notifiable plumbing work.

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**PART 9 – NOTIFIABLE PLUMBING WORK**

***Division 1 – General***

**104. Notifiable plumbing work**

- (1) For the purposes of this Act, the Director of Building Control may determine that specified plumbing work, or a specified class of plumbing work, is notifiable plumbing work.
- (2) Despite subsection (1), plumbing work is not notifiable plumbing work if any part of the plumbing work is –
  - (a) building work or demolition work; or
  - (b) emergency work; or
  - (c) plumbing work that is performed as part of work performed under an emergency order, a plumbing order or a building order.

**105. Requirements for notifiable plumbing work**

Notifiable plumbing work must be –

- (a) designed by a designer; and
- (b) performed in accordance with this Act by a licensed plumber who is licensed to perform the work.

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***Division 2 – Before performing notifiable plumbing work***

**106. Notification before performing notifiable plumbing work**

A person must not perform notifiable plumbing work unless he or she ensures that –

- (a) a notice of work has been given under section 107 to a permit authority in respect of the work; and
- (b) the permit authority has issued a certificate of likely compliance (notifiable plumbing work) in respect of the work; and
- (c) the work to be performed is the same as, or not materially different from, the work specified in that certificate of likely compliance (notifiable plumbing work); and
- (d) the work is to be performed by, or under the supervision of, the responsible person for the work.

Penalty: Fine not exceeding 100 penalty units.

**107. Notice of work**

- (1) A responsible person for proposed notifiable plumbing work must provide a notice of work to the relevant permit authority that specifies the proposed notifiable plumbing work to be performed.

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- (2) A notice of work is to –
- (a) be in an approved form; and
  - (b) include the prescribed information.
- (3) A responsible person for notifiable plumbing work must provide a new notice of work to the relevant permit authority –
- (a) if the work to be performed is materially different from the work specified under the previous notice of work; or
  - (b) if the responsible person for the notifiable plumbing work is to change, before the responsible person changes.

**108. Certificate of likely compliance (notifiable plumbing work)**

- (1) On receipt of a notice of work under section 107, a permit authority is to take into account each of the following matters in relation to the proposed notifiable plumbing work specified in the notice of work:
- (a) whether the work is entirely within the definition of notifiable plumbing work;
  - (b) the protection work that has been, or is to be, performed in respect of the work;
  - (c) any documents provided to the permit authority with the notice of work;

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- (d) any further information requested under subsection (2);
  - (e) any other permits, consents, or orders in place or required under any Act in respect of the proposed work or the premises where the work is to be performed;
  - (f) any documents relied on by the designer of the proposed work;
  - (g) any other prescribed matter.
- (2) A permit authority may request further information in respect of a notice of work.
- (3) After taking into account the matters specified in subsection (1) in respect of notifiable plumbing work, a permit authority may issue a certificate of likely compliance (notifiable plumbing work) if satisfied that –
  - (a) the work is not permit plumbing work; and
  - (b) in the opinion of the permit authority, all appropriate protection work has been performed in respect of the notifiable plumbing work; and
  - (c) the work is likely to comply with this Act.
- (4) A permit authority may refuse to issue a certificate of likely compliance (notifiable plumbing work) –

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- (a) until all fees required to be paid to the permit authority in respect of the work have been paid; or
    - (b) for any other reason that is reasonable in the circumstances.
  - (5) If a permit authority refuses to issue a certificate of likely compliance (notifiable plumbing work) under this section, the permit authority must notify the person responsible for the work, in writing, of the refusal and the reason for the refusal.
  - (6) A certificate of likely compliance (notifiable plumbing work) is to be in an approved form.
  - (7) A certificate of likely compliance (notifiable plumbing work) expires 12 months after it has been issued.

***Division 3 – Performance of notifiable plumbing work***

**109. Performing notifiable plumbing work**

- (1) A person must not perform any notifiable plumbing work, or cause or permit any notifiable plumbing work to be performed, unless he or she –
  - (a) is satisfied that a certificate of likely compliance (notifiable plumbing work) is in force in respect of the work; and
  - (b) has notified the relevant permit authority that he or she intends to start the notifiable plumbing work; and

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- (c) has been provided with authorisation to start the work, and a unique authorisation number for the work, by the permit authority.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must perform any notifiable plumbing work in accordance with –
  - (a) the most recent notice of work provided in respect of the work to the permit authority; and
  - (b) the certificate of likely compliance (notifiable plumbing work) provided in respect of the work.

Penalty: Fine not exceeding 100 penalty units.

- (3) If a responsible person for notifiable plumbing work ceases to be the responsible person for the work –
  - (a) the work must stop; and
  - (b) the person who is to become the new responsible person for the work must notify the relevant permit authority of that fact before permitting the work to be performed.
- (4) If notifiable plumbing work has not been completed within 2 years after the authorisation to start the work was provided by a permit authority under subsection (1)(c), the responsible person for the work must obtain, from the

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relevant permit authority, written approval to continue with the notifiable plumbing work after the expiry of that period.

Penalty: Fine not exceeding 100 penalty units.

- (5) The written approval of the permit authority under subsection (4) is to specify one further period in which the notifiable plumbing work must be completed.

**110. Inspection of notifiable plumbing work**

- (1) For the purpose of ensuring compliance with this Act, a permit authority responsible for notifiable plumbing work may, in accordance with any guidelines specified by the Director of Building Control, inspect notifiable plumbing work being performed.
- (2) A permit authority may inspect notifiable plumbing work more than once, if those inspections are within the guidelines specified by the Director of Building Control.

**111. Directions relating to non-compliant notifiable plumbing work**

- (1) After inspecting notifiable plumbing work under section 110, a permit authority may direct the responsible person for the work to perform the plumbing work so that it complies with –
- (a) the certificate of likely compliance (notifiable plumbing work) issued in respect of the work; and

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- (b) the notice of work given in respect of the work.
- (2) A direction under subsection (1) may be given orally or in writing.
- (3) A person who gives an oral direction under subsection (1) is to confirm it in writing, to the person to whom it was given, within the prescribed period.
- (4) If a person fails to comply with a direction under subsection (1), the permit authority may –
  - (a) issue a plumbing notice under section 237 in respect of the work specified in the direction; and
  - (b) take any other appropriate action under this Act.

***Division 4 – Completion of notifiable plumbing work***

**112. Completion of notifiable plumbing work**

- (1) A responsible person for notifiable plumbing work must notify the relevant permit authority for the work when the work is completed.  
  
Penalty: Fine not exceeding 100 penalty units.
- (2) After receiving notification under subsection (1), the relevant permit authority is to specify, to the responsible person for the notifiable plumbing work, when the completed work is to be inspected by the permit authority.

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- (3) The responsible person for the notifiable plumbing work must, unless it is unreasonable in the circumstances –
- (a) ensure that the work is accessible and ready to be inspected at the time specified by the permit authority; and
  - (b) be present, or ensure that a qualified representative of the responsible person is present, at the work during that inspection.
- (4) A representative under subsection (3)(b) is a qualified representative if –
- (a) he or she is qualified to perform or rectify, without supervision, the notifiable plumbing work that is being inspected; and
  - (b) the person performing the inspection is satisfied of those qualifications.

**113. Standard of work certificate (notifiable plumbing work)**

- (1) Within the prescribed period after notifiable plumbing work is completed, the responsible person for the work must –
- (a) provide the relevant permit authority with –
    - (i) a standard of work certificate (notifiable plumbing work) for the work; and

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- (ii) a copy of any as-constructed plans of the work that have not previously been provided to the permit authority; and
  - (b) provide a copy of the standard of work certificate (notifiable plumbing work) to the owner of the premises where the work was performed.
- (2) A standard of work certificate (notifiable plumbing work) is to be in an approved form.
- (3) For the purposes of this section, notifiable plumbing work is only completed after –
  - (a) the work has been inspected as required under section 110; and
  - (b) the person performing the inspection is satisfied that the work complies with this Act and the National Construction Code.

**114. Certificate of completion (notifiable plumbing work)**

- (1) A person may apply to the relevant permit authority for a certificate of completion (notifiable plumbing work) in respect of completed notifiable plumbing work.
- (2) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) is to be accompanied by the prescribed fee; and

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- (c) must include a copy of the standard of work certificate (notifiable plumbing work) issued in respect of the notifiable plumbing work.
- (3) On receipt of an application under subsection (1), a permit authority may only issue a certificate of completion (notifiable plumbing work) if satisfied that the completed notifiable plumbing work has been performed in accordance with this Act.

**PART 10 – NOTIFIABLE DEMOLITION WORK**

***Division 1 – General***

**115. Notifiable demolition work**

- (1) For the purposes of this Act, the Director of Building Control may determine that specified demolition work, or a specified class of demolition work, is notifiable demolition work.
- (2) Despite subsection (1), demolition work is not notifiable demolition work if any part of the demolition work is –
  - (a) building work other than demolition work; or
  - (b) plumbing work; or
  - (c) emergency work.

**116. Requirements for notifiable demolition work**

Notifiable demolition work must be –

- (a) designed by a designer; and
- (b) performed in accordance with this Act by a person who holds a licence under the *Occupational Licensing Act 2005*, or a person who holds a prescribed qualification, that authorises the person to perform the notifiable demolition work; and

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- (c) inspected in accordance with this Act by a building surveyor.

**117. Building surveyor to be engaged in respect of notifiable demolition work**

The owner of the premises where notifiable demolition work is proposed to be performed must engage a building surveyor in respect of the work before the notifiable demolition work commences.

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.

***Division 2 – Before performing notifiable demolition work***

**118. Notification before performing notifiable demolition work**

A person must not perform notifiable demolition work unless he or she ensures that –

- (a) a notice of work has been given under section 119 to the building surveyor engaged in respect of the work; and
- (b) the building surveyor engaged in respect of the work has issued a certificate of likely compliance (notifiable demolition work) in respect of the work; and

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- (c) the work to be performed is the same as, or not materially different from, the work specified in that certificate of likely compliance (notifiable demolition work); and
- (d) the work is to be performed by, or under the supervision of, the responsible person for the work.

Penalty: Fine not exceeding 100 penalty units.

**119. Notice of work**

- (1) A responsible person for proposed notifiable demolition work must provide a notice of work to the relevant building surveyor that specifies the proposed notifiable demolition work to be performed.
- (2) A notice of work is to –
  - (a) be in an approved form; and
  - (b) include the prescribed information.
- (3) A responsible person for notifiable demolition work must provide a new notice of work to the relevant building surveyor –
  - (a) if the work to be performed is materially different from the work specified under the previous notice of work; or
  - (b) if the responsible person for the notifiable demolition work is to change, before the responsible person changes.

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**120. Certificate of likely compliance (notifiable demolition work)**

- (1) On receipt of a notice of work under section 119, a building surveyor is to take into account each of the following matters in relation to the proposed notifiable demolition work specified in the notice of work:
  - (a) whether the work is entirely within the definition of notifiable demolition work;
  - (b) the protection work that has been, or is to be, performed in respect of the work;
  - (c) any documents provided to the building surveyor with the notice of work;
  - (d) any further information requested under subsection (2);
  - (e) any other permits, consents, or orders, in place or required under any Act in respect of the proposed work or the premises where the work is to be performed;
  - (f) any documents relied on by the designer of the work;
  - (g) any other prescribed matter.
- (2) A building surveyor may request further information in respect of a notice of work.
- (3) After taking into account the matters specified in subsection (1) in respect of the notifiable demolition work, a building surveyor may issue

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a certificate of likely compliance (notifiable demolition work) if satisfied that –

- (a) the work is not building work or permit demolition work; and
  - (b) in the opinion of the building surveyor, all appropriate protection work has been performed in respect of the notifiable demolition work; and
  - (c) the work is likely to comply with this Act.
- (4) If a building surveyor issues a certificate of likely compliance (notifiable demolition work), the building surveyor must forward a copy of the certificate to the relevant permit authority within the specified period.
- (5) A building surveyor may refuse to issue a certificate of likely compliance (notifiable demolition work) –
  - (a) until all fees required to be paid to the building surveyor in respect of the work have been paid; and
  - (b) for any other reason that is reasonable in the circumstances.
- (6) If a building surveyor refuses to issue a certificate of likely compliance (notifiable demolition work) under this section, he or she must notify the person responsible for the work, in writing, of the refusal and the reason for the refusal.

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- (7) A certificate of likely compliance (notifiable demolition work) is to be in an approved form.
  - (8) A certificate of likely compliance (notifiable demolition work) expires 12 months after it has been issued.

***Division 3 – Performance of notifiable demolition work***

**121. Performing notifiable demolition work**

- (1) A person must not perform any notifiable demolition work, or cause or permit any notifiable demolition work to be performed, unless he or she –
  - (a) is satisfied that a certificate of likely compliance (notifiable demolition work) is in force in respect of the work; and
  - (b) has notified the relevant building surveyor that he or she intends to start the notifiable demolition work; and
  - (c) has been provided with authorisation to start the work, and a unique authorisation number for the work, by the building surveyor.

Penalty: Fine not exceeding 100 penalty units.

- (2) A person must perform any notifiable demolition work in accordance with –
  - (a) the most recent notice of work provided in respect of the work to the relevant building surveyor; and

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- (b) the certificate of likely compliance (notifiable demolition work) provided in respect of the work.

Penalty: Fine not exceeding 100 penalty units.

- (3) If a responsible person for notifiable demolition work ceases to be the responsible person for the work –

- (a) the work must stop; and
- (b) the person who is to become the new responsible person for the work must notify the relevant building surveyor of that fact before permitting the work to be performed.

- (4) If notifiable demolition work has not been completed within 2 years after the authorisation to start the work was provided by a building surveyor under subsection (1)(c), the responsible person for the work must obtain, from the relevant building surveyor, written approval to continue with the notifiable demolition work after the expiry of that period.

Penalty: Fine not exceeding 100 penalty units.

- (5) The written approval of the building surveyor under subsection (4) is to specify one further period in which the notifiable demolition work must be completed.
- (6) If a building surveyor provides a written approval under subsection (4), he or she is to

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forward a copy of the written approval to the relevant permit authority.

**122. Inspection of notifiable demolition work**

- (1) For the purpose of ensuring compliance with this Act, a building surveyor responsible for notifiable demolition work may, in accordance with any guidelines specified by the Director of Building Control, inspect notifiable demolition work being performed.
- (2) A building surveyor may inspect notifiable demolition work more than once, if those inspections are within the guidelines specified by the Director of Building Control.

**123. Directions relating to non-compliant notifiable demolition work**

- (1) After inspecting notifiable demolition work under section 122, a building surveyor may direct the responsible person for the work to perform the demolition work so that it complies with –
  - (a) the certificate of likely compliance (notifiable demolition work) issued in respect of the work; and
  - (b) the notice of work given in respect of the work.
- (2) A direction under subsection (1) may be given orally or in writing.

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- (3) A person who gives an oral direction under subsection (1) is to confirm it in writing, to the person to whom it was given, within the prescribed period.
- (4) If a person fails to comply with a direction under subsection (1), the building surveyor may –
  - (a) issue a building notice under section 236 in respect of the work specified in the direction; and
  - (b) take any other appropriate action under this Act.

***Division 4 – Completion of notifiable demolition work***

**124. Completion of notifiable demolition work**

- (1) A responsible person for notifiable demolition work must notify the relevant building surveyor for the work when the work is completed.  
  
Penalty: Fine not exceeding 100 penalty units.
- (2) After receiving notification under subsection (1), the building surveyor is to specify, to the responsible person for the notifiable demolition work, when the completed work is to be inspected by the building surveyor.
- (3) The responsible person for the notifiable demolition work must, unless it is unreasonable in the circumstances –

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- (a) ensure that the work is accessible and ready to be inspected at the time specified by the building surveyor; and
    - (b) be present, or ensure that a qualified representative of the responsible person is present, at the work during the inspection.
  - (4) A representative under subsection (3)(b) is a qualified representative if –
    - (a) he or she is qualified to perform or rectify, without supervision, the notifiable demolition work that is being inspected; and
    - (b) the person performing the inspection is satisfied of those qualifications.

**125. Standard of work certificate (notifiable demolition work)**

- (1) Within the prescribed period after notifiable demolition work is completed, the responsible person for the work must –
  - (a) provide the relevant building surveyor with a standard of work certificate (notifiable demolition work) for the work; and
  - (b) provide a copy of the standard of work certificate (notifiable demolition work) to the owner of the premises where the work was performed.

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- (2) A standard of work certificate (notifiable demolition work) is to be in an approved form.
- (3) For the purposes of this section, notifiable demolition work is only completed if –
  - (a) the work has been inspected as required under section 122; and
  - (b) the person performing the inspection is satisfied that no further work is required for the notifiable demolition work to comply with this Act.

**126. Certificate of completion (notifiable demolition work)**

- (1) A person may apply to the relevant building surveyor for a certificate of completion (notifiable demolition work) in respect of completed notifiable demolition work.
- (2) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) is to be accompanied by the prescribed fee; and
  - (c) must include a copy of the standard of work certificate (notifiable demolition work) issued in respect of the notifiable demolition work.
- (3) On receipt of an application under subsection (1), a building surveyor may only

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issue a certificate of completion (notifiable demolition work) if satisfied that –

- (a) the completed notifiable demolition work has been performed in accordance with this Act; and
- (b) the applicable building administration fee has been paid in respect of the work.

**PART 11 – PERMIT BUILDING WORK**

***Division 1 – General***

**127. Permit building work**

For the purposes of this Act, all building work is permit building work unless the work is –

- (a) low-risk building work or low-risk demolition work; or
- (b) notifiable building work or notifiable demolition work; or
- (c) emergency work.

**128. Requirements for permit building work**

Permit building work must be –

- (a) designed by a designer; and
- (b) performed by a licensed builder who is licensed to perform the permit building work; and
- (c) inspected by a building surveyor as required under this Act.

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***Division 2 – Before performing permit building work***

***Subdivision 1 – Certificate of likely compliance (permit building work)***

**129. Application for certificate of likely compliance (permit building work)**

- (1) An owner of premises where permit building work is proposed to be performed may apply to the building surveyor, engaged in respect of the permit building work, for a certificate of likely compliance (permit building work) in respect of the work.
- (2) An application under subsection (1) is to –
  - (a) be in an approved form; and
  - (b) include, or be accompanied by, such information as is specified by the Director of Building Control or the building surveyor.
- (3) An application under subsection (1) may be made in respect of a stage of proposed permit building work.
- (4) After receiving an application under subsection (1), the building surveyor may require the applicant to –
  - (a) provide further information as specified; or
  - (b) amend the application.

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- (5) If the applicant fails to comply with a requirement under subsection (4) within the period specified by the building surveyor at the time of making the requirement, the application lapses.

**130. Required report from reporting authority**

- (1) A building surveyor is not to grant an application for a certificate of likely compliance (permit building work) in respect of which a report is required under the Building Regulations unless the report is supplied to the building surveyor.
- (2) A building surveyor is taken to have been supplied with a required report if the reporting authority fails to supply it within the prescribed period.

**131. Determining application for certificate of likely compliance (permit building work)**

- (1) Before determining an application for a certificate of likely compliance (permit building work), the building surveyor is to take into account the following matters:
  - (a) any information or documents provided with the application;
  - (b) if a required report has been provided under section 130 in respect of the application, the required report;
  - (c) any relevant requirements of this Act or of a permit, consent or authority in force

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under any other Act in respect of the premises where the proposed work is to be performed;

- (d) any other matter that the Director of Building Control determines to be relevant to an application under this Subdivision;
  - (e) any other matter that the building surveyor considers relevant.
- (2) If the building surveyor intends to grant an application for a certificate of likely compliance (permit building work), the building surveyor is not required to implement anything contained in a required report provided under section 130 in respect of the application.
- (3) If the building surveyor intends to grant an application for a certificate of likely compliance (permit building work) and does not implement anything contained in a required report provided in respect of the application, the building surveyor is to –
- (a) notify the relevant reporting authority of the refusal to implement all, or part, of the report; and
  - (b) provide the reporting authority with –
    - (i) a copy of the certificate of likely compliance (permit building work) issued as a result of granting the application; and

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- (ii) the reasons for not implementing the report.

**132. Refusing application for certificate of likely compliance (permit building work)**

- (1) A building surveyor is to refuse an application for a certificate of likely compliance (permit building work) if the permit building work specified in the application is not likely to comply with this Act.
- (2) If a building surveyor refuses an application under this Subdivision, the building surveyor is to notify the applicant and the relevant permit authority, in writing, of –
  - (a) the refusal to grant the application for a certificate of likely compliance (permit building work); and
  - (b) the reasons for the refusal; and
  - (c) the right of appeal under this Act in respect of the refusal.

**133. Granting application for certificate of likely compliance (permit building work)**

- (1) A building surveyor is to grant an application for a certificate of likely compliance (permit building work) within the prescribed period if the building surveyor is satisfied that the work specified in the application –
  - (a) is permit building work; and

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- (b) is likely to comply with this Act and the National Construction Code.
  - (2) A building surveyor may grant an application for a certificate of likely compliance (permit building work) subject to any conditions he or she thinks appropriate.
  - (3) If a building surveyor grants an application for a certificate of likely compliance (permit building work), the building surveyor is to –
    - (a) issue the applicant with a certificate of likely compliance (permit building work) in an approved form that specifies that the certificate has been issued in respect of permit building work; and
    - (b) if the owner of the premises where the work specified in the application is to be performed is not the applicant for the certificate, provide the owner with a copy of the certificate of likely compliance (permit building work) so issued.

**134. Duration of certificate of likely compliance (permit building work)**

- (1) A certificate of likely compliance (permit building work) issued under this Subdivision expires 12 months from the date of issue.
- (2) Despite subsection (1), a certificate of likely compliance (permit building work) issued under this Subdivision that is in force when submitted with an application for a building permit –

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- (a) is taken to form part of any building permit issued as a result of that application; and
- (b) remains in force until that building permit expires or lapses.

**135. Variation of certificate of likely compliance (permit building work)**

- (1) A building surveyor who has issued a certificate of likely compliance (permit building work) may amend the certificate at any time before a building permit has been issued in respect of the permit building work to which the certificate relates.
- (2) If a certificate of likely compliance (permit building work) has been submitted with an application for a building permit, the certificate forms part of the application and may be amended as part of the application.
- (3) If a certificate of likely compliance (permit building work) was submitted with the application for a building permit and the permit was granted, the certificate forms part of the building permit and may be amended as part of the permit.

**136. Revocation of certificate of likely compliance (permit building work)**

- (1) A building surveyor who has issued a certificate of likely compliance (permit building work) may

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revoke the certificate if the building surveyor is satisfied that the certificate has been obtained by fraud, misrepresentation or omission of fact.

- (2) The Director of Building Control may revoke a certificate of likely compliance (permit building work) if –
- (a) the Director of Building Control is satisfied that the certificate has been obtained by fraud, misrepresentation or omission of fact; and
  - (b) the building surveyor who issued the certificate is no longer a building surveyor.

***Subdivision 2 – Building permits***

**137. Building permit required before performing permit building work**

- (1) A person must not perform permit building work unless there is a valid building permit in force in respect of the building work.

Penalty: Fine not exceeding 100 penalty units.

- (2) In addition to any penalty imposed under this section, a permit authority may take any action, in relation to permit building work performed other than in accordance with a building permit or an order under this Act, required to ensure the work complies with this Act.

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**138. Application for building permit**

- (1) An owner of premises, or a person authorised in writing by an owner of premises, may apply for a building permit to perform permit building work, or a stage of permit building work, in respect of those premises.
- (2) An application under subsection (1) –
  - (a) must be made to the relevant permit authority; and
  - (b) must be accompanied by –
    - (i) a certificate of likely compliance (permit building work) that is in force in respect of the proposed permit building work; and
    - (ii) the building administration fee payable in respect of the proposed permit building work; and
    - (iii) any other fee payable in respect of the application; and
  - (c) is to include, or be accompanied by, such information and documentation as is determined by the Director of Building Control.

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**139. Additional application requirements for alternative performance solutions**

If an application under section 138 relates to permit building work that involves a proposed performance solution under the National Construction Code, the applicant must include the following information, as part of the application, in addition to the requirements of that section:

- (a) a letter from the owner of the premises where the proposed permit building work is to be performed stating that the owner is aware that the proposed work includes a performance solution;
- (b) evidence that the performance solution complies with the National Construction Code.

**140. Determining application for building permit**

- (1) Before determining an application for a building permit under section 138, the permit authority may –
  - (a) carry out such inquiries, consult such other persons and take into account such matters as the permit authority considers necessary or expedient having regard to the nature of the proposed permit building work; and
  - (b) require the applicant to provide any further information or evidence about

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any matter relating to the application, or any documentation provided with the application, or the proposed permit building work.

- (2) If the application for a building permit relates to building work that includes a proposed performance solution, the permit authority may also require the applicant to provide one or more of the following:
  - (a) further 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);
  - (c) information in relation to the design or suitability of the proposed performance solution.
- (3) If an applicant fails to comply with a requirement of subsection (2) within the period specified in the requirement, the application for a permit is taken to lapse on the expiry of that period.
- (4) Before determining an application for a building permit under , the permit authority is to take into account the following matters:
  - (a) the suitability of the premises where proposed permit building work is to be performed;

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- (b) whether the premises are in, or are, a hazardous area, including the stability of the site;
  - (c) whether, in the opinion of the permit authority, all appropriate protection work has been performed in respect of the work;
  - (d) the means of access to the premises, during and after the work, and the provision of water and sanitation to those premises;
  - (e) any relevant requirements of this Act or of a permit, consent or authority in force under any other Act in respect of those premises;
  - (f) any other matter that the Director of Building Control determines to be relevant to an application under this Subdivision;
  - (g) any other matter that the permit authority considers relevant.
- (5) A permit authority may refuse to determine an application for a building permit under until all fees, charges, or levies, in respect of the application are paid.
- (6) A failure of the permit authority to determine an application for a building permit under section 138 within a specified period does not authorise the applicant to commence the proposed permit building work.

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**141. Refusal of application for building permit**

- (1) A permit authority may refuse an application for a building permit under if the permit authority considers the refusal to be reasonable in the circumstances.
- (2) A permit authority must refuse an application for a building permit under section 138 if the permit authority is satisfied that –
  - (a) the proposed permit building work will not comply with this Act; or
  - (b) all appropriate protection work has not been, or will not be, performed in respect of the work; or
  - (c) the proposed permit building work will not be performed by a licensed builder where required; or
  - (d) the responsible person for the work does not meet the requirements of section 5.
- (3) If a permit authority refuses an application for a building permit under section 138, the permit authority must notify the applicant in writing of –
  - (a) the refusal of the application; and
  - (b) the reason for the refusal of the application; and
  - (c) the right of appeal under this Act in respect of the decision to refuse the application.

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**142. Granting of application for building permit**

- (1) A permit authority may grant an application for a building permit under section 138 if –
  - (a) the permit authority is satisfied that the proposed permit building work will comply with this Act; and
  - (b) the building administration fee payable in respect of the building permit has been paid.
- (2) A permit authority may grant an application for a building permit under subsection (1) subject to any condition imposed in accordance with section 144.
- (3) If a permit authority grants an application for a building permit under subsection (1), the permit authority is to issue a building permit to each of the following persons:
  - (a) the applicant for the permit;
  - (b) the owner of the premises where the permit building work is to be performed;
  - (c) the building surveyor for the permit building work;
  - (d) each licensed builder named on the permit, or his or her business entity;
  - (e) each person prescribed for the purposes of this section.

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- (4) If an application for a building permit under section 138 is an application for a staged permit, the permit authority may specify, at the time of granting the application for the permit –
  - (a) that the permit is in effect for –
    - (i) such period, of more than 2 years, as may be specified in the permit; or
    - (ii) such period as may be specified in the permit for each stage of the permit; and
  - (b) that a certificate of completion (permit building work) is only required in respect of the completion of the last stage of the permit building work.
- (5) The granting of an application for a staged permit under subsection (1) does not entitle the applicant to be granted any other building permit in respect of any other stage of the permit building work.

**143. Form of building permit**

A building permit issued under this Part is to –

- (a) be in an approved form; and
- (b) specify that the permit has been issued in respect of permit building work; and

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- (c) specify each condition that has been imposed on the permit under section 144, other than a prescribed condition; and
- (d) if relevant, specify the period within which the permit building work is to be commenced; and
- (e) specify when the permit expires.

**144. Conditions on building permit**

- (1) A permit authority may impose any one or more of the following conditions on a building permit:
  - (a) a condition specified in any documentation submitted to the permit authority with the application for the building permit;
  - (b) a condition that the permit authority considers appropriate and that relates to the permit building work to be performed under the authority of the building permit.
- (2) A permit authority must not impose a condition on a building permit that –
  - (a) modifies the plans, or specifications, for the permit building work that is to be performed under the authority of the building permit, unless the modification is made with the consent of the designer of the work; or

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- (b) requires the permit building work that is to be performed under the authority of the permit to be performed at a higher standard than the standard required under the National Construction Code; or
  - (c) requires the permit building work that is to be performed under the authority of the permit to be performed in a manner that is inconsistent with the certificate of likely compliance (permit building work) issued in respect of the work.
- (3) The permit authority may add, vary or revoke a condition on a building permit at any time –
  - (a) if the condition relates to a specific aspect of the permit building work, before the work relating to that specific aspect is completed; or
  - (b) if the condition relates to the permit building work generally, before the permit building work is completed.
- (4) The addition, variation or revocation of a condition on a building permit under subsection (3) takes effect –
  - (a) when each of the following persons is notified in writing of the addition, variation or revocation:
    - (i) the applicant for the building permit;

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- (ii) the owner of the premises where the permit building work is to be performed;
    - (iii) the building services provider or licensed builder named on the permit, or his or her business entity; or
  - (b) at such later time as is specified in the notification under paragraph (a).

**145. Duration of building permit**

- (1) A building permit expires on the first of the following:
  - (a) if the permit specifies a period within which the permit building work is to be commenced and no work has commenced within that period, on the expiry of that period;
  - (b) if no permit building work has been commenced under the permit and the permit does not specify a period within which the work is to be commenced, on the first anniversary of the permit application being granted under section 142;
  - (c) if the permit does not specify a period for which it is in effect and the period for which it is in effect is not extended under section 146, on the second anniversary of

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the permit application being granted under section 142;

- (d) if the permit specifies a period for which it is in effect and the period is not extended under section 146, on the expiry of the period specified in the permit;
- (e) if the period for which the permit is in effect is extended under section 147, on the expiry of the period so extended;
- (f) on the issuing of a certificate of completion (permit building work) in respect of the permit building work to be performed under the permit.

- (2) A building permit is only valid while the permit is in effect.

**146. Extension of duration of building permit**

- (1) A person may apply to the permit authority that issued a building permit 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 building permit 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

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- (c) be accompanied by such documentation as is required by the Director of Building Control and the permit authority; and
    - (d) be accompanied by the prescribed fee, if any.
  - (3) Before making a decision in respect of an application under subsection (1) in relation to a building permit –
    - (a) the permit authority is to request the relevant building surveyor to provide, within a specified period, advice regarding the permit building work being performed under the permit; and
    - (b) the building surveyor must comply with the request within that period.
  - (4) The permit authority that receives an application under subsection (1) in relation to a building permit may –
    - (a) extend the period for which the building permit is in effect; or
    - (b) refuse to extend the period for which the building permit 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 building permit is in effect.

***Division 3 – Performance of permit building work***

**147. Permit building work must be performed in accordance with building permit**

- (1) A person must perform permit building work in accordance with the valid building permit issued in respect 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.
- (2) Despite subsection (1), a person may perform permit building work that varies from the building permit if the person is performing the work in accordance with the written approval of the relevant building surveyor and the approval has been obtained before performing the building work that varies from the permit.
- (3) A building surveyor may only give written approval under subsection (2) if –
- (a) the responsible person for the permit building work, or the owner of the premises where the permit building work is being performed, has submitted to the building surveyor amended design documentation that accurately reflects the variation; and

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- (b) if the variation relates to a matter specified in section 140(4), the relevant permit authority has consented to the variation in writing; and
- (c) the building surveyor is satisfied that the amended design documentation complies with this Act, and certifies the documentation accordingly.

**148. Inspection of permit building work**

- (1) The responsible person for permit building work must –
  - (a) notify the building surveyor within the prescribed period before the completion of each mandatory notification stage of the work; and
  - (b) stop performing that work or any part of that work on completion of a mandatory notification stage until permitted to proceed under the Building Regulations.

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.
- (2) On being notified under subsection (1) that a mandatory notification stage in respect of any permit building work is to be completed, the building surveyor may inspect the work, or cause

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the work to be inspected, within the prescribed period.

- (3) Nothing in this section prevents a building surveyor from inspecting permit building work at any time, whether or not a mandatory notification stage has been completed.
- (4) A building surveyor may cause any building work to be demolished, opened, cut into or tested if it is reasonably required to facilitate an inspection of permit building work under this Act.

**149. Directions relating to non-compliant permit building work**

- (1) After inspecting permit building work under section 148, a building surveyor may direct the responsible person for the work to perform the building work so that it complies with the building permit issued in respect of the work.
- (2) A direction under subsection (1) may be given orally or in writing.
- (3) A person who gives an oral direction under subsection (1) is to confirm it in writing, to the person to whom it was given, within the prescribed period.
- (4) If a person fails to comply with a direction under subsection (1), the building surveyor may –

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- (a) issue a building notice under section 236 in respect of the work specified in the direction; and
  - (b) take any other appropriate action under this Act.

***Division 4 – Completion of permit building work***

**150. Standard of work certificate (permit building work)**

- (1) Within the prescribed period after permit building work is completed, the responsible person for the work must –
  - (a) provide the relevant building surveyor with –
    - (i) a standard of work certificate (permit building work) for the work; and
    - (ii) a copy of any as-constructed plans for the work that have not previously been provided to the building surveyor; and
  - (b) provide a copy of the standard of work certificate (permit building work) to the owner of the premises where the work was performed.
- (2) A standard of work certificate (permit building work) is to be in an approved form.

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**151. Certificate of final inspection (building)**

- (1) A building surveyor may issue a certificate of final inspection (building) in respect of permit building work if –
  - (a) the building surveyor has –
    - (i) inspected the permit building work under section 148 on completion of the final notification stage for the work; and
    - (ii) received a standard of work certificate (permit building work) in respect of the work; and
  - (b) the building surveyor is satisfied that –
    - (i) the permit building work is completed; and
    - (ii) the permit building work is in compliance with this Act and the National Construction Code, in so far as it is reasonably practicable to inspect.
- (2) If a building surveyor issues a certificate of final inspection (building), the building surveyor is to –
  - (a) issue the certificate of final inspection (building) to the owner of the premises where the permit building work was performed; and

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- (b) provide a copy of it to the permit authority and the licensed builder specified in the relevant permit for the permit building work.

**152. Certificate of completion (permit building work)**

- (1) A person may apply to the relevant permit authority for a certificate of completion (permit building work) in respect of completed permit building work.
- (2) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) is to be accompanied by the prescribed fee; and
  - (c) must include a copy of each of the following certificates issued in respect of the permit building work:
    - (i) the certificate of final inspection (building);
    - (ii) the standard of work certificate (permit building work); and
  - (d) if the permit building work also included permit plumbing work, must include a copy of each of the following certificates issued in respect of the permit plumbing work:
    - (i) the certificate of completion (permit plumbing work);

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- (ii) the standard of work certificate (permit plumbing work); and
  - (e) if the permit building work also included notifiable plumbing work, must include a copy of the standard of work certificate (notifiable plumbing work) issued in respect of the notifiable plumbing work.
- (3) On receipt of an application under subsection (1), a permit authority may issue a certificate of completion (permit building work) if satisfied that –
  - (a) all the conditions of the relevant building permit have been complied with; and
  - (b) the certificate of final inspection (building) has been issued in respect of the permit building work; and
  - (c) if the permit building work also included permit plumbing work –
    - (i) a certificate of completion (permit plumbing work) has been issued in respect of the permit plumbing work; and
    - (ii) if required under the *Water and Sewerage Industry Act 2008*, a certificate of water and sewerage compliance (building) has been issued under section 56TD of that Act in relation to the permit building work; and

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- (d) if the permit building work also included notifiable plumbing work –
- (i) a standard of work certificate (notifiable plumbing work) has been issued in respect of the notifiable plumbing work; and
  - (ii) if required under the *Water and Sewerage Industry Act 2008*, a certificate of water and sewerage compliance (building) has been issued under section 56TD of that Act in relation to the permit building work.

**PART 12 – PERMIT PLUMBING WORK**

***Division 1 – General***

**153. Permit plumbing work**

For the purposes of this Act, all plumbing work is permit plumbing work unless the work is –

- (a) low-risk plumbing work; or
- (b) notifiable plumbing work; or
- (c) emergency work.

**154. Requirements for permit plumbing work**

Permit plumbing work must be –

- (a) designed by a designer; and
- (b) performed by a licensed plumber who is licensed to perform the permit plumbing work.

***Division 2 – Before performing permit plumbing work***

***Subdivision 1 – Certificate of likely compliance (permit plumbing work)***

**155. Application for certificate of likely compliance (permit plumbing work)**

- (1) An owner of premises where permit plumbing work is proposed to be performed may apply to the relevant permit authority for a certificate of

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likely compliance (permit plumbing work) in respect of the work.

- (2) An application under subsection (1) is to –
  - (a) be in an approved form; and
  - (b) include, or be accompanied by, such information as is specified by the Director of Building Control or the permit authority.
- (3) An application under subsection (1) may be made in respect of a stage of proposed permit plumbing work.
- (4) After receiving an application under subsection (1), the permit authority may require the applicant to –
  - (a) provide further information as specified; or
  - (b) amend the application.
- (5) If the applicant fails to comply with a requirement under subsection (4) within the period specified by the permit authority at the time of making the requirement, the application lapses.

**156. Required report from reporting authority**

- (1) The permit authority is not to grant an application for a certificate of likely compliance (permit plumbing work) in respect of which a report is required under the Plumbing

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Regulations unless the report is supplied to the permit authority.

- (2) The permit authority is taken to have been supplied with a required report if the reporting authority fails to supply it within the prescribed period.

**157. Determining application for certificate of likely compliance (permit plumbing work)**

- (1) Before determining an application for a certificate of likely compliance (permit plumbing work), the permit authority is to take into account the following matters:
  - (a) any information or documents provided with the application;
  - (b) if a required report has been provided under section 156 in respect of the application, the required report;
  - (c) any relevant requirements of this Act or of a permit, consent or authority in force under any other Act in respect of the premises where the proposed work is to be performed;
  - (d) any other matter that the Director of Building Control determines to be relevant to an application under this Subdivision;
  - (e) any other matter that the permit authority considers relevant.

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- (2) If the permit authority intends to grant an application for a certificate of likely compliance (permit plumbing work), the permit authority is not required to implement anything contained in a required report provided under section 156 in respect of the application.
- (3) If the permit authority intends to grant an application for a certificate of likely compliance (permit plumbing work) and does not implement anything contained in a required report provided in respect of the application, the permit authority is to –
- (a) notify the relevant reporting authority of the refusal to implement all, or part, of the report; and
  - (b) provide the reporting authority with –
    - (i) a copy of the certificate of likely compliance (permit plumbing work) issued as a result of granting the application; and
    - (ii) the reasons for not implementing the report.

**158. Refusing application for certificate of likely compliance (permit plumbing work)**

- (1) A permit authority is to refuse an application for a certificate of likely compliance (permit plumbing work) if the permit plumbing work specified in the application is not likely to comply with this Act.

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- (2) If a permit authority refuses an application under this Subdivision, the permit authority is to notify the applicant, in writing, of –
  - (a) the refusal to grant the application for a certificate of likely compliance (permit plumbing work); and
  - (b) the reasons for the refusal; and
  - (c) the right of appeal under this Act in respect of the refusal.

**159. Granting application for certificate of likely compliance (permit plumbing work)**

- (1) A permit authority is to grant an application for a certificate of likely compliance (permit plumbing work) within the prescribed period if the permit authority is satisfied that the work specified in the application –
  - (a) is permit plumbing work; and
  - (b) is likely to comply with this Act and the National Construction Code.
- (2) A permit authority may grant an application for a certificate of likely compliance (permit plumbing work) subject to any conditions the permit authority thinks appropriate.
- (3) If a permit authority grants an application for a certificate of likely compliance (permit plumbing work), the permit authority is to –

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- (a) issue the applicant with a certificate of likely compliance (permit plumbing work) in an approved form that specifies that the certificate has been issued in respect of permit plumbing work; and
  - (b) if the owner of the premises where the work specified in the application is to be performed is not the applicant for the certificate, provide the owner with a copy of the certificate of likely compliance (permit plumbing work) so issued.

**160. Duration of certificate of likely compliance (permit plumbing work)**

- (1) A certificate of likely compliance (permit plumbing work) issued under this Subdivision expires 12 months from the date of issue.
- (2) Despite subsection (1), a certificate of likely compliance (permit plumbing work) issued under this Subdivision that is in force when submitted with an application for a plumbing permit –
  - (a) is taken to form part of any plumbing permit issued as a result of that application; and
  - (b) remains in force until that plumbing permit expires or lapses.

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**161. Variation of certificate of likely compliance (permit plumbing work)**

- (1) A permit authority who has issued a certificate of likely compliance (permit plumbing work) may amend the certificate at any time before a plumbing permit has been issued in respect of the permit plumbing work to which the certificate relates.
- (2) If a certificate of likely compliance (permit plumbing work) has been submitted with an application for a plumbing permit, the certificate forms part of the application and may be amended as part of the application.
- (3) If a certificate of likely compliance (permit plumbing work) was submitted with the application for a plumbing permit and the permit was granted, the certificate forms part of the plumbing permit and may be amended as part of that permit.

**162. Revocation of certificate of likely compliance (permit plumbing work)**

A permit authority who has issued a certificate of likely compliance (permit plumbing work) may revoke the certificate if the permit authority is satisfied that the certificate has been obtained by fraud, misrepresentation or omission of fact.

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***Subdivision 2 – Plumbing permit***

**163. Plumbing permit required before performing permit plumbing work**

- (1) A person must not perform permit plumbing work unless there is a valid plumbing permit in force in respect of the plumbing work.

Penalty: Fine not exceeding 100 penalty units.

- (2) In addition to any penalty imposed under this section, a permit authority may take any necessary action, in relation to permit plumbing work performed other than in accordance with a plumbing permit or an order under this Act, required to ensure the work complies with this Act.

**164. Application for plumbing permit**

- (1) An owner of premises, or a person authorised in writing by an owner of premises, may apply for a plumbing permit to perform permit plumbing work, or a stage of permit plumbing work, in respect of those premises.
- (2) An application under subsection (1) –
- (a) must be made to the relevant permit authority; and
  - (b) must be accompanied by –
    - (i) a certificate of likely compliance (permit plumbing work) that is in

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force in respect of the proposed  
permit plumbing work; and

- (ii) any fee payable in respect of the  
application; and
- (c) is to include, or be accompanied by, such  
information and documentation as is  
determined by the Director of Building  
Control.

**165. Additional application requirements for alternative  
performance solutions**

If an application under section 164 relates to permit plumbing work that involves a proposed performance solution under the National Construction Code, the applicant must include, as part of the application, the following information in addition to the requirements of that section:

- (a) a letter from the owner of the premises  
where the proposed permit plumbing  
work is to be performed stating that the  
owner is aware that the proposed work  
includes a performance solution;
- (b) evidence of the suitability of the  
proposed performance solution in  
accordance with Part A2.2 of the  
Plumbing Code of Australia in Volume 3  
of the National Construction Code;
- (c) if the proposed performance solution  
involves plumbing work on an

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installation that connects directly or indirectly to a water supply system, a wastewater system, an onsite waste-water management system or a sewerage system, a copy of the written consent, from the owner of the system, to the use of the performance solution.

**166. Determining application for plumbing permit**

- (1) Before determining an application for a plumbing permit under section 164, the permit authority may –
  - (a) carry out such inquiries, consult such other persons and take into account such matters as the permit authority considers necessary or expedient having regard to the nature of the proposed permit plumbing work; and
  - (b) require the applicant to provide any further information or evidence about any matter relating to the application, or any documentation provided with the application, or the proposed permit plumbing work.
- (2) If the application for a plumbing permit relates to plumbing work that includes a proposed performance solution, the permit authority may also require the applicant to provide one or more of the following:

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- (a) further 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);
  - (c) information in relation to the design or suitability of the proposed performance solution.
- (3) If an applicant fails to comply with a requirement of subsection (2) within the period specified in the requirement, the application for a permit is taken to lapse on the expiry of that period.
- (4) Before determining an application for a plumbing permit under , the permit authority is to take into account the following matters:
  - (a) the suitability of the premises where proposed permit plumbing work is to be performed;
  - (b) whether the premises are in, or are, a hazardous area, including the stability of the site;
  - (c) whether, in the opinion of the permit authority, all appropriate protection work has been performed in respect of the work;

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- (d) the means of access to the premises, during and after the work, and the provision of water and sanitation to those premises;
  - (e) any relevant requirements of this Act or of a permit, consent or authority in force under any other Act in respect of the premises;
  - (f) any other matter that the Director of Building Control determines to be relevant to an application under this Subdivision;
  - (g) any other matter that the permit authority considers relevant.
- (5) A permit authority may refuse to determine an application for a plumbing permit under until all fees, charges, or levies, in respect of the application are paid.
- (6) A failure of a permit authority to determine an application for a plumbing permit under section 164 within a specified period does not authorise the applicant to commence the proposed permit plumbing work.

**167. Refusal of application for plumbing permit**

- (1) A permit authority may refuse an application for a plumbing permit under section 164 if the permit authority considers the refusal to be reasonable in the circumstances.

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- (2) A permit authority must refuse an application for a plumbing permit under section 164 if the permit authority is satisfied that –
  - (a) the proposed permit plumbing work will not comply with this Act; or
  - (b) all appropriate protection work has not been, or will not be, performed in respect of the work; or
  - (c) the proposed work will not be performed by a licensed plumber; or
  - (d) the responsible person for the work does not meet the requirements of section 5.
- (3) If a permit authority refuses an application for a plumbing permit under section 164, the permit authority must notify the applicant in writing of –
  - (a) the refusal of the application; and
  - (b) the reason for the refusal of the application; and
  - (c) the right of appeal under this Act in respect of the decision to refuse the application.

**168. Granting of application for plumbing permit**

- (1) A permit authority may grant an application for a plumbing permit under section 164 if the permit authority is satisfied that the proposed permit plumbing work will comply with this Act.

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- (2) A permit authority may grant an application for a plumbing permit under subsection (1) subject to any condition imposed in accordance with section 170.
- (3) If a permit authority grants an application for a plumbing permit under subsection (1), the permit authority is to issue a plumbing permit to each of the following persons:
- (a) the applicant for the permit;
  - (b) the owner of the premises where the permit plumbing work is to be performed;
  - (c) each licensed plumber named on the permit, or his or her business entity;
  - (d) each person prescribed for the purposes of this section.
- (4) If an application for a plumbing permit under section 164 is an application for a staged permit, the permit authority may specify, at the time of granting the application for the permit –
- (a) that the permit is in effect for –
    - (i) such period, of more than 2 years, as may be specified in the permit; or
    - (ii) such period as may be specified in the permit for each stage of the permit; and

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- (b) that a certificate of completion (permit plumbing work) is only required in respect of the completion of the last stage of the permit plumbing work.
- (5) The granting of an application for a staged permit under subsection (1) does not entitle the applicant to be granted any other plumbing permit in respect of any other stage of the permit plumbing work.

**169. Form of plumbing permit**

A plumbing permit issued under this Part is to –

- (a) be in an approved form; and
- (b) specify that the permit is issued in respect of permit plumbing work; and
- (c) specify each condition that has been imposed on the permit under section 170, other than a prescribed condition; and
- (d) if relevant, specify the period within which the permit plumbing work is to be commenced; and
- (e) specify when the permit expires.

**170. Conditions on plumbing permit**

- (1) A permit authority may impose any one or more of the following conditions on a plumbing permit:

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- (a) a condition specified in any documentation submitted to the permit authority with the application for the plumbing permit;
    - (b) a condition that the permit authority considers appropriate and that relates to the permit plumbing work to be performed under the authority of the plumbing permit.
  - (2) A permit authority must not impose a condition on a plumbing permit that –
    - (a) modifies the plans, or specifications, for the permit plumbing work that is to be performed under the authority of the permit, unless the modification is made with the consent of the designer of the work; or
    - (b) requires the permit plumbing work that is to be performed under the authority of the permit to be performed at a higher standard than the standard required under the National Construction Code; or
    - (c) requires the permit plumbing work that is to be performed under the authority of the permit to be performed in a manner that is inconsistent with the certificate of likely compliance (permit plumbing work) issued in respect of the work.
  - (3) The permit authority may add, vary or revoke a condition on a plumbing permit at any time –

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- (a) if the condition relates to a specific aspect of the permit plumbing work, before the work relating to that specific aspect is completed; or
  - (b) if the condition relates to the permit plumbing work generally, before the permit plumbing work is completed.
- (4) The addition, variation or revocation of a condition on a plumbing permit under subsection (3) takes effect –
  - (a) when each of the following persons is notified in writing of the addition, variation or revocation:
    - (i) the applicant for the plumbing permit;
    - (ii) the owner of the premises where the permit plumbing work is to be performed;
    - (iii) the licensed plumber named on the permit, or his or her business entity; or
  - (b) at such later time as is specified in the notification under paragraph (a).

**171. Duration of plumbing permit**

- (1) A plumbing permit expires on the first of the following:

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- (a) if the permit specifies a period within which the permit plumbing work is to be commenced and no work has commenced within that period, on the expiry of that period;
  - (b) if no permit plumbing work has been commenced under the permit and the permit does not specify a period within which the work is to be commenced, on the first anniversary of the permit application being granted under section 168;
  - (c) if the permit does not specify a period for which it is in effect and the period for which it is in effect is not extended under section 172, on the second anniversary of the permit application being granted under section 168;
  - (d) if the permit specifies a period for which it is in effect and the period for which it is in effect is not extended under section 172, on the expiry of the period specified in the permit;
  - (e) if the period for which the permit is in effect is extended under section 172, on the expiry of the period so extended;
  - (f) on the issuing of a certificate of completion (permit plumbing work) in respect of the permit plumbing work to be performed under the permit.

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- (2) A plumbing permit is only valid while the permit is in effect.

**172. Extension of duration of plumbing permit**

- (1) A person may apply to the permit authority that issued a plumbing permit 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 plumbing permit 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; and
  - (d) be accompanied by the prescribed fee, if any.
- (3) The permit authority that receives an application under subsection (1) in relation to a plumbing permit may –
  - (a) extend the period for which the plumbing permit is in effect; or
  - (b) refuse to extend the period for which the plumbing permit is in effect; or
  - (c) ask the applicant for further information and, after considering the further

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information, extend or refuse to extend the period for which the plumbing permit is in effect.

***Division 3 – Performance of permit plumbing work***

**173. Permit plumbing work must be performed in accordance with plumbing permit**

- (1) A person must perform permit plumbing work in accordance with the valid plumbing permit issued in respect 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.
- (2) Despite subsection (1), a person may perform permit plumbing work that varies from the plumbing permit if the person is performing the work in accordance with the written approval of the relevant permit authority that has been obtained before performing the plumbing work that varies from the permit.
- (3) A permit authority may only give written approval under subsection (2) if –
- (a) the responsible person for the permit plumbing work, or the owner of the premises where the permit plumbing work is being performed, has submitted to the permit authority amended design

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documentation that accurately reflects the variation; and

- (b) the permit authority is satisfied that the amended design documentation complies with this Act, and certifies the documentation accordingly.

**174. Inspection of permit plumbing work**

- (1) The responsible person for permit plumbing work must –
  - (a) notify the permit authority within the prescribed period before the completion of each mandatory notification stage of the work; and
  - (b) stop performing that work or any part of that work on completion of a mandatory notification stage until permitted to proceed under the Plumbing Regulations.

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.
- (2) On being notified under subsection (1) that a mandatory notification stage in respect of any permit plumbing work is to be completed, the permit authority may inspect the work, or cause the work to be inspected, within the prescribed period.

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- (3) If the notification under subsection (1) relates to a mandatory notification stage in respect of plumbing work incorporating the installation of a greywater reuse system, a greywater diversion system, an onsite waste-water management system or a recycled water system, the permit authority must, within the prescribed period, inspect or cause to be inspected the plumbing work.
  - (4) Nothing in this section prevents a permit authority from inspecting permit plumbing work at any time, whether or not a mandatory notification stage has been completed.
  - (5) A permit authority may cause any work to be demolished, opened, cut into or tested if it is reasonably required to facilitate an inspection of permit plumbing work under this Act.

**175. Directions relating to non-compliant permit plumbing work**

- (1) After inspecting permit plumbing work under section 174, a permit authority may direct the responsible person for the work to perform the plumbing work so that it complies with the plumbing permit issued in respect of the work.
- (2) A direction under subsection (1) may be given orally or in writing.
- (3) A person who gives an oral direction under subsection (1) is to confirm it in writing, to the person to whom it was given, within the prescribed period.

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- (4) If a person fails to comply with a direction under subsection (1), the permit authority may –
  - (a) issue a plumbing notice under section 237 in respect of the work specified in the direction; and
  - (b) take any appropriate action under this Act.

***Division 4 – Completion of permit plumbing work***

**176. Standard of work certificate (permit plumbing work)**

- (1) Within the prescribed period after permit plumbing work is completed, the responsible person for the work must –
  - (a) provide the relevant permit authority with –
    - (i) a standard of work certificate (permit plumbing work) for the work; and
    - (ii) a copy of any as-constructed plans for the work that have not previously been provided to the permit authority; and
  - (b) provide a copy of the standard of work certificate (permit plumbing work) to the owner of the premises where the work was performed.

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- (2) A standard of work certificate (permit plumbing work) is to be in an approved form.

**177. Certificate of completion (permit plumbing work)**

- (1) A person may apply to the relevant permit authority for a certificate of completion (permit plumbing work) in respect of completed permit plumbing work.
- (2) An application under subsection (1) –
- (a) is to be in an approved form; and
  - (b) must include a copy of the standard of work certificate (permit plumbing work) issued in respect of the permit plumbing work; and
  - (c) is to be accompanied by the prescribed fee.
- (3) On receipt of an application under subsection (1), a permit authority may issue a certificate of completion (permit plumbing work) if satisfied that –
- (a) all the conditions of the relevant plumbing permit have been complied with; and
  - (b) the permit plumbing work is completed; and
  - (c) the permit plumbing work complies with this Act and the National Construction Code; and

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- (d) if required under the *Water and Sewerage Industry Act 2008*, a certificate of water and sewerage compliance (building) has been issued under section 56TD of that Act in relation to the permit plumbing work.

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**PART 13 – PERMIT DEMOLITION WORK**

***Division 1 – General***

**178. Permit demolition work**

For the purposes of this Act, all demolition work is permit demolition work unless the work is –

- (a) low-risk demolition work; or
- (b) notifiable demolition work; or
- (c) performed as part of building work; or
- (d) emergency work.

**179. Requirements for permit demolition work**

Permit demolition work must be –

- (a) performed by a person who holds a licence under the *Occupational Licensing Act 2005*, or a person who holds a prescribed qualification, that authorises the person to perform the permit demolition work; and
- (b) inspected by a building surveyor as required under this Act.

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***Division 2 – Before performing permit demolition work***

***Subdivision 1 – Certificate of likely compliance (permit demolition work)***

**180. Application for certificate of likely compliance (permit demolition work)**

- (1) An owner of premises where permit demolition work is proposed to be performed may apply to the building surveyor, engaged in respect of the permit demolition work, for a certificate of likely compliance (permit demolition work) in respect of the work.
- (2) An application under subsection (1) is to –
  - (a) be in an approved form; and
  - (b) include, or be accompanied by, such information as is specified by the Director of Building Control or the building surveyor.
- (3) An application under subsection (1) may be made in respect of a stage of proposed permit demolition work.
- (4) After receiving an application under subsection (1), the building surveyor may require the applicant to –
  - (a) provide further information as specified; or
  - (b) amend the application.

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- (5) If the applicant fails to comply with a requirement under subsection (4) within the period specified by the building surveyor at the time of making the requirement, the application lapses.

**181. Required report from reporting authority**

- (1) A building surveyor is not to grant an application for a certificate of likely compliance (permit demolition work) in respect of which a report is required under the Building Regulations unless the report is supplied to the building surveyor.
- (2) A building surveyor is taken to have been supplied with a required report if the reporting authority fails to supply it within the prescribed period.

**182. Determining application for certificate of likely compliance (permit demolition work)**

- (1) Before determining an application for a certificate of likely compliance (permit demolition work), the building surveyor is to take into account the following matters:
- (a) any information or documents provided with the application;
  - (b) if a required report has been provided under section 181 in respect of the application, the required report;
  - (c) any relevant requirements of this Act or of a permit, consent or authority in force

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under any other Act in respect of the premises where the proposed work is to be performed;

(d) any other matter that the Director of Building Control determines to be relevant to an application under this Subdivision;

(e) any other matter that the building surveyor considers relevant.

(2) If the building surveyor intends to grant an application for a certificate of likely compliance (permit demolition work), the building surveyor is not required to implement anything contained in a required report provided under section 181 in respect of the application.

(3) If the building surveyor intends to grant an application for a certificate of likely compliance (permit demolition work) and does not implement anything contained in a required report provided in respect of the application, the building surveyor is to –

(a) notify the relevant reporting authority of the refusal to implement all, or part, of the required report; and

(b) provide the reporting authority with –

(i) a copy of the certificate of likely compliance (permit demolition work) issued as a result of granting the application; and

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- (ii) the reasons for not implementing the report.

**183. Refusing application for certificate of likely compliance (permit demolition work)**

- (1) A building surveyor is to refuse an application for a certificate of likely compliance (permit demolition work) if the permit demolition work specified in the application is not likely to comply with this Act.
- (2) If a building surveyor refuses an application under this Subdivision, the building surveyor is to notify the applicant and the relevant permit authority, in writing, of –
  - (a) the refusal to grant the application for a certificate of likely compliance (permit demolition work); and
  - (b) the reasons for the refusal; and
  - (c) the right of appeal under this Act in respect of the refusal.

**184. Granting application for certificate of likely compliance (permit demolition work)**

- (1) A building surveyor is to grant an application for a certificate of likely compliance (permit demolition work) within the prescribed period if the building surveyor is satisfied that the work specified in the application –
  - (a) is permit demolition work; and

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- (b) is likely to comply with this Act.
- (2) A building surveyor may grant an application for a certificate of likely compliance (permit demolition work) subject to any conditions he or she thinks appropriate.
- (3) If a building surveyor grants an application for a certificate of likely compliance (permit demolition work), the building surveyor is to –
  - (a) issue the applicant with a certificate of likely compliance (permit demolition work) in an approved form that specifies that the certificate has been issued in respect of permit demolition work; and
  - (b) if the owner of the premises where the work specified in the application is to be performed is not the applicant for the certificate, provide the owner with a copy of the certificate of likely compliance (permit demolition work) so issued.

**185. Duration of certificate of likely compliance (permit demolition work)**

- (1) A certificate of likely compliance (permit demolition work) issued under this Subdivision expires 12 months from the date of issue.
- (2) Despite subsection (1), a certificate of likely compliance (permit demolition work) issued under this Subdivision that is in force when submitted with an application for a demolition permit –

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- (a) is taken to form part of any demolition permit issued as a result of that application; and
- (b) remains in force until that demolition permit expires or lapses.

**186. Variation of certificate of likely compliance (permit demolition work)**

- (1) A building surveyor who has issued a certificate of likely compliance (permit demolition work) may amend the certificate at any time before a demolition permit has been issued in respect of the permit demolition work to which the certificate relates.
- (2) If a certificate of likely compliance (permit demolition work) has been submitted with an application for a demolition permit, the certificate forms part of the application and may be amended as part the application.
- (3) If a certificate of likely compliance (permit demolition work) was submitted with the application for a demolition permit and the permit was granted, the certificate forms part of the demolition permit and may be amended as part of the permit.

**187. Revocation of certificate of likely compliance (permit demolition work)**

- (1) A building surveyor that has issued a certificate of likely compliance (permit demolition work)

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may revoke the certificate if the building surveyor is satisfied that the certificate has been obtained by fraud, misrepresentation or omission of fact.

- (2) The Director of Building Control may revoke a certificate of likely compliance (permit demolition work) if –
  - (a) the Director of Building Control is satisfied that the certificate has been obtained by fraud, misrepresentation or omission of fact; and
  - (b) the building surveyor who issued the certificate is no longer a building surveyor.

***Subdivision 2 – Demolition permits***

**188. Demolition permit required before performing permit demolition work**

- (1) A person must not perform permit demolition work unless –
  - (a) there is a valid demolition permit in force in respect of the demolition work; or
  - (b) the demolition work is incidental to the performance of permit building work and there is a valid building permit in force in respect of the permit building work.

Penalty: Fine not exceeding 100 penalty units.

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- (2) In addition to any penalty imposed under this section, a permit authority may take any necessary action, in relation to permit demolition work performed other than in accordance with a demolition permit, a building permit or an order under this Act, required to ensure the work complies with this Act.

**189. Application for demolition permit**

- (1) An owner of premises, or a person authorised in writing by an owner of premises, may apply for a demolition permit to perform permit demolition work, or a stage of permit demolition work, in respect of those premises.
- (2) An application under subsection (1) –
- (a) must be made to the relevant permit authority; and
  - (b) must be accompanied by –
    - (i) a certificate of likely compliance (permit demolition work) that is in force in respect of the proposed permit building work; and
    - (ii) the building administration fee payable in respect of the proposed permit demolition work; and
    - (iii) any other fee payable in respect of the application; and

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- (c) is to include, or be accompanied by, such information and documentation as is determined by the Director of Building Control.

**190. Determining application for demolition permit**

- (1) Before determining an application for a demolition permit under section 189, the permit authority may –
  - (a) carry out such inquiries, consult such other persons and take into account such matters as the permit authority considers necessary or expedient having regard to the nature of the proposed permit demolition work; and
  - (b) require the applicant to provide any further information or evidence about any matter relating to the application, or any documentation provided with the application, or the proposed permit demolition work.
- (2) Before determining an application for a demolition permit under section 189, the permit authority is to take into account the following matters:
  - (a) the suitability of the premises where proposed permit demolition work is to be performed;

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- 
- (b) whether the premises are in, or are, a hazardous area, including the stability of the site;
  - (c) whether, in the opinion of the permit authority, all appropriate protection work has been performed in respect of the work;
  - (d) the means of access to the premises, during and after the work, and the provision of water and sanitation to those premises;
  - (e) any relevant requirements of this Act or of a permit, consent or authority in force under any other Act in respect of those premises;
  - (f) any other matter that the Director of Building Control determines to be relevant to an application under this Subdivision;
  - (g) any other matter that the permit authority considers relevant.
- (3) A permit authority may refuse to determine an application for a demolition permit under section 189 until all fees, charges, or levies, in respect of the application are paid.
- (4) A failure of a permit authority to determine an application for a demolition permit under section 189 within a specified period does not authorise the applicant to commence the proposed permit demolition work.

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**191. Refusal of application for demolition permit**

- (1) A permit authority may refuse an application for a demolition permit under section 189 if the permit authority considers the refusal to be reasonable in the circumstances.
- (2) A permit authority must refuse an application for a demolition permit under section 189 if the permit authority is satisfied that –
  - (a) the proposed permit demolition work will not comply with this Act; or
  - (b) all appropriate protection work has not been, or will not be, performed in respect of the work; or
  - (c) the proposed permit demolition work will not be performed by persons qualified as required under section 179(a); or
  - (d) the responsible person for the work does not meet the requirements of section 5.
- (3) If a permit authority refuses an application for a demolition permit under section 189, the permit authority must notify the applicant in writing of –
  - (a) the refusal of the application; and
  - (b) the reason for the refusal of the application; and

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- (c) the right of appeal under this Act in respect of the decision to refuse the application.

**192. Granting of application for demolition permit**

- (1) A permit authority may grant an application for a demolition permit under section 189 if –
  - (a) the permit authority is satisfied that the proposed permit demolition work will comply with this Act; and
  - (b) the building administration fee payable in respect of the demolition permit has been paid.
- (2) A permit authority may grant an application for a demolition permit under subsection (1) subject to any condition imposed in accordance with section 194.
- (3) If a permit authority grants an application for a demolition permit under subsection (1), the permit authority is to issue a demolition permit to each of the following persons:
  - (a) the applicant for the permit;
  - (b) the owner of the premises where the permit demolition work is to be performed;
  - (c) the building surveyor for the permit demolition work;

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- (d) each licensed builder named on the permit, or his or her business entity;
  - (e) each person prescribed for the purposes of this section.
- (4) If an application for a demolition permit under section 189 is an application for a staged permit, the permit authority may specify, at the time of granting the application for the permit –
  - (a) that the permit is in effect for –
    - (i) such period, of more than 2 years, as may be specified in the permit; or
    - (ii) such period as may be specified in the permit for each stage of the permit; and
  - (b) that a certificate of completion (permit demolition work) is only required in respect of the completion of the last stage of the permit demolition work.
- (5) The granting of an application for a staged permit under subsection (1) does not entitle the applicant to be granted any other permit in respect of any other stage of the permit demolition work.

**193. Form of demolition permit**

A demolition permit issued under this Part is to –

- (a) be in an approved form; and

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- (b) specify that the permit has been issued in respect of permit demolition work; and
  - (c) specify each condition that has been imposed on the permit under section 194, other than a prescribed condition; and
  - (d) if relevant, specify the period within which the permit demolition work is to be commenced; and
  - (e) specify when the permit expires.

**194. Conditions on demolition permit**

- (1) A permit authority may impose any one or more of the following conditions on a demolition permit:
  - (a) a condition specified in any documentation submitted to the permit authority with the application for the demolition permit;
  - (b) a condition that the permit authority considers appropriate and that relates to permit demolition work to be performed under the authority of the demolition permit.
- (2) A permit authority must not impose a condition on a demolition permit that –
  - (a) modifies the plans, or specifications, for the permit demolition work that is to be performed under the authority of the permit, unless the modification is made

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with the consent of the designer of the work; or

- (b) requires the permit demolition work that is to be performed under the authority of the permit to be performed at a higher standard than the standard required under the Act; or
  - (c) requires the permit demolition work that is to be performed under the authority of the permit to be performed in a manner that is inconsistent with the certificate of likely compliance (permit demolition work) issued in respect of the work.
- (3) The permit authority may add, vary or revoke a condition on a demolition permit at any time –
- (a) if the condition relates to a specific aspect of the permit demolition work, before the work relating to that specific aspect is completed; or
  - (b) if the condition relates to the permit demolition work generally, before the permit demolition work is completed.
- (4) The addition, variation or revocation of a condition on a demolition permit under subsection (3) takes effect –
- (a) when each of the following persons is notified in writing of the addition, variation or revocation:

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- 
- (i) the applicant for the demolition permit;
  - (ii) the owner of the premises where the permit demolition work is to be performed;
  - (iii) the building services provider or licensed builder named on the permit, or his or her business entity; or
- (b) at such later time as is specified in the notification under paragraph (a).

**195. Duration of demolition permit**

- (1) A demolition permit expires on the first of the following:
- (a) if the permit specifies a period within which the permit demolition work is to be commenced and no work has commenced within that period, on the expiry of that period;
  - (b) if no permit demolition work has been commenced under the permit and the permit does not specify a period within which the work is to be commenced, on the first anniversary of the permit application being granted under section 192;
  - (c) if the permit does not specify a period for which it is in effect and the period for

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which it is in effect is not extended under section 196, on the second anniversary of the permit application being granted under section 192;

- (d) if the permit specifies a period for which it is in effect and the period for which it is in effect is not extended under section 196, on the expiry of the period specified in the permit;
- (e) if the period for which the permit is in effect is extended under section 196, on the expiry of the period so extended;
- (f) on the issuing of a certificate of completion (permit demolition work) in respect of the work to be performed under the permit.

- (2) A demolition permit is only valid while the permit is in effect.

**196. Extension of duration of demolition permit**

- (1) A person may apply to the permit authority that issued a demolition permit for an extension of the period for which the permit is in effect.
- (2) An application for an extension of the period for which a demolition permit 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

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- (c) be accompanied by such documentation as is required by the Director of Building Control and the permit authority; and
    - (d) be accompanied by the prescribed fee, if any.
  - (3) Before making a decision in respect of an application under subsection (1) in relation to a demolition permit –
    - (a) the permit authority is to request the relevant building surveyor to provide, within a specified period, advice regarding the permit demolition work being performed under the permit; and
    - (b) the building surveyor must comply with the request within that period.
  - (4) The permit authority that receives an application under subsection (1) in relation to a demolition permit may –
    - (a) extend the period for which the demolition permit is in effect; or
    - (b) refuse to extend the period for which the demolition permit 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 demolition permit is in effect.

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***Division 3 – Performance of permit demolition work***

**197. Permit demolition work must be performed in accordance with demolition permit**

- (1) A person must perform permit demolition work in accordance with –
  - (a) a valid demolition permit issued in respect of the work; or
  - (b) a valid building permit issued in respect of building work that includes the permit demolition 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.
- (2) Despite subsection (1), a person may perform permit demolition work that varies from the demolition permit, or building permit, if the person is performing the work in accordance with the written approval of the relevant building surveyor that has been obtained before performing the demolition work that varies from the permit.
- (3) A building surveyor may only give written approval under subsection (2) if –
  - (a) the responsible person for the permit demolition work, or the owner of the

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premises where the work is being performed, has submitted to the building surveyor amended design documentation that accurately reflects the variation; and

- (b) if the variation relates to a matter specified in section 190(2), the relevant permit authority has consented to the variation in writing; and
- (c) the building surveyor is satisfied that the amended design documentation complies with this Act, and certifies the documentation accordingly.

**198. Inspection of permit demolition work**

- (1) The responsible person for permit demolition work must –
  - (a) notify the building surveyor within the prescribed period before the completion of each mandatory notification stage of the work; and
  - (b) stop performing that work or any part of that work on completion of a mandatory notification stage until permitted to proceed under the Building Regulations.

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.

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- (2) On being notified under subsection (1) that a mandatory notification stage in respect of any demolition work is to be completed, the building surveyor may inspect the work, or cause the work to be inspected, within the prescribed period.
- (3) Nothing in this section prevents a building surveyor from inspecting permit demolition work at any time, whether or not a mandatory notification stage has been completed.
- (4) A building surveyor may cause any work to be demolished, opened, cut into or tested if it is reasonably required to facilitate an inspection of permit demolition work under this Act.

**199. Directions relating to non-compliant permit demolition work**

- (1) After inspecting permit demolition work under section 198, a building surveyor may direct the responsible person for the work to perform the demolition work so that it complies with the demolition permit issued in respect of the work.
- (2) A direction under subsection (1) may be given orally or in writing.
- (3) A person who gives an oral direction under subsection (1) is to confirm it in writing, to the person to whom it was given, within the prescribed period.
- (4) If a person fails to comply with a direction under subsection (1), the building surveyor may –

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- (a) issue a building notice under section 236 in respect of the work specified in the direction; and
  - (b) take any other appropriate action under this Act.

***Division 4 – Completion of permit demolition work***

**200. Standard of work certificate (permit demolition work)**

- (1) Within the prescribed period after permit demolition work is completed, the responsible person for the work must –
  - (a) provide the relevant building surveyor with –
    - (i) a standard of work certificate (permit demolition work) for the work; and
    - (ii) a copy of any as-constructed plans for the work that have not previously been provided to the building surveyor; and
  - (b) provide a copy of the standard of work certificate (permit demolition work) to the owner of the premises where the work was performed.
- (2) A standard of work certificate (permit demolition work) is to be in an approved form.

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**201. Certificate of final inspection (demolition)**

- (1) A building surveyor may issue a certificate of final inspection (demolition) in respect of permit demolition work if –
  - (a) the building surveyor has –
    - (i) inspected the permit demolition work under section 198 on completion of the final notification stage for the work; and
    - (ii) received a standard of work certificate (permit demolition work) in respect of the work; and
  - (b) the building surveyor is satisfied that –
    - (i) the permit demolition work is completed; and
    - (ii) the permit demolition work is in compliance with this Act and the National Construction Code, in so far as it is reasonably practicable to inspect.
- (2) If a building surveyor issues a certificate of final inspection (demolition), the building surveyor is to –
  - (a) issue the certificate of final inspection (demolition) to the owner of the premises where the permit demolition work was performed; and

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- (b) provide a copy of it to the permit authority and the licensed builder specified in the relevant permit for the permit demolition work.

**202. Certificate of completion (permit demolition work)**

- (1) A person may apply to the relevant permit authority for a certificate of completion (permit demolition work) in respect of completed permit demolition work.
- (2) An application under subsection (1) –
  - (a) is to be in an approved form; and
  - (b) must include a copy of each of the following certificates issued in respect of the permit demolition work:
    - (i) the certificate of final inspection (demolition);
    - (ii) the standard of work certificate (permit demolition work); and
  - (c) is to be accompanied by the prescribed fee.
- (3) On receipt of an application under subsection (1), a permit authority may issue a certificate of completion (permit demolition work) if satisfied that –
  - (a) all the conditions of the relevant demolition permit have been complied with; and

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- (b) the certificate of final inspection (demolition) has been issued in respect of the permit demolition work; and
- (c) if required under the *Water and Sewerage Industry Act 2008*, a certificate of water and sewerage compliance (building) has been issued under section 56TD of that Act in relation to the permit demolition work.

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**PART 14 – MAINTENANCE WORK**

**203. Interpretation**

In this Part –

*responsible owner*, of a building, includes –

- (a) an owner as defined in section 4;  
and
- (b) a body corporate formed in  
respect of the building under the  
*Strata Titles Act 1998*.

**204. Performance of maintenance work**

- (1) A responsible owner of a building must ensure  
that the building is used and maintained in  
accordance with 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 responsible owner of a building must ensure  
that the plumbing work within the building is  
used and maintained in accordance with this Act.

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) A person performing maintenance work must ensure that the work complies with 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.

**205. Schedule of maintenance**

(1) A responsible owner of a building must ensure that a schedule of maintenance for the building is –

(a) prepared in respect of that building and contains the prescribed matters relevant for that building and for the essential building services of that building; and

(b) approved by 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) A building surveyor must not approve a schedule of maintenance for a building under

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subsection (1) unless the building surveyor is satisfied that the relevant prescribed matters for the building, and for the essential building services of the building, are included in sufficient detail within the schedule of maintenance.

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.
- (3) A responsible owner of a building must ensure that the schedule of maintenance for the building is reviewed at least once in each specified period for maintenance and any changes to the schedule of maintenance are approved by a building surveyor.

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.
- (4) A responsible owner, or occupier, of a building must comply with the most recent schedule of maintenance for the building that has been approved by a building surveyor.

Penalty: In the case of –

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- (a) a natural person, a fine not exceeding 100 penalty units; or
  - (b) a body corporate, a fine not exceeding 500 penalty units.
- (5) A responsible owner, or occupier, of a building must –
  - (a) keep records in relation to maintenance as are specified; and
  - (b) provide those records to an authorised officer, or the Chief Officer within the meaning of the *Fire Service Act 1979*, if requested to do so.

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.

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**PART 15 – DEFECTIVE WORK**

**206. Defective work**

For the purposes of this Act, defective work is building work, plumbing work or demolition work that –

- (a) does not comply with this Act, or the National Construction Code, as in force at the time the work was performed; and
- (b) is discovered during an inspection of the work under this Act or at any point after the completion of the work.

**207. Discovery of defective building work**

- (1) The responsible person for building work must notify the following persons in writing during the prescribed period if the responsible person discovers, or becomes aware of, defective work while performing the building work:
  - (a) the owner of the premises where the defective work is located;
  - (b) the occupier of the premises where the defective work is located, if any;
  - (c) the relevant building surveyor for the work.

Penalty: Fine not exceeding 100 penalty units.

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- (2) Nothing in subsection (1) prevents a person who is not a responsible person for work from informing the relevant building surveyor of any defective building work.
- (3) A building surveyor who is notified under subsection (1), or who has become aware of defective building work in any other way, may do one or more of the following:
  - (a) inspect the defective building work;
  - (b) give a written direction to the responsible person for the building work to do one or more of the following as specified in the direction:
    - (i) to repair the defective work;
    - (ii) to make the defective work compliant with the National Construction Code;
    - (iii) to repair a defective product or system used in the work;
    - (iv) to replace a fitting used in the work with an authorised fitting.
- (4) A responsible person who receives a written direction under subsection (3)(b) must comply with the written direction.

Penalty: Fine not exceeding 100 penalty units.

- (5) If a written direction given to a responsible person under subsection (3)(b) relates to incomplete building work, the responsible

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person must comply with the written direction before continuing with the building work.

Penalty: Fine not exceeding 100 penalty units.

- (6) A written direction under subsection (3)(b) ceases to have effect if –
- (a) the work specified in the direction is completed to the satisfaction of the relevant building surveyor; or
  - (b) the direction is withdrawn; or
  - (c) the relevant building work is the subject of an order by the appeal tribunal; or
  - (d) the direction is issued more than 12 months after the building work to which it relates has been completed.

**208. Rectification of defective building work**

A person who carried out building work that is defective work must ensure the defective work is rectified at his or her own cost if –

- (a) the defective work is discovered –
  - (i) at any stage before the first anniversary of the issue of the certificate of completion (notifiable building work) in respect of the work, if the work was notifiable building work; or

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- (ii) at any stage before the first anniversary of the issue of the certificate of completion (permit building work) in respect of the work, if the work was permit building work; and
- (b) the relevant building surveyor, or the Director of Building Control, certifies on reasonable grounds that the defective work is due to –
  - (i) an omission, or faulty workmanship, by the person; or
  - (ii) the use of a defective or unauthorised material, fitting or building product by the person.

Penalty: Fine not exceeding 100 penalty units.

**209. Discovery of defective plumbing work**

- (1) The responsible person for plumbing work must notify the following persons in writing during the prescribed period if the responsible person discovers, or becomes aware of, defective work while performing the plumbing work:
  - (a) the owner of the premises where the defective work is located;
  - (b) the occupier of the premises where the defective work is located, if any;
  - (c) the relevant permit authority for the work.

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Penalty: Fine not exceeding 100 penalty units.

- (2) Nothing in subsection (1) prevents a person who is not the responsible person for work from informing the relevant permit authority of any defective plumbing work.
- (3) A permit authority who is notified under subsection (1), or who has become aware of defective plumbing work in any other way, may do one or more of the following:
  - (a) inspect the defective plumbing work;
  - (b) give a written direction to the responsible person for the plumbing work to do one or more of the following as specified in the direction:
    - (i) to repair the defective work;
    - (ii) to make the defective work compliant with the National Construction Code;
    - (iii) to repair a defective product or system used in the work;
    - (iv) to replace a fitting used in the work with an authorised fitting;
    - (v) if there is a risk to public health, to disconnect –
      - (A) the supply of water to premises or part of premises; or

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(B) a plumbing installation  
from a sewer.

- (4) A responsible person who receives a written direction under subsection (3)(b) must comply with the written direction.

Penalty: Fine not exceeding 100 penalty units.

- (5) If a written direction given to a responsible person under subsection (3)(b) relates to incomplete plumbing work, the responsible person must comply with the written direction before continuing with the plumbing work.

Penalty: Fine not exceeding 100 penalty units.

- (6) A written direction under subsection (3)(b) ceases to have effect if –
- (a) the work specified in the direction is completed to the satisfaction of the relevant permit authority; or
  - (b) the direction is withdrawn; or
  - (c) the relevant plumbing work is the subject of an order by the appeal tribunal; or
  - (d) the direction is issued more than 12 months after the plumbing work to which it relates has been completed.

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**210. Rectification of defective plumbing work**

A licensed plumber who carried out plumbing work that is defective work must rectify the defective work at his or her own cost if –

- (a) the defective work is discovered –
  - (i) at any stage before the first anniversary of the issue of the certificate of completion (notifiable plumbing work) in respect of the work, if the work was notifiable plumbing work; or
  - (ii) at any stage before the first anniversary of the issue of the certificate of completion (permit plumbing work) in respect of the work, if the work was permit plumbing work; and
- (b) the relevant permit authority, or the Director of Building Control, certifies on reasonable grounds that the defective work is due to –
  - (i) an omission, or faulty workmanship, by the person; or
  - (ii) the use of a defective or unauthorised material, fitting or plumbing product by the person.

Penalty: Fine not exceeding 100 penalty units.

**211. Discovery of defective demolition work**

- (1) The responsible person for demolition work must notify the following persons in writing during the prescribed period if the responsible person discovers, or becomes aware of, defective work while performing the demolition work:
  - (a) the owner of the premises where the defective work is located;
  - (b) the occupier of the premises where the defective work is located, if any;
  - (c) the relevant building surveyor for the work.

Penalty: Fine not exceeding 100 penalty units.

- (2) Nothing in subsection (1) prevents a person who is not the responsible person for the work from informing the relevant building surveyor of any defective demolition work.
- (3) A building surveyor who is notified under subsection (1), or who has become aware of defective demolition work in any other way, may do one or more of the following:
  - (a) inspect the defective work;
  - (b) give a written direction to the responsible person for the demolition work to do one or more of the following as specified in the direction:
    - (i) to repair the defective work;

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- (ii) to repair a defective product or system used in the work;
  - (iii) to replace a fitting used in the work with an authorised fitting.
- (4) A responsible person who receives a written direction under subsection (3)(b) must comply with the written direction.

Penalty: Fine not exceeding 100 penalty units.

- (5) If a written direction given to a responsible person under subsection (3)(b) relates to incomplete demolition work, the responsible person must comply with the written direction before continuing with the demolition work.

Penalty: Fine not exceeding 100 penalty units.

- (6) A written direction under subsection (3)(b) ceases to have effect if –
- (a) the work specified in the direction is completed to the satisfaction of the relevant building surveyor; or
  - (b) the direction is withdrawn; or
  - (c) the relevant demolition work is the subject of an order by the appeal tribunal; or
  - (d) the direction is issued more than 12 months after the demolition work to which it relates has been completed.

**212. Rectification of defective demolition work**

A person who carried out demolition work that is defective work must ensure the defective work is rectified at his or her own cost if –

- (a) the defective work is discovered –
  - (i) at any stage before the first anniversary of the issue of the certificate of completion (notifiable demolition work) in respect of the work, if the work was notifiable demolition work; or
  - (ii) at any stage before the first anniversary of the issue of the certificate of completion (permit demolition work) in respect of the work, if the work was permit demolition work; and
- (b) the relevant building surveyor, or the Director of Building Control, certifies on reasonable grounds that the defective work is due to –
  - (i) an omission, or faulty workmanship, by the person; or
  - (ii) the use of a defective or unauthorised material, fitting or product by the person.

Penalty: Fine not exceeding 100 penalty units.

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**PART 16 – EMERGENCY WORK**

**213. Emergency work**

For the purposes of this Act, emergency work is building work, plumbing work or demolition work that –

- (a) is required to be performed under an emergency order; or
- (b) is required on reasonable grounds to be performed in an emergency, or to circumvent an emergency –
  - (i) to protect public health or safety; or
  - (ii) to prevent significant damage to property; or
  - (iii) to prevent a waste of water; or
  - (iv) to restore a water supply that has been cut off to prevent a waste of water; or
  - (v) to free a blocked pipe.

**214. Requirements for emergency work**

- (1) Emergency work does not need to be notified to a building surveyor, or a permit authority, before it is performed.
- (2) The responsible person for emergency work must take all reasonable steps to ensure that the

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performance of the emergency work does not threaten the health and safety of any person.

Penalty: Fine not exceeding 100 penalty units.

- (3) The responsible person for emergency work must give to the relevant permit authority notice of the emergency work, in an approved form, within the prescribed period after the work is completed.

Penalty: Fine not exceeding 100 penalty units.

- (4) Subsection (3) does not apply if the responsible person for the emergency work gives the relevant permit authority notice of the emergency work before the completion of the work to which the notice relates.

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**PART 17 – OCCUPANCY REQUIREMENTS**

***Division 1 – Occupancy permit***

**215. Occupancy permit required**

- (1) Unless otherwise specified, an occupancy permit is required for each of the following types of buildings before the building or a part of the building can be, or can continue to be, occupied:
- (a) a new building;
  - (b) a building where the new use of the building would need to satisfy different requirements, under the National Construction Code, than the previous use;
  - (c) a building where the classification for the building, under the National Construction Code, has changed;
  - (d) a building where work is, or has been, carried out, if the work is –
    - (i) notifiable building work; or
    - (ii) permit building work; or
    - (iii) demolition work where only part of the building, or part of an adjacent building, is demolished as part of the work;

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- (e) a building that is a special-use building, where that special use has changed in a material way;
  - (f) a building, or a class or type of buildings, prescribed for the purpose of this section.
- (2) A building surveyor may determine that a building does not require a new occupancy permit if –
  - (a) an occupancy permit is in force in respect of the building; and
  - (b) the building surveyor is satisfied that building work performed on the building after the occupancy permit was issued was for maintenance of the building, or of a minor nature; and
  - (c) the building surveyor intends to issue a certificate of final inspection (building) in respect of the work; and
  - (d) the Act does not require the work to be the subject of a report by a reporting authority.
- (3) A person must not occupy, or continue to occupy, a building referred to in subsection (1) unless –
  - (a) an occupancy permit is in force in respect of that building as it is, or is intended to be, used while so occupied; or

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- (b) an occupancy permit is in force in respect of that building and a building surveyor is satisfied that the building can be occupied under that occupancy permit while work is being performed on the building; or
  - (c) a temporary occupancy permit is in force in respect of that building as it is, or is intended to be, used while so occupied; or
  - (d) the Building Regulations provide that an occupancy permit is not required for that building as it is, or is intended to be, used while so occupied.

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.

**216. Application for occupancy permit**

An owner, or a person authorised in writing by an owner, of a building –

- (a) if an occupancy permit is required as a result of work performed on the building, may apply for an occupancy permit to –
  - (i) the building surveyor who granted a certificate of likely compliance for the work; or

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- (ii) another building surveyor engaged under this Act in respect of the work; or
- (b) if an occupancy permit is required for any other reason, may apply to a building surveyor engaged by the owner to inspect the building for the purposes of this Division.

**217. Form of application for occupancy permit**

- (1) An application for an occupancy permit is to be –
  - (a) in an approved form; and
  - (b) accompanied by any documents and information the building surveyor requires.
- (2) The building surveyor may require an applicant, within the prescribed period –
  - (a) to provide additional information and documents; and
  - (b) to amend the application.
- (3) If an applicant fails to comply with a requirement under subsection (2) within the prescribed period, the building surveyor may treat the application as having lapsed.

**218. Required report from reporting authority**

- (1) A building surveyor is not to grant an application for an occupancy permit in respect of which a report is required under the Building Regulations from a reporting authority unless the report is supplied to the building surveyor.
- (2) A building surveyor is taken to have been supplied with a required report if the reporting authority fails to supply it within the prescribed period.

**219. Determination of application for occupancy permit**

- (1) In considering an application for an occupancy permit, the building surveyor is to take into account –
  - (a) if a required report has been provided under section 218 in respect of the application, the required report; and
  - (b) the documentation provided with the application; and
  - (c) the building's suitability for occupation for its intended use; and
  - (d) whether adequate provision has been made for smoke alarms, sanitation and water supply within the building; and
  - (e) any prescribed documents or matters.
- (2) If the building surveyor grants an application for an occupancy permit, the building surveyor is

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not required to implement anything contained in a required report provided under section 218 in respect of the application.

- (3) If the building surveyor does not implement anything contained in the required report, the building surveyor is to –
  - (a) notify the reporting authority; and
  - (b) provide the reporting authority with –
    - (i) a copy of the occupancy permit; and
    - (ii) the reasons for not implementing anything contained in the report.
- (4) If a required report was provided as part of an application for an occupancy permit and the application is granted, the building surveyor is to provide a copy of the occupancy permit for the building to the reporting authority that provided the report.

**220. Refusing application for occupancy permit**

- (1) A building surveyor –
  - (a) is to refuse an application for an occupancy permit in respect of a building if the building surveyor is not satisfied of any of the matters specified in section 219(1); and
  - (b) may refuse to grant an application for an occupancy permit if he or she considers

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the refusal to be reasonable in the circumstances.

- (2) A building surveyor, by notice in writing within the prescribed period, is to notify an applicant of –
- (a) the refusal to grant the application; and
  - (b) the reasons for that refusal; and
  - (c) the right of appeal under this Act in respect of the refusal.

**221. Granting application for occupancy permit**

- (1) A building surveyor is to grant an application for an occupancy permit within the prescribed period if the building surveyor is satisfied of the matters specified in section 219(1).
- (2) A building surveyor may grant an application for an occupancy permit subject to any relevant and reasonable condition that does not impose a lesser or greater standard, or requirement, than that required by this Act.

**222. Issue of occupancy permits**

- (1) If the building surveyor grants an application for an occupancy permit, the building surveyor is to issue an occupancy permit to the applicant.
- (2) An occupancy permit is to –
- (a) be in an approved form; and

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- (b) state the use, or uses, to which the building may be put; and
  - (c) state the conditions of the permit.
- (3) If the occupancy permit for a building is required as a result of work performed on the building, the building surveyor is to provide a copy of the occupancy permit to the responsible person for the work.
- (4) An owner of a building must display in a prominent place in the building, as prescribed, the occupancy permit issued in respect of the building.

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.

**223. Notification to permit authority of occupancy permit**

A building surveyor who issues an occupancy permit must –

- (a) notify the permit authority in writing, within the prescribed period, of the issue of the permit; and
- (b) provide the permit authority with a copy of the permit.

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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.

**224. Occupancy permit**

An owner of a building, and any person occupying the building, must comply with an occupancy permit in force in respect of the building, including any relevant condition on the occupancy permit.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units, and a further fine not exceeding 2 penalty units for each day during which the offence continues; or
- (b) a body corporate, a fine not exceeding 500 penalty units, and a further fine not exceeding 10 penalty units for each day during which the offence continues.

**225. Cancellation of occupancy permit**

- (1) A building surveyor, permit authority or the Director of Building Control may cancel an

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occupancy permit in force in respect of a building if satisfied that –

- (a) a person is using, or is intending to use, the building for a use –
    - (i) other than that stated in the occupancy permit; or
    - (ii) for which an occupancy permit is not in force in respect of the building; or
  - (b) a person occupying the building fails to comply, or is intending not to comply, with any condition of the occupancy permit; or
  - (c) building work has been, or is to be, carried out on the building other than in accordance with this Act; or
  - (d) the building is unsafe or unfit for occupation by, or is a danger or unhealthy to, persons; or
  - (e) any other prescribed condition, or prescribed circumstances, in respect of the building have not been met.
- (2) A permit authority may also cancel an occupancy permit in force in respect of a building if satisfied that a direction given under Part 15 in respect of the building has not been complied with.

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- (3) In addition to any penalty imposed under this Part, an occupancy permit in force in respect of a building is automatically cancelled if a person is found guilty of an offence under this Part in respect of the occupancy permit.

**226. Duration of occupancy permit**

- (1) An occupancy permit in respect of a building remains in force until –
- (a) another occupancy permit in respect of the building is issued under this Act; or
  - (b) it is cancelled.
- (2) For the avoidance of doubt –
- (a) the issue of an occupancy permit in respect of part of a building does not affect the validity of an occupancy permit in respect of another part of the building; and
  - (b) the sale or lease of a building does not, in itself, affect the validity of an occupancy permit in force in respect of the building.

***Division 2 – Temporary occupancy permit***

**227. Occupancy of temporary structure**

A person must not occupy a temporary structure unless –

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- (a) a temporary occupancy permit is in force in respect of the temporary structure; or
- (b) the Building Regulations provide that a temporary occupancy permit is not required for that temporary structure as it is, or is intended to be, occupied.

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.

**228. Temporary occupancy of existing building**

- (1) A person must not occupy an existing building, that is a building in respect of which an occupancy permit has been issued, for a use that is not covered by that occupancy permit, unless –
  - (a) a temporary occupancy permit is in force in respect of the building for that use; or
  - (b) the Building Regulations provide that a temporary occupancy permit is not required for that building as it is, or is intended to be, occupied.

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 person must not occupy an existing building for a use for which an occupancy permit is unable to be issued, unless –
- (a) a temporary occupancy permit is in force in respect of that building; or
  - (b) the Director of Building Control has made a determination that a temporary occupancy permit is not required for that building, or a class of buildings, as it is, or is intended to be, occupied.

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.

**229. Application for temporary occupancy permit**

- (1) An owner, or a person authorised in writing by an owner, of an existing building or temporary structure may apply to a building surveyor for a temporary occupancy permit to occupy the building or temporary structure.
- (2) An application for a temporary occupancy permit under subsection (1) is to –
  - (a) be in an approved form; and

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- (b) specify the period or periods for which the temporary occupancy permit is to be in force; and
- (c) be accompanied by any specified documents and any documents and information the building surveyor requires.

**230. Refusing application for temporary occupancy permit**

- (1) A building surveyor must refuse an application for a temporary occupancy permit under section 229 if satisfied that the building or temporary structure is not suitable for temporary occupation.
- (2) A building surveyor, by notice in writing within the prescribed period, is to notify an applicant of –
  - (a) the refusal to grant the application; and
  - (b) the reasons for the refusal; and
  - (c) the right of appeal under this Act in respect of the refusal.

**231. Granting temporary occupancy permit**

- (1) A building surveyor may grant an application for a temporary occupancy permit under section 229 if satisfied that the building or temporary structure is suitable for occupation.

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- (2) If a building surveyor grants the application, he or she is to issue a temporary occupancy permit to the applicant in the approved form.
- (3) The building surveyor may issue a temporary occupancy permit –
- (a) subject to any reasonable and relevant conditions the building surveyor thinks fit; and
  - (b) authorising the building or temporary structure specified in the permit to be erected or re-erected as specified in the permit; and
  - (c) for a period that does not exceed 36 months or for more than one period within a 36-month period.
- (4) A temporary occupancy permit is to –
- (a) be in an approved form; and
  - (b) state the use, or uses, to which the building or temporary structure may be put; and
  - (c) state the conditions of the permit; and
  - (d) state the period, or periods, for which the permit has been issued.
- (5) A building surveyor who issues a temporary occupancy permit is to –

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- (a) notify the relevant permit authority in writing that the permit has been issued; and
- (b) provide it with a copy of the temporary occupancy permit.

**232. Occupation in contravention of temporary occupancy permit**

- (1) A person must not occupy a building, or temporary structure, in contravention of the temporary occupancy permit in respect of that building or structure.

Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units, and a further fine not exceeding 2 penalty units for each day during which the offence continues; or
  - (b) a body corporate, a fine not exceeding 500 penalty units, and a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (2) A person must comply with each condition specified on a temporary occupancy permit in respect of a building or temporary structure while the person occupies the building or temporary structure.

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Penalty: In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units, and a further fine not exceeding 2 penalty units for each day during which the offence continues; or
- (b) a body corporate, a fine not exceeding 500 penalty units, and a further fine not exceeding 10 penalty units for each day during which the offence continues.

**233. Cancellation of temporary occupancy permit**

- (1) A building surveyor, or permit authority, may cancel a temporary occupancy permit in respect of a building or temporary structure if satisfied that –
  - (a) a person is using, or is intending to use, the building or temporary structure for a use –
    - (i) other than that stated in the temporary occupancy permit; or
    - (ii) to which the building or structure may not be used; or
  - (b) a person occupying the building or temporary structure fails to comply, or is intending not to comply, with any

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condition of the temporary occupancy permit; or

- (c) a building order or emergency order made in respect of the building, or temporary structure, has not been complied with; or
  - (d) building work has been, or is to be, carried out on the building or temporary structure other than in accordance with this Act; or
  - (e) the building or temporary structure is unsafe, unhealthy, or unfit for occupation by, or a danger to, persons.
- (2) In addition to any penalty imposed under section 232, a temporary occupancy permit in respect of a building or temporary structure is automatically cancelled if a person is found guilty under that section in respect of the temporary occupancy permit.

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**PART 18 – ACTIONS FOR NON-COMPLIANCE**

***Division 1 – Interpretation***

**234. Fire hazards**

For the purposes of this Part, a building or temporary structure is a fire hazard if –

- (a) it has –
  - (i) insufficient means of escape for its occupants in the event of fire; or
  - (ii) insufficient measures to manage smoke hazard; or
  - (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
- (b) the permit authority, of the relevant municipal area, considers the building or structure a risk to life or property.

**235. Application of Part**

This Part applies to building work, plumbing work and demolition work that has been

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performed, whether performed before or after the commencement of this Act.

***Division 2 – Notification of requirement to comply***

**236. Building notice**

- (1) A building surveyor engaged in respect of work on a building or temporary structure is to issue a building notice to the owner of the building or temporary structure where building work has been performed, or to the builder performing the work, if satisfied that –
  - (a) the work has been performed on the building without a building permit, or other valid authorisation, if required; or
  - (b) the work has been performed on the building or temporary structure in contravention of –
    - (i) a building permit, or other valid authorisation, in force in respect of the work; or
    - (ii) this Act or any other relevant Act in force at the time the work was performed; or
  - (c) the work is notifiable building work that has been performed on the building or temporary structure in contravention of –
    - (i) a certificate of likely compliance issued in respect of the work; or

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- (ii) a notice of work provided in respect of the work; or
    - (iii) this Act or any other relevant Act in force at the time the work was performed; or
  - (d) the work is low-risk building work that has been performed on the building or temporary structure in contravention of this Act, or any other relevant Act in force at the time the work was performed; or
  - (e) the use of the building or temporary structure contravenes this Act; or
  - (f) the building or temporary structure –
    - (i) is unfit for use or occupation; or
    - (ii) is a danger to users of the building or temporary structure, to users of adjoining land or to members of the public; or
  - (g) the essential building services of the building have not been maintained in accordance with the Building Regulations or any other relevant Act in force at the time the work was performed.
- (2) A permit authority of the relevant municipal area is to issue a building notice to the owner of a building or temporary structure if the permit authority is satisfied that a circumstance

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specified in subsection (1) exists in respect of a building or temporary structure.

- (3) A permit authority may perform any of the duties of a building surveyor under subsection (1) if the building surveyor resigns, dies or becomes incapable, for any reason, of performing that duty or those duties.
- (4) A building notice is to require the owner or builder to show cause within the prescribed period –
  - (a) why occupation of the building or temporary structure should not be prohibited; or
  - (b) why the owner or builder should not do either or both of the following things:
    - (i) evacuate the building or temporary structure;
    - (ii) perform building work or other work specified in the notice.
- (5) A building notice is to be in an approved form.
- (6) If a person issues a notice to an owner under this section, the person is to provide a copy of the notice to the responsible person for the building work.
- (7) If a person issues a notice to a builder under this section, the person is to provide a copy of the notice to the relevant owner.

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**237. Plumbing notice**

- (1) A permit authority is to issue a plumbing notice to the owner of a building or temporary structure where plumbing work has been performed, or to the plumber performing work on the building or structure, if satisfied that –
- (a) the work has been performed on the building without a plumbing permit, or other valid authorisation, if required; or
  - (b) the work has been performed on the building or temporary structure in contravention of –
    - (i) a plumbing permit, or other valid authorisation, in force in respect of the work; or
    - (ii) this Act or any other relevant Act in force at the time the work was performed; or
  - (c) the work is notifiable plumbing work that has been performed on the building or temporary structure in contravention of –
    - (i) a certificate of likely compliance issued in respect of the work; or
    - (ii) a notice of work provided in respect of the work; or
    - (iii) this Act or any other relevant Act in force at the time the work was performed; or

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- (d) the work is low-risk plumbing work that has been performed on the building or temporary structure in contravention of this Act or any other relevant Act in force at the time the work was performed; or
  - (e) the use of an existing plumbing installation is in contravention of the conditions of a plumbing permit or a certificate of likely compliance; or
  - (f) an existing plumbing installation within the building or temporary structure is faulty, defective, or a risk to the health or safety of persons.
- (2) A plumbing notice is to require the owner or person to show cause within the prescribed period why plumbing work or other work specified in the notice should not be performed.
- (3) A plumbing notice is to be in an approved form.

**238. Fire upgrading report**

- (1) If a permit authority for a council believes that a building or temporary structure within the municipal area for the council may be a fire hazard, the permit authority –
- (a) may inspect the building or temporary structure; and
  - (b) is to prepare a fire upgrading report on the matter.

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- (2) A fire upgrading report is to state –
- (a) whether or not the building or temporary structure is a fire hazard; and
  - (b) a program for work to overcome any fire hazard; and
  - (c) the prescribed period and manner in which representations may be made in respect of the report; and
  - (d) any other specified matter.
- (3) A permit authority may obtain information as to any matter relating to a fire upgrading report from any relevant reporting authority.

**239. Fire upgrading notice**

- (1) A permit authority is to issue a fire upgrading notice to an owner of premises if a fire upgrading report issued by the permit authority under section 238 in respect of the premises states that a fire hazard exists.
- (2) A fire upgrading notice is to –
- (a) require the owner to show cause within the prescribed period why the owner should not perform the program of work specified in the fire upgrading report; and
  - (b) be accompanied by a copy of the relevant fire upgrading report.

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**240. Dilapidated building report**

- (1) If a general manager believes that a building may be a dilapidated building, the general manager –
  - (a) may inspect the building; and
  - (b) is to prepare a dilapidated building report on the matter.
- (2) A dilapidated building report is to state –
  - (a) whether or not the building is a dilapidated building; and
  - (b) the building work, or other work, that the general manager considers is required in order for the building to cease to be a dilapidated building; and
  - (c) any other matter that the general manager considers relevant.
- (3) A general manager may obtain information as to any matter relating to a dilapidated building report from any building services provider, or other person, the general manager thinks appropriate.

**241. Dilapidated building notice**

- (1) A general manager may issue a dilapidated building notice to an owner of a building if a dilapidated building report under section 240 states that the building is a dilapidated building.

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- (2) A dilapidated building notice issued to an owner of a dilapidated building is to –
- (a) require the owner to show cause, in the manner and within the period specified in the notice, why the owner should not perform the building work, or other work, specified in the dilapidated building report; and
  - (b) be accompanied by a copy of the relevant dilapidated building report.

**242. Representations relating to notices**

- (1) A person to whom a notice is issued under this Division may make representations to the person who issued the notice about any matter contained in the notice.
- (2) Representations are to be made in the manner, and within the period, stated in the notice.

**243. Revocation of notices**

A person who issued a notice under this Division may revoke the notice if satisfied that it is appropriate to do so after –

- (a) considering any representations made under section 242; or
- (b) receiving any other information.

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***Division 3 – Compliance orders***

**244. Emergency order**

- (1) A general manager may make an emergency order if satisfied, on reasonable grounds, that a threat to life may arise out of the condition or use of a building, temporary structure or plumbing installation.
- (2) An emergency order may –
  - (a) require an owner or occupier of a building, temporary structure or plumbing installation to –
    - (i) evacuate all persons from the building, temporary structure or the building or temporary structure housing the plumbing installation; or
    - (ii) stop, or perform, building work or other work; and
  - (b) prohibit the occupation of a building or temporary structure.
- (3) An emergency order –
  - (a) is to be in an approved form; and
  - (b) is to contain any specified matter; and
  - (c) may specify how emergency work is to be performed under the order, including

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that the work must be performed other than in accordance with the regulations.

- (4) A person served with an emergency order must comply with the order.

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) A person may not be found guilty of an offence under the Act in respect of work that has been performed in accordance with an emergency order.
- (6) A general manager may revoke an emergency order if the circumstances giving rise to the making of the order have changed.
- (7) A general manager is to provide a copy of an emergency order to the relevant permit authority within 7 business days after making the order.

**245. Building orders**

- (1) A building surveyor, or permit authority, is to serve a building order on a person who was issued with a building notice if –
- (a) the building notice has not been revoked; and

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- (b) the period for making representations in respect of the notice has expired.
- (2) A building order in respect of a building or temporary structure may –
  - (a) prohibit the occupation of the building or temporary structure; and
  - (b) require the person on whom it is served to do one or more of the following:
    - (i) evacuate the building or temporary structure;
    - (ii) perform building work or other work on the building or temporary structure;
    - (iii) perform building work, or other work, on the building or temporary structure other than in accordance with the regulations; and
  - (c) require the owner, or any other person, to stop building work being performed on the building or temporary structure; and
  - (d) if a direction under this Part has been served on a builder and has not been complied with, require the builder to perform building work or other work on the building or temporary structure as specified in the direction.

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- (3) A building order may be served without first issuing a building notice if –
- (a) the order contains a requirement specified in subsection (2)(d); or
  - (b) the building surveyor, or permit authority, issuing the order is of the opinion that the work required to be done under the order is of a minor nature
- (4) A building order under subsection (2)(c) may be served if, in the opinion of the permit authority or building surveyor, the building work –
- (a) contravenes this Act; or
  - (b) is a danger to the public; or
  - (c) affects the support of any adjoining property.
- (5) A building order under subsection (2)(c) may be served in respect of a building or temporary structure without first issuing a building notice if the person serving the notice is of the opinion that further building work might be performed, or permitted, on the building or temporary structure which would make compliance with such an order more difficult or impossible.
- (6) A building order under subsection (2)(c) may be served, in respect of a building or temporary structure, on –
- (a) any person apparently in charge of the building or temporary structure; and

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(b) the owner.

(7) A building order is to be in an approved form.

(8) A person served with a building order must comply with the order.

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.

(9) A person may not be found guilty of an offence under the Act in respect of work performed in accordance with a building order.

**246. Building order relating to illegal building work**

(1) In addition to a building order under section 245, a permit authority is to serve a building order on an owner of premises where building work is performed in contravention of this Act if the permit authority does not revoke a building notice in respect of that building work.

(2) A building order in respect of building work performed in contravention of this Act is to require the owner at the owner's choice –

(a) to demolish the building work or building; or

(b) to complete any remaining building work in accordance with this Act.

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- (3) A building order under this section may be –
- (a) a separate building order; or
  - (b) combined with a building order under section 245 or section 247.

**247. Building order relating to fire hazards**

- (1) In addition to a building order under section 245, a permit authority is to serve a building order relating to a fire hazard on the owner of a building or temporary structure if the permit authority does not revoke a fire upgrading notice in force in respect of the building or temporary structure.
- (2) A building order relating to a fire hazard –
  - (a) is to direct an owner of the building or temporary structure to perform a program of work; and
  - (b) may contain any other specified matter.
- (3) A building order under this section may be –
  - (a) a separate building order; or
  - (b) combined with a building order under section 245.

**248. Building order relating to dilapidated building**

- (1) If a dilapidated building notice issued in relation to a building is not revoked, the permit authority

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is to serve a building order relating to the dilapidated building on an owner of the building.

- (2) A building order relating to a dilapidated building is to direct an owner of the building to perform the building work, or other work, that the permit authority considers is required in order for the building to cease to be a dilapidated building.
- (3) A building order under this section may be –
  - (a) a separate building order; or
  - (b) combined with another building order.

**249. Plumbing orders**

- (1) If a permit authority does not revoke a plumbing notice, the permit authority is to serve a plumbing order on the person who was issued with the notice or, if that person cannot be found, is to serve the order on –
  - (a) the owner of the premises that is the subject of the plumbing notice; or
  - (b) a person apparently in charge of those premises; or
  - (c) a licensed plumber performing the plumbing work at those premises.
- (2) A plumbing order may require the owner of premises to have plumbing work or other specified work performed on the premises,

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including the removal of plumbing work or a plumbing installation.

- (3) A plumbing order requiring plumbing work or other work to be performed may be served without first issuing a plumbing notice if a permit authority is of the opinion that the plumbing work or other work required to be performed under the authority of the plumbing order is of a minor nature.
- (4) A plumbing order is to be in an approved form.
- (5) A person served with a plumbing order must not fail to comply with the order.

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.

**250. Court orders**

- (1) The Director of Building Control, or a general manager, may apply to a court of competent jurisdiction for an order in relation to a contravention or likely contravention of –
  - (a) this Act; or
  - (b) a notice, order or determination under this Act.

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- (2) The court, if satisfied that a contravention has been or is likely to be committed, may make any one or more of the following orders:
  - (a) an order to restrain the contravention or other conduct by the person by whom the contravention is committed or is likely to be committed;
  - (b) an order requiring building work or plumbing work to be performed;
  - (c) an order requiring the payment of money into court in respect of any building work or plumbing work performed or to be performed by the permit authority;
  - (d) any necessary ancillary orders.
- (3) An application for an order under this section –
  - (a) may be made during proceedings for an offence under this Act; and
  - (b) must not be made in relation to a matter that is subject to an appeal to the appeal tribunal that has not been finally disposed of.
- (4) An order may be made under this section instead of, or in addition to, any other order or penalty imposed in proceedings under this Act.

**251. Certain orders to be made within certain period**

- (1) An order to demolish or remove work is to be made no later than 12 months after the person

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making the order becomes aware of the reason for the order to demolish or remove work.

- (2) An order to stop work, cease occupation, carry out work necessary to rectify a defect, remedy a hazard, or cause a building to no longer be dilapidated is to be made no later than 24 months after the person making the order becomes aware of the defect to which the order relates.
- (3) An order under section 246 is to be made no later than 24 months after the person making the order becomes aware of the relevant contravention.

**252. Permit authority to be notified of building order**

A building surveyor who serves a building order must provide a copy of the order to the relevant permit authority within the prescribed period.

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.

**253. Duration of orders**

An order under this Division remains in force until –

- (a) it is complied with; or

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- (b) it is revoked.

***Division 4 – Process for illegal building work***

***Subdivision 1 – Certificate of substantial compliance***

**254. Application for certificate of substantial compliance**

- (1) An owner of premises may apply to a building surveyor for a certificate of substantial compliance in respect of completed, or partially completed, building work on the premises that –
  - (a) fails to comply with this Act, or any other relevant Act, as in force at the time the work was performed; and
  - (b) is the subject of a building order under section 246.
- (2) An application for a certificate of substantial compliance is to –
  - (a) include specified information; and
  - (b) be accompanied by specified documentation; and
  - (c) be accompanied by the prescribed fee, if any.
- (3) Subdivision 1 of Division 2 of Part 11 applies to an application for a certificate of substantial compliance as if it were an application for a certificate of likely compliance (permit building work).

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**255. Refusal of application for certificate of substantial compliance**

- (1) A building surveyor is to refuse to grant a certificate of substantial compliance if the building surveyor is satisfied that the building work is not likely to comply, or cannot be made to comply, with this Act.
- (2) A building surveyor must notify an applicant for a certificate of substantial compliance, in writing, of –
  - (a) his or her refusal to grant the certificate of substantial compliance; and
  - (b) the reasons for his or her refusal; and
  - (c) the right of appeal under this Act in respect of the refusal.

**256. Grant of application for certificate of substantial compliance**

- (1) A building surveyor may grant a certificate of substantial compliance if the building surveyor is satisfied that the building work that is the subject of the application for the certificate –
  - (a) substantially complies with, or may be made to comply with, this Act; or
  - (b) does not comply with this Act but the non-compliance is not detrimental to the safety and health of any occupant, or any future occupant, of the building.

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- (2) A certificate of substantial compliance may be granted subject to any relevant condition imposed by the building surveyor that does not impose a greater standard, or requirement, on the building work than the standard or requirement imposed by this Act.
- (3) If a building surveyor grants an application for a certificate of substantial compliance, the building surveyor is to provide the applicant with a certificate of substantial compliance in an approved form.

***Subdivision 2 – Permit of substantial compliance***

**257. Application for permit of substantial compliance**

- (1) An owner of premises may apply to a permit authority for a permit of substantial compliance in respect of completed, or partially completed, building work on the premises that –
  - (a) fails to comply with this Act, or any other relevant Act, as in force at the time the work was performed; and
  - (b) is the subject of a building order.
- (2) An application for a permit of substantial compliance –
  - (a) must be accompanied by a certificate of substantial compliance that is in force in respect of the building work that is the subject of the application; and
  - (b) is to include specified information; and

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- (c) is to be accompanied by such documentation as is required by the permit authority; and
    - (d) is to be accompanied by the prescribed fee, if any.
  - (3) Before determining an application for a permit of substantial compliance, the permit authority may –
    - (a) carry out such inquiries, consult such other persons and take into account such matters as the permit authority considers necessary or expedient having regard to the nature of the building work; and
    - (b) require the applicant to provide any further information or evidence about any matter relating to the application or the building work.
  - (4) If an applicant fails to comply with a requirement of subsection (3)(b) within the period specified in the requirement, the application for a permit of substantial compliance is taken to lapse on the expiry of that period.

**258. Refusal of application for permit of substantial compliance**

- (1) A permit authority –
  - (a) is to refuse to grant a permit of substantial compliance if a certificate of

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substantial compliance has not been granted in respect of the building work; and

(b) may refuse to grant a permit of substantial compliance if he or she considers the refusal reasonable in the circumstances.

(2) A permit authority must notify an applicant for a permit of substantial compliance, in writing, of –

(a) his or her refusal to grant the permit of substantial compliance; and

(b) the reasons for his or her refusal; and

(c) the right of appeal under this Act in respect of the refusal.

**259. Grant of application for permit of substantial compliance**

(1) A permit authority may grant a permit of substantial compliance if the permit authority is satisfied that –

(a) the building work that is the subject of the application for the permit substantially complies with, or may be made to comply with, this Act; and

(b) a certificate of substantial compliance has been granted in respect of the building work.

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- (2) An owner of a building that is the subject of a permit of substantial compliance must comply with the permit of substantial compliance.

Penalty: Fine not exceeding 100 penalty units.

**260. Conditions on permit of substantial compliance**

- (1) A permit authority may impose on a permit of substantial compliance any one or more of the following conditions:
- (a) a condition specified in any documentation submitted to the permit authority with the application for the permit of substantial compliance;
  - (b) a condition that the permit authority considers appropriate and that relates to work to be performed under the permit of substantial compliance.
- (2) A permit authority must not impose on a building permit a condition that modifies the plans, or specifications, for the work to be performed under the permit of substantial compliance.
- (3) The permit authority may add, vary or revoke a condition on a permit of substantial compliance at any time before the work, to be performed under the permit of substantial compliance, is completed.

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- (4) The addition, variation, or revocation of a condition on a permit of substantial compliance under subsection (3) takes effect –
- (a) when each of the following persons is notified in writing of the addition, variation or revocation:
    - (i) the applicant for the permit of substantial compliance;
    - (ii) the owner of the premises where the work is to be performed;
    - (iii) the building services provider and the licensed builder named on the permit, or his or her business entity; or
  - (b) at such later time as is specified in the notification under paragraph (a).

**261. Duration of permit of substantial compliance**

- (1) A permit of substantial compliance expires –
- (a) if no work has been commenced under the permit, on the first anniversary of the permit being granted under section 259; or
  - (b) if the permit does not specify a period for which it is in effect and the period for which it is in effect is not extended, on the second anniversary of the permit being granted under section 259; or

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- (c) if the permit specifies a period for which it is in effect and the period for which it is in effect is not extended, on the expiry of the period specified in the permit; or
  - (d) if the period for which permit is in effect is extended as prescribed, on the expiry of the period so extended; or
  - (e) if a certificate of completion (permit building work) is issued in respect of the building work to be performed under the permit.
- (2) A permit is only valid while the permit is in effect.

**262. Effect of permit of substantial compliance**

A person who has been granted a permit of substantial compliance under this Part is to –

- (a) perform building work under that permit in accordance with Part 11 as if –
  - (i) a reference in that Part to a certificate of likely compliance (permit building work) in respect of work were a reference to the certificate of substantial compliance issued under this Part in respect of the work; and
  - (ii) a reference in that Part to a building permit in respect of work were a reference to the

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permit of substantial compliance  
issued under this Part in respect  
of the work; and

- (b) comply with this provisions of this Act that relate to permit building work as if a reference to permit building work were a reference to the building work being performed under the permit of substantial compliance.

***Division 5 – Process for illegal plumbing work***

**263. Illegal plumbing work to be subject of plumbing permit**

- (1) An owner of premises may apply for a plumbing permit under Part 12 in relation to completed, or partially completed, plumbing work that –
  - (a) fails to comply with this Act, or any other relevant Act, as in force at the time the work was performed; and
  - (b) is the subject of a plumbing order.
- (2) The regulations may exempt or vary any of the requirements of that Part, or prescribe requirements that are in addition to the requirements of that Part, in relation to the application of that Part to plumbing work referred to in subsection (1).

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***Division 6 – Failure to comply with compliance orders***

**264. Failure to comply with emergency, building or plumbing order**

- (1) If a person fails to comply with a building order made by a building surveyor, the building surveyor is to refer the matter to the permit authority.
- (2) The permit authority is to take all reasonable steps to enforce a building order referred to in subsection (1).
- (3) If a person fails to perform any work required by an emergency order, a building order or plumbing order, the work may be performed by the council.
- (4) In performing any work under subsection (3), the council may –
  - (a) enter on the land where the work is to be done with the appropriate equipment; and
  - (b) exclude other persons from the place where the work is being done; and
  - (c) if anything is to be altered, determine the form of the alteration so far as it was not previously specified; and
  - (d) if anything is to be taken down, demolished or removed, determine in what condition the remainder is to be left; and

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- (e) carry away to some convenient place any materials removed; and
- (f) sell any materials so carried away and deduct the proceeds from the cost of the work.

**265. Possession of building**

- (1) If any occupier of a building or temporary structure fails to allow any person to do work under section 264, a council may take proceedings under the *Justices Act 1959* to obtain possession of the building or temporary structure.
- (2) On the hearing of a complaint, a justice may order the occupier to give the council possession of the building or temporary structure within a prescribed period.
- (3) If a person fails to comply with an order under subsection (2), a justice who made the order may issue a warrant authorising police officers to –
  - (a) enter into the building or temporary structure by force if necessary and with any assistance they consider necessary; and
  - (b) eject any person from the building or temporary structure; and
  - (c) deliver possession of the building or temporary structure to the relevant council.

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- (4) A council may remain in possession of a building or temporary structure pursuant to a warrant until the work is completed.

**266. Demolition order**

- (1) A council may serve, on the owner of premises on which building work that is the subject of a building order is situated, an order to demolish the building work, if –
- (a) the owner fails to comply with –
    - (i) the building order; or
    - (ii) a permit of substantial compliance issued in respect of the work; or
  - (b) a building surveyor refuses to grant a certificate of substantial compliance in respect of the work; or
  - (c) a permit authority refuses to grant a permit of substantial compliance in respect of the work; or
  - (d) an appeal has not been instituted in respect of the building order and the order has not been complied with.
- (2) A council is to serve, on the owner of premises on which building work that is the subject of a building order is situated, an order to demolish the building work if satisfied that the building work –

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- (a) does not comply with this Act; and
  - (b) is detrimental to the safety and health of any occupant, or any future occupant, of the building or the public.
- (3) The council, or a person acting on its behalf, may enter onto land and demolish any building work in respect of which an order to demolish is served if –
  - (a) at least 21 days have expired since the day of service of the order; and
  - (b) the building work has not been demolished; and
  - (c) an appeal has not been instituted in respect of the order.
- (4) An order to demolish –
  - (a) is to be in an approved form; and
  - (b) may require the owner to clean up the premises to the satisfaction of a building surveyor within the prescribed period.

***Division 7 – General matters***

**267. Endorsements on certificates**

A building certificate, occupancy permit or certificate of completion, or a certificate issued under section 337 of the *Local Government Act 1993*, in respect of building work to which a building order under section 246 relates, is to be

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endorsed to the effect that it was not the subject of the normal application, permit and inspection procedures under this Act.

**268. Recovery of performance costs**

- (1) The cost of performing any work not performed by an owner as required under this Part is a debt due by the owner and recoverable in a court of competent jurisdiction.
- (2) If a person fails to perform 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*.

**269. Recovery of compliance costs**

- (1) The Director of Building Control, or the relevant permit authority, may recover from a person served with a notice or order under this Part the reasonable costs and expenses incurred –
  - (a) in the issue and service of the notice or order, including any amendment of the notice or order; and
  - (b) the issue and service of copies of the notice or order, including any amendment of the notice or order, if required to be issued and served under this Act; and

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- (c) the lodging of documents with the Recorder of Titles, if required to be lodged under this Act; and
  - (d) any action taken in respect of monitoring, or reviewing, compliance with a notice or order.
- (2) The Director of Building Control, or the relevant permit authority, may recover, as a debt due by the person served with the relevant notice or order –
  - (a) the costs and expenses referred to in subsection (1); and
  - (b) interest those costs and expenses, but only from the date on which the debt is due, calculated at the rate prescribed for the purposes of section 34 of the *Supreme Court Civil Procedure Act 1932*.

**270. Purchasing buildings and materials**

- (1) A council which demolishes a building pursuant to an order under this Part may –
  - (a) sell the building for removal; or
  - (b) after demolishing the building, sell the materials on the premises for removal.
- (2) A council may grant the purchaser of a building under subsection (1)(a) all the powers it has under section 266.

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- (3) The rights of the purchaser of a building may be –
- (a) protected by caveat under the *Land Titles Act 1980*, if the land is subject to that Act; or
  - (b) registered under the *Registration of Deeds Act 1935* as if the deed by which they were granted were a judgement.
- (4) The rights of the purchaser of materials are to be created by a security interest registrable under the *Personal Property Securities Act 2009* of the Commonwealth.
- (5) A purchaser who fails to remove a building, or materials, within a reasonable period is liable to the occupier of the building in damages for the use and occupation of the land.
- (6) A council is to pay the owner of the building or materials sold under subsection (1) the balance of any proceeds of the sale after deducting any reasonable expenses incurred by it.
- (7) Any proceeds not claimed within one year after a sale of a building or materials under subsection (1) vest in the relevant council.

**271. Police assistance**

A general manager may request the assistance of a police officer –

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- (a) in evacuating a building or temporary structure in accordance with an emergency order; or
- (b) in removing any person from a building or temporary structure in respect of which an emergency order, building order or plumbing order is in effect.

**272. Notification of completion of work**

- (1) An owner, by notice in writing, must notify the completion of any work performed under an emergency order, a building order or a plumbing order to the person who issued the order.

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) After inspecting the completed work, the person who issued the order is to –
  - (a) notify the owner that the order has been complied with; or
  - (b) require the order to be complied with.

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**273. Amendment or revocation of building, plumbing or demolition orders**

- (1) An owner who is required to comply with a building order, plumbing order or demolition order may, if there is a change in circumstances after the service of the order, request that the person who issued the order amend or revoke the order.
- (2) A person who receives an application under subsection (1) may, if he or she issued the order that is the subject of the application –
  - (a) refuse to amend or revoke the order; or
  - (b) issue an amended order; or
  - (c) revoke the order.
- (3) An application under subsection (1) is taken to have been refused if action has not been taken under subsection (2) within the specified period.

**274. Compliance with Act in certain circumstances**

- (1) A person who performs work in accordance with an emergency order is not required to obtain a building permit, or comply with this Act, unless the general manager or building surveyor otherwise directs.
- (2) A person who performs work in accordance with a building order or demolition order must comply with this Act unless the general manager or building surveyor otherwise directs.

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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.
- (3) A person who performs work in accordance with a plumbing order must comply with this Act unless the permit authority otherwise directs.

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.

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**PART 19 – APPEALS AND DETERMINATIONS**

***Division 1 – Appeals***

**275. Appeals relating to permits**

(1) In this section –

***relevant permit*** means any one of the following permits:

- (a) a building permit;
- (b) a plumbing permit;
- (c) a demolition permit;
- (d) a permit of substantial compliance;
- (e) an occupancy permit;
- (f) a temporary occupancy permit.

(2) An applicant for a relevant permit may appeal to the appeal tribunal against –

- (a) a refusal, or failure, to grant an application for the permit in accordance with this Act; or
- (b) a requirement to provide further information under this Act in respect of the application; or
- (c) if the permit is capable of being extended, a refusal to extend the permit as requested; or

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- (d) any condition imposed on the permit other than a condition that must be imposed on the permit under this Act.
- (3) A person granted a relevant permit may appeal to the appeal tribunal against an amendment to, or the cancellation of, the permit.

**276. Appeals relating to notifiable work**

An owner of premises where notifiable work is to be, or is being, performed may appeal to the appeal tribunal against –

- (a) a refusal, or failure, to grant a certificate in respect of the work; or
- (b) a refusal of a building surveyor or permit authority, as applicable, to accept a certificate of completion in respect of the work.

**277. Appeals relating to orders**

An owner of premises, a temporary structure or a plumbing installation affected by an emergency order, building order or plumbing order may appeal to the appeal tribunal against –

- (a) the order; or
- (b) the imposition of a condition on the order; or
- (c) a refusal to amend or cancel the order; or

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- (d) a failure of a building surveyor to notify as required under section 272; or
  - (e) a failure to revoke the order on completion of the work specified in the order.

**278. Appeals relating to protection work**

An owner of premises, or the owner of adjoining premises under Part 6, may appeal to the appeal tribunal against the determination of a person under Part 6.

**279. Appeals relating to building surveyor**

An owner of premises, or a building services provider or licensed builder engaged by such an owner, may appeal to the appeal tribunal against the exercise of, or the failure to exercise, any power by a building surveyor under this Act in respect of those premises.

**280. Appeals relating to permit authority**

An owner of premises, or a building services provider, licensed builder or licensed plumber engaged by such an owner, may appeal to the appeal tribunal against the exercise of, or the failure to exercise, any power by a permit authority under this Act in relation to the premises.

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**281. Appeals relating to fire regulations**

An owner of premises may appeal to the appeal tribunal against the exercise of any power under the General Fire Regulations, made under section 133 of the *Fire Service Act 1979*, in relation to those premises.

***Division 2 – Determinations***

**282. Determination of application of relevant Code**

- (1) A person may apply to the appeal tribunal to determine whether any provision of the National Construction Code applies, or may be modified, in respect of any building work or plumbing work that is proposed to be performed by the person.
- (2) A person may not apply under subsection (1) for a determination in relation to an access provision of the National Construction Code within the meaning of section 283.
- (3) Before making a determination of an application under this section that relates to building work, the appeal tribunal is to notify, and seek submissions from, the Director of Building Control, any reporting authority that may be affected and the relevant building surveyor.
- (4) Before making a determination of an application under this section that relates to plumbing work, the appeal tribunal is to notify, and seek submissions from, the Director of Building Control and the relevant permit authority.

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- (5) In determining an application under this section, the appeal tribunal is to take into account –
- (a) any relevant provisions of this Act and any relevant codes or standards; and
  - (b) any submissions made under subsection (3) or (4).
- (6) The appeal tribunal may –
- (a) determine that a provision –
    - (i) be modified as directed, if satisfied that the modification is reasonable and not detrimental to the public interest; or
    - (ii) does not apply, if satisfied that the provision is inappropriate in the circumstances and the modification is not detrimental to the public interest; and
  - (b) impose any relevant condition as part of the determination.

**283. Determination for modification or non-application of access provision of Code**

- (1) In this section –

*access provision of the National Construction Code* means a performance requirement –

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- (a) that is contained in one of the following parts of Volume One of the National Construction Code:
    - (i) Section D;
    - (ii) Part E3 of Section E;
    - (iii) Part F2 of Section F; 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.
- (2) A person may apply to the appeal tribunal for a determination that an access provision of the National Construction Code –
  - (a) does not apply; or
  - (b) applies with the modifications or variations specified in the application –to premises specified in the application.
- (3) An application under subsection (2) may only be made on the ground that compliance with the access provisions of the National Construction Code would impose unjustifiable hardship on the applicant.
- (4) An application under subsection (2) may be made by –

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- 
- (a) the owner of the premises; or
    - (b) a lessee of the premises, who proposes to have, or is having, building work carried out in respect of the premises.
  - (5) 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.
  - (6) In determining whether compliance with an access provision of the National Construction Code would impose unjustifiable hardship on the applicant, the appeal tribunal must take into account –
    - (a) the objects of the *Disability Discrimination Act 1992* of the Commonwealth; and
    - (b) all the circumstances prescribed for the purposes of this section, if those circumstances are applicable to the particular case; and
    - (c) all other circumstances of the particular case that the appeal tribunal considers relevant.
  - (7) If a substantial issue of unjustifiable hardship is raised having regard to the matters referred to in

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subsection (6), the appeal tribunal must consider the following additional matters:

- (a) the extent to which substantially equal access to public premises is or may be provided other than by compliance with the access provisions of the National Construction Code;
  - (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.
- (8) A determination under this section must provide for compliance with the access provisions of the National Construction Code to the maximum extent not involving unjustifiable hardship.
- (9) For the purposes of this section, in interpreting and determining whether there is unjustifiable hardship, the appeal tribunal is to have due regard to the rights and interests of all relevant parties.

***Division 3 – General***

**284. Form of application**

- (1) An application to the appeal tribunal that relates to a decision made under this Act is to be made within 28 days after the applicant is notified of the decision to which the application relates.

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- (2) The appeal tribunal may extend the period referred to in subsection (1) if it considers the extension of the period appropriate.

**285. Onus of proof in certain cases**

- (1) If an appeal relates to the issue of a building order in respect of a fire upgrading notice, the appeal is not to be dismissed unless a general manager or building surveyor proves that the issue of the order ought to be confirmed.
- (2) If an appeal relates to the failure to comply with a building order issued in respect of a fire upgrading notice, the appeal is not to be dismissed unless a general manager or building surveyor proves that the order has not been complied with.

**PART 20 – REGULATIONS**

***Division 1 – Building Regulations***

**286. Building Regulations**

- (1) The Governor may make regulations establishing standards and requirements relating to buildings and the performance of building work.
- (2) Standards established by the Building Regulations may be expressed –
  - (a) in terms of performance; or
  - (b) in terms of types of materials or methods of construction; or
  - (c) in any other terms.
- (3) The Building Regulations may make provision in relation to the following matters:
  - (a) design, documentation, assessment, construction and inspection relating to building work;
  - (b) notification requirements relating to building work and the performance of building work;
  - (c) the use, inspection and maintenance of buildings;
  - (d) the maintenance requirements for buildings and building work;

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- (e) the limitations and restrictions applicable to building work and buildings;
  - (f) building work or demolition work that may be performed in hazardous areas and any additional requirements for those areas;
  - (g) the safety measures and precautions in relation to building work and buildings;
  - (h) protection work;
  - (i) the environmental efficiency of buildings;
  - (j) access to, and egress from, buildings;
  - (k) heating appliances;
  - (l) matters relating to building work or demolition work, or the approval processes of such work.
- (4) The Building Regulations may adopt by reference the National Construction Code, any standards, rules, codes and specifications of bodies specified in that Code and any other standards, rules, codes and specifications.
- (5) The Building Regulations may provide that any or all of the regulations apply to any existing building, whether or not building work is being, or is proposed to be, performed on that building.

**287. Non-application of Building Regulations**

- (1) A provision of the Building Regulations does not apply to any building work –
  - (a) for which a building permit is granted before the provision commences; or
  - (b) if the building surveyor for the work certifies in writing that substantial progress was made on the design of the work before the commencement of the provision.
- (2) Subsection (1) does not apply if the building surveyor and the owner of premises where building work is to be performed agree that a provision of the Building Regulations applies to the building work.
- (3) Nothing in this section prevents a person from complying with a provision of the Building Regulations that is not an applicable provision by virtue of this section.

***Division 2 – Plumbing Regulations***

**288. Plumbing Regulations**

- (1) The Governor may make regulations establishing standards and requirements relating to plumbing work and plumbing installations.
- (2) Standards established by the Plumbing Regulations may be expressed –
  - (a) in terms of performance; or

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- (b) in terms of types of materials or methods of construction; or
  - (c) in any other terms.
- (3) The Plumbing Regulations may provide for the following matters:
- (a) design, documentation, assessment, construction, inspection and testing relating to plumbing work and plumbing installation;
  - (b) the use of materials, products and systems;
  - (c) the use, maintenance, management and rectification of plumbing work and plumbing installation;
  - (d) the maintenance requirements for plumbing work;
  - (e) plumbing work that may be performed in hazardous areas and any additional requirements for those areas;
  - (f) the limitations and restrictions applicable to plumbing work and plumbing installation;
  - (g) matters relating to plumbing work or the approval processes of such work.
- (4) The Plumbing Regulations may adopt by reference the National Construction Code and any of the standards, rules, codes and specifications of bodies specified in the Code.

**289. Non-application of Plumbing Regulations**

- (1) A provision of the Plumbing Regulations does not apply to any plumbing work –
  - (a) for which a plumbing permit is granted before the provision commences; or
  - (b) if the relevant permit authority certifies in writing that substantial progress was made on the design of the work before the commencement of the provision.
- (2) Subsection (1) does not apply if the permit authority and the owner of the premises where plumbing work is to be performed agree that a provision of the Plumbing Regulations applies to the plumbing work.
- (3) Nothing in this section prevents a person from complying with a provision of the Plumbing Regulations that is not an applicable provision by virtue of this section.

***Division 3 – General provisions***

**290. General provisions**

- (1) Regulations made under this Act may –
  - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 200 penalty units for a body corporate

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and 100 penalty units for a natural person and, in the case of a continuing offence, a further fine not exceeding 20 penalty units for each day during which the offence continues.

- (2) Regulations made under this Act may –
  - (a) authorise any matter to be determined, applied or regulated by a person or body specified in the regulations; and
  - (b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions specified in the regulations.
- (3) If a regulation requires anything to have certain qualities, the Director of Building Control may publish the trade names of things which, according to tests by competent persons, appear to have those qualities.
- (4) Any thing, the trade name of which is published under subsection (3), is to be treated as having the qualities required for the purposes of the regulation in respect of which it is published.

**291. Inspection provisions**

- (1) The Governor may make regulations under this Act in relation to the inspecting or testing of –
  - (a) a building or an incidental structure; or
  - (b) building work, plumbing work or demolition work.

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- (2) Without limiting this Part, regulations may –
- (a) prescribe the inspections or tests that are to be conducted during or at the completion of building work, plumbing work or demolition work; and
  - (b) list the inspections and tests that may be specified by a building surveyor, in a certificate of likely compliance for a particular building or incidental structure, as inspections or tests that are to be conducted during or at the completion of the building work; and
  - (c) provide for the persons or classes of persons who may conduct inspections or tests; and
  - (d) provide for the methods to be adopted in the inspection or testing process; and
  - (e) provide for the frequency of inspection or testing or the means for determining whether, when and how often an inspection or test must be conducted; and
  - (f) provide for persons performing building or demolition work to give notice of having reached, or completed, a stage of building or demolition work; and
  - (g) require an inspection certificate to be obtained; and
  - (h) make provision in relation to the form of an inspection certificate; and

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- (i) provide for the keeping of records in relation to matters mentioned in this section; and
  - (j) provide for the reporting of information about matters mentioned in this section.

**292. Fees**

- (1) The Governor may make regulations under this Act to prescribe fees payable –
  - (a) in respect of any application, authorisation, accreditation, referral, permit, certificate, notice or appeal; or
  - (b) for any other matter or service provided under this Act.
- (2) Regulations made under this Act may provide for a minimum or maximum amount of fees.
- (3) Regulations made under this Act may provide for the payment, remitting, refunding and waiving of fees in respect of any matter under this Act.

**293. Exemptions**

The Governor may make regulations under this Act relating to the exemption of –

- (a) any building work or class of building works from any or all provisions of the regulations; or

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- (b) any plumbing work or class of plumbing works from any or all provisions of the regulations; or
- (c) any demolition work or class of demolition works from any or all provisions of the regulations; or
- (d) any person or class of persons from any or all provisions of the regulations; or
- (e) any building or class of buildings from any or all provisions of the regulations.

**294. Savings and transitional**

- (1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act.
- (2) Regulations under subsection (1) may take effect from the commencement of this Act or on a later day.

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**PART 21 – MISCELLANEOUS**

***Division 1 – Building administration fee***

**295. Building administration fee**

- (1) A person who is to perform building work or demolition work, or other prescribed work, under this Act is liable to pay a building administration fee in respect of the work.
- (2) Subsection (1) does not apply in respect of work, if the work has an estimated cost that is less than \$20 000 or such other amount as may be prescribed.
- (3) The amount of the building administration fee payable under subsection (1) in respect of work is –
  - (a) 0.1% of the estimated cost of the work –
    - (i) as specified in the contract to perform the work; or
    - (ii) as estimated by the building surveyor for the work; or
  - (b) such other prescribed amount.
- (4) The building administration fee payable under subsection (1) –
  - (a) in respect of permit work, is payable at the time a permit is granted in respect of the work; or

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- (b) in respect of notifiable work, is payable at the time a certificate of completion is issued in respect of the work; or
  - (c) in respect of low-risk work, is payable within 7 business days after the work is completed or such other prescribed period.
- (5) A building administration fee payable under this Division is to be paid to –
  - (a) the relevant permit authority; or
  - (b) such other person as may be prescribed.

**296. Additional building administration fee payable in certain circumstances**

- (1) If, at the time when permit work is completed, the cost of the work at completion is higher than the estimated cost of the work used to calculate a person's liability to pay the building administration fee under this Division, the person must inform the Director of Building Control, within the specified period after completing the work, of the cost of the work at completion.
- (2) A person who has paid the building administration fee in respect of permit work may be liable to pay an additional amount of the building administration fee in respect of the work if the cost of the work at completion is higher than the estimated cost of the work used

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to calculate the building administration fee as previously paid for the permit work.

- (3) A person who was not previously liable to pay the building administration fee in respect of permit work, due to the estimated cost of the permit work being lower than the applicable amount under section 295(2), may be liable to pay the building administration fee in respect of the work if the cost of the work at completion is equal to or higher than the amount so specified.
- (4) The Director of Building Control –
  - (a) may, within the 12-month period after the completion of the permit work referred to in subsection (2) or (3) –
    - (i) calculate the building administration fee for the work using the cost of the work at completion; and
    - (ii) require the person referred to in subsection (2) or (3) to pay the difference between the building administration fee calculated under subparagraph (i) and the building administration fee paid in respect of the work by the person, if any; and
  - (b) is to notify the person referred to in subsection (2) or (3) in writing that an additional amount of the building administration fee is to be paid in accordance with the written notice.

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- (5) A person referred to in subsection (2) or (3) is liable to pay any additional amount of the building administration fee specified in a written notice given to the person under subsection (4)(b).

**297. Determination of cost of staged building work**

- (1) If –
  - (a) a permit is granted in respect of a stage of work; and
  - (b) no building administration fee was payable in respect of a previous stage of the work –

the estimated cost of the work to be used to determine the amount of the building administration fee payable in respect of the permit is to include the estimated, or actual, cost of that previous stage of the work.
- (2) For the purposes of subsection (1), any permit granted in respect of building work is taken to be granted in respect of a stage of building work if –
  - (a) a building permit was, or ought to have been, granted in respect of previous building work performed on the same building or premises; and
  - (b) a certificate of completion has not been issued in respect of the previous building work at the time the permit is granted.

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**298. Further information to be provided if requested**

- (1) If the building administration fee is payable in respect of permit work, the relevant permit authority may require any of the following persons to produce information about the estimated cost of the work that is to be used to determine the amount of the building administration fee payable under this Part:
  - (a) the applicant for the permit for the work in respect of which the building administration fee is payable;
  - (b) the relevant building surveyor;
  - (c) a builder performing the work;
  - (d) a plumber performing work associated with the work.
- (2) If the building administration fee is payable in respect of notifiable work, the relevant building surveyor may require any of the following persons to produce information about the cost of the work that is to be used to determine the amount of the building administration fee payable under this Part:
  - (a) the applicant for the certificate of likely compliance for the notifiable work in respect of which the building administration fee is payable;
  - (b) a builder performing the work;

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(c) a plumber performing work associated with the work.

(3) A person must comply with a requirement imposed on that person under subsection (1) or (2).

Penalty: Fine not exceeding 100 penalty units.

**299. Payment of building administration fee**

(1) If a building surveyor receives the building administration fee payable in respect of notifiable work, the building surveyor must forward the building administration fee to the relevant permit authority with the standard of work certificate for the notifiable work.

(2) A permit authority to whom a building administration fee has been paid or forwarded –

(a) may retain a specified percentage of the building administration fee; and

(b) is to forward to the Director of Building Control, or other specified body, for payment into the Fund so much of the building administration fee as she or he is not permitted under paragraph (a) to retain.

**300. Offence for non-payment of building administration fee**

(1) The responsible person for permit work in respect of which the building administration fee

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is payable must ensure that the work is not commenced before that building administration fee has been paid.

Penalty: Fine not exceeding 100 penalty units.

- (2) For the avoidance of doubt, a penalty imposed under subsection (1) does not affect the liability of an owner, or applicant, to pay the building administration fee that is owing under this Act in respect of which the penalty has been imposed.

**301. Director of Building Control may waive, refund or recover building administration fee**

- (1) The Director of Building Control may waive or refund all or part of a building administration fee paid under this Division –
- (a) if a permit issued in respect of the work is cancelled; or
  - (b) if the building administration fee paid was calculated with an estimated cost of building work that is higher than the cost of the work calculated at the time the work is completed; or
  - (c) for any reason the Director of Building Control considers appropriate.
- (2) The Director of Building Control may recover a building administration fee payable under this Division as a debt due in a court of competent jurisdiction.

***Division 2 – Offences generally***

**302. Offences by bodies corporate**

- (1) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.
- (2) It is a defence in proceedings under subsection (1) for a person to prove that –
  - (a) the body corporate contravened the provision without the person's knowledge; or
  - (b) the person was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or
  - (c) the person, if in such a position, attempted to prevent the contravention by the body corporate.
- (3) A person may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.
- (4) This section does not affect a liability imposed on a body corporate for an offence committed by it against a provision of this Act.
- (5) For the purpose of this section, the following persons are persons who are concerned in, or

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take part in, the management of a body corporate:

- (a) a director of the body corporate;
- (b) a secretary of the body corporate;
- (c) a person involved in managing the affairs of the body corporate, by whatever name called;
- (d) a receiver and manager of property of the body corporate;
- (e) an administrator of a deed of arrangement executed by the body corporate;
- (f) a liquidator of the body corporate appointed in a voluntary winding-up of the body corporate;
- (g) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

**303. False and misleading statements**

A person, in providing any information, statement, report or document under this Act, must not –

- (a) provide it knowing it to be false or misleading; or

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- (b) omit any matter knowing that without that matter the information, statement, report or document is false or misleading.

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.

**304. Offences relating to Director of Building Control**

A person must not –

- (a) wilfully delay, or obstruct, the Director of Building Control in the exercise of his or her powers under this Act; or
- (b) refuse, or fail, to provide any record or document the person is required to produce under this Act; or
- (c) conceal, or attempt to conceal, any record or document the person is required to provide under this Act; or
- (d) refuse, or fail, to explain or to answer a question as required under this Act; or
- (e) give a false or misleading answer, or explanation, to a question required to be answered under this Act.

Penalty: Fine not exceeding 500 penalty units.

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**305. Offences relating to authorised persons**

A person must not –

- (a) assault, delay, obstruct, hinder or impede an authorised person in the performance of any function or exercise of any power under this Act; or
- (b) forge or counterfeit any written evidence of appointment of an authorised person; or
- (c) make use of any forged, counterfeited or false written evidence of an appointment of an authorised person; or
- (d) refuse to produce records, information or documents if requested to do so under this Act; or
- (e) impersonate an authorised person; or
- (f) falsely pretend to be an authorised person.

Penalty: Fine not exceeding 100 penalty units.

**306. Offences relating to building surveyors**

- (1) A building surveyor must not demand or receive any payment, gratuity or gift in consideration of doing or omitting to do anything relating to the exercise of any power under this Act, other than payment for services rendered under this Act.

Penalty: Fine not exceeding 100 penalty units.

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- (2) A person must not give any payment, gratuity or gift to a building surveyor in consideration of doing or omitting to do anything relating to the exercise of any power under this Act, other than payment for services rendered under this Act.

Penalty: Fine not exceeding 100 penalty units.

**307. Habitation of certain buildings**

- (1) In this section –

*inhabit*, in relation to a building, means to stay, work, sleep, eat or cook in the building.

- (2) A person, without the consent of the relevant general manager, must not inhabit a building that is not built as a dwelling for a cumulative period that exceeds 30 days.

Penalty: Fine not exceeding 50 penalty units.

**308. Restriction on use of land**

Except with the consent of the general manager, a person must not erect a fence, building or any other structure so as to restrict the use, in connection with a building, of any unoccupied area of the land on which it is built.

Penalty: Fine not exceeding 50 penalty units.

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**309. Prosecution of offences**

Proceedings for an offence against this Act or the regulations are to be commenced by an authorised person within the period of 2 years from the date on which evidence of the alleged offence first came to the attention of any authorised person.

**310. Defence of compliance with Act**

In an action for negligence relating to the construction or alteration of buildings or plumbing installations or relating to building work or plumbing work, it is a defence to prove compliance with standards in force at the time of that construction, alteration or work, unless the building, plumbing installation, building work or plumbing work was required to be upgraded under another Act and was not so upgraded.

***Division 3 – Evidence***

**311. Evidentiary provisions**

- (1) The production in any proceedings of a document purporting to be a copy of a determination made by the appeal tribunal under this Act is conclusive evidence of the due making and existence of the determination.
- (2) A court is to take judicial notice of any notice, order or direction given under this Act.

**312. Evidence of compliant building work**

- (1) Unless evidence is provided to the contrary, building work is taken to comply with this Act if it complies with the relevant performance requirements of the National Construction Code.
- (2) Unless evidence is provided to the contrary, building work is taken to comply with the relevant performance requirements of the National Construction Code if –
  - (a) in relation to permit building work –
    - (i) a building permit is issued in respect of the building work; and
    - (ii) a certificate of completion is issued in respect of the building work; and
  - (b) in relation to notifiable building work, a certificate of completion is issued in respect of the building work.

**313. Evidence of compliant plumbing work**

- (1) Unless evidence is provided to the contrary, plumbing work or a plumbing installation is taken to comply with this Act if it complies with the relevant performance requirements of the National Construction Code.
- (2) Unless evidence is provided to the contrary, plumbing work, or a plumbing installation, is taken to comply with the relevant performance

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requirements of the National Construction Code  
if –

- (a) in relation to permit plumbing work –
  - (i) a plumbing permit is issued in respect of the plumbing work;  
and
  - (ii) a certificate of completion is issued in respect of the plumbing work; and
- (b) in relation to notifiable plumbing work, a certificate of completion is issued in respect of the plumbing work.

**314. Evidence of compliant demolition work**

- (1) Unless evidence is provided to the contrary, demolition work is taken to comply with this Act if it complies with the relevant performance requirements of the National Construction Code.
- (2) Unless evidence is provided to the contrary, demolition work is taken to comply with the relevant performance requirements of the National Construction Code if –
  - (a) in relation to permit demolition work –
    - (i) a demolition permit is issued in respect of the demolition work;  
and

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- (ii) a certificate of completion is issued in respect of the demolition work; and
- (b) in relation to notifiable demolition work, a certificate of completion is issued in respect of the demolition work.

**315. Evidence of occupancy permit**

An occupancy permit issued in respect of a building is not prima facie evidence that –

- (a) the building to which it applies complies with this Act; or
- (b) a function control authority has given permission for the building to be used for a particular use.

**316. Evidence of final inspection**

A certificate of final inspection (building) is not evidence that the building or building work to which it applies complies with this Act.

**317. Evidence of compliance**

In any proceedings relating to protection work, a statement of the building surveyor as to whether or not the provisions of the regulations or any drawings or specifications have been complied with is conclusive unless evidence is provided to the contrary.

**318. Evidence of authority**

- (1) In any proceedings relating to work under this Act, evidence in writing of the engagement of a person as a building surveyor by a person purporting to be the owner of the premises is, unless the contrary is shown, taken to be evidence that the building surveyor was engaged by the owner or a person acting on behalf of the owner.
- (2) In any proceedings relating to work under this Act, any application under this Act that is made, or purportedly made, by a person acting as an agent of an owner is, unless the contrary is shown, taken to be evidence that the person was the agent of the owner.

**319. Authentication of documents**

A document requiring authentication by the appeal tribunal is sufficiently authenticated without the seal of the appeal tribunal if it is signed by the chairperson of the appeal tribunal.

**320. Reliance on certification**

- (1) In this section –

*assessable item* includes –

- (a) a material; and
- (b) a design; and
- (c) a form of construction; and

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- (d) a document; and
  - (e) testing of a component, a building system or a plumbing system; and
  - (f) an inspection, or assessment, performed.
- (2) Unless evidence is provided to the contrary, a certificate issued in respect of an assessable item by a person qualified, or purportedly qualified, to certify the assessable item may be relied on by an authorised person as evidence that the assessable item complies with this Act.
- (3) Subsection (2) only applies to the certification of an assessable item in relation to the use of the assessable item as part of –
  - (a) building work, plumbing work or demolition work; or
  - (b) a building, temporary structure or plumbing installation.
- (4) A certificate referred to in subsection (2) is to be in an approved form and contain the specified information.
- (5) For the purposes of a certificate referred to in subsection (2), the Director of Building Control may specify the following matters:
  - (a) the information to be contained in such a certificate;

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- (b) the qualifications required for a person to provide a certificate to be relied on under this Act in respect of an assessable item.

**321. Reliance on actions of others**

If a building surveyor is engaged in respect of work in respect of which another building surveyor has already exercised, refused to exercise or is taken to have refused to exercise his or her powers under this Act –

- (a) the building surveyor may rely on the certification, reports or decisions of the previous building surveyor; and
- (b) unless otherwise directed by the Director of Building Control, the building surveyor is not required to review or inspect work that has been completed before his or her engagement as building surveyor.

**322. Evidence relating to infringement notice**

Evidence of the service, acceptance or withdrawal of an infringement notice is not admissible in any proceedings for the offence to which the notice relates.

***Division 4 – Infringement notices***

**323. Infringement notices**

- (1) The following persons may issue and serve an infringement notice on a person if satisfied that the person has committed a prescribed offence against this Act or the regulations:
  - (a) an authorised person other than a building surveyor;
  - (b) a person authorised in writing by the Director of Building Control to issue and serve infringement notices for the purposes of this Act.
- (2) An infringement notice –
  - (a) is not to relate to 4 or more offences; and
  - (b) is not to be served on a person under the age of 16 years.
- (3) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.
- (4) Any payments made in respect of an infringement notice –
  - (a) are payable to a council if the notice was served by the relevant general manager or the relevant permit authority; or
  - (b) in any other case, are payable into the Fund.

***Division 5 – Liability***

**324. Immunity from liability**

- (1) The Minister, the Director of Building Control, a councillor, a person acting under the direction of the Minister, the Director of Building Control or a member of a council is not personally liable for an act done, or omission made, in good faith when exercising or purportedly exercising a power or when performing or purportedly performing a function under this Act.
- (2) A general manager or permit authority, or a person acting on behalf of a general manager or permit authority, in relying on the action, advice, or certificate of another person exercising a power or performing a function, is not liable for an honest act done or omission made in exercising any power or performing any function under this Act.
- (3) A permit authority is not liable for an honest act done or omission made by a building surveyor under this Act.
- (4) The Director of Building Control, a permit authority or a building surveyor is not liable for an act done, or omission made, in good faith as a result of relying on –
  - (a) a certificate provided in accordance with this Act; or

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- (b) the valid performance of a function, or exercise of a power, by another person as required under this Act; or
- (c) advice provided by a person qualified, or purportedly qualified, to provide the advice.

**325. Immunity from liability for building surveyor**

- (1) A building surveyor is not personally liable for an act done, or omission made, in good faith when exercising or purportedly exercising a power, or when performing or purportedly performing a function, of a building surveyor under this Act.
- (2) A building surveyor is not liable for an act done, or omission made, in good faith as a result of relying on –
  - (a) a certificate provided in accordance with this Act; or
  - (b) the valid performance of a function, or exercise of a power, by another person as required under this Act; or
  - (c) advice provided by a person qualified, or purportedly qualified, to provide the advice.

**326. Accrual of cause of action**

- (1) In this section –

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***cause of action***, in relation to building work  
or plumbing work, means –

- (a) a cause of action for damages,  
other than damages for death or  
bodily injury, incurred as a result  
of –
    - (i) defective building work  
or defective associated  
building work; or
    - (ii) defective plumbing work  
or defective associated  
plumbing work; or
  - (b) a counterclaim to such an action;
- (2) A cause of action for any permit building work  
in respect of a building accrues –
- (a) on the date on which an occupancy  
permit in respect of the building is issued  
after the completion of the permit  
building work; or
  - (b) if that permit is not issued –
    - (i) on the date of the first occupation  
of the building; or
    - (ii) 2 years after the issue of a  
building permit relating to that  
building, if the building is  
intended to be occupied but has  
not been occupied since the

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permit building work was  
completed; or

- (c) if the building is occupied and there is no occupancy permit, on the date on which the work is completed.
- (3) A cause of action for any permit plumbing work accrues –
  - (a) on the date on which a certificate of completion is issued in respect of the permit plumbing work; or
  - (b) if that certificate is not issued –
    - (i) on the date of the first use of the permit plumbing work; or
    - (ii) 2 years after the issue of a plumbing permit relating to that plumbing work, if the plumbing work is not used.
- (4) A cause of action for any permit demolition work accrues –
  - (a) on the date on which a certificate of completion is issued in respect of the permit demolition work; or
  - (b) if that certificate is not issued, 2 years after the issue of a demolition permit relating to the permit demolition work.
- (5) A cause of action for any notifiable work accrues on the date on which a certificate of completion was issued in respect of the notifiable work.

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- (6) A cause of action for any low-risk work accrues on the completion of the work.
- (7) A cause of action referred to in this section cannot be brought –
- (a) in the case of permit work or notifiable work, after a period of 10 years starting on the date on which the cause of the action first accrues; and
  - (b) in the case of low-risk work, after a period of 2 years starting on the date on which the cause of the action first accrues –

whether or not the cause accrues before or after the commencement of this Act.

***Division 6 – General matters***

**327. Documents to be translated**

If a record, document or statement is required to be produced or supplied under this Act and the record, document or statement is in a language other than English, the requirement to produce or supply the record, document or statement includes a requirement to produce or supply a legible English translation of that record, document or statement.

**328. Building Administration Fund**

- (1) The Building Administration Fund established under the *Building Act 2000*, as in force

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immediately before the commencement of this Act, is continued for the purposes of this Act.

(2) The funds of the Fund are to be applied –

- (a) for the administration of this Act; and
- (b) for any other purpose, relating to building, plumbing or demolition matters, the Minister determines.

**329. Transitional and savings provisions**

The transitional and savings provisions set out in Schedule 2 have effect.

**330. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Building and Construction; and
- (b) the department responsible to the Minister for Building and Construction in relation to the administration of this Act is the Department of Justice.

**331. Legislation repealed**

The legislation specified in Schedule 3 is repealed.

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**332. Legislation rescinded**

The legislation specified in Schedule 4 is rescinded.

**333. Legislation revoked**

The legislation specified in Schedule 5 is revoked.

**SCHEDULE 1 – INFORMATION REGISTERS**

Section 27

**1. Registers**

A permit authority must keep a register for each of the following:

- (a) building permits issued by it;
- (b) plumbing permits issued by it;
- (c) authorisations for notifiable work received by it;
- (d) authorisations for notifiable work issued by it;
- (e) certificates of final inspection received by it;
- (f) occupancy permits received by it;
- (g) temporary occupancy permits received by it;
- (h) certificates of completion issued by it;
- (i) building orders received by it or issued by it or a building surveyor or general manager;
- (j) plumbing orders issued by it;
- (k) emergency orders received by it;

- (l) permits of substantial compliance issued by it.

## **2. Records**

A permit authority must keep records in relation to each of the following:

- (a) applications for building permits –
  - (i) granted by it; or
  - (ii) refused by it;
- (b) applications for plumbing permits –
  - (i) granted by it; or
  - (ii) refused by it;
- (c) applications for demolition permits –
  - (i) granted by it; or
  - (ii) refused by it;
- (d) the extension, variation or cancellation of a building permit, demolition permit or plumbing permit.

## **3. Building administration fees records**

A permit authority must keep, for at least 10 years, the following records:

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- (a) records that show the amount of any building administration fee payable under this Act;
- (b) records that show the estimated cost of the building work in relation to which the building administration fee is payable;
- (c) records that show the date on which the building administration fee was paid to the permit authority.

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**SCHEDULE 2 – TRANSITIONAL AND SAVINGS  
PROVISIONS**

Section 329

**PART 1 – PRELIMINARY**

**1. Interpretation**

In this Schedule –

*commencement day* means the day on which  
this Act commences;

*former Act* means the *Building Act 2000*.

**PART 2 – APPOINTMENTS AND FUND**

**2. Director of Building Control**

The person holding the office of Director of Building Control under the former Act immediately before the commencement of this Act is taken, on and after the commencement day, to be appointed as Director of Building Control under section 15 of this Act, subject to the same terms and conditions as applied to his or her appointment under the former Act.

**3. Permit authority**

A person or body authorised as a permit authority by the council of a municipal area for the purposes of the former Act immediately

before the commencement day is taken, on and after the commencement day –

- (a) to have been appointed as the permit authority for the municipal area, on the same terms and conditions, under section 24(2) of this Act; and
- (b) to hold a licence under the *Occupational Licensing Act 2005* that authorises the person or body to perform the functions and exercise the powers of a permit authority, while so appointed, for a period that does not exceed 2 years commencing on the commencement day.

### **PART 3 – APPLICATIONS AND DETERMINATIONS**

#### **4. Determinations under former Act**

A valid determination made under section 55 of the former Act and in force immediately before the commencement day –

- (a) is taken to be a determination validly made under section 13 of this Act; and
- (b) remains in force under that section on the same terms and conditions.

#### **5. Required reports under former Act**

A required report under section 63 of the former Act supplied, or taken to have been supplied, immediately before the commencement day in

respect of work is taken, on and after the commencement day, to be a required report that has been supplied under this Act in respect of that work.

**6. Building and plumbing permits under former Act**

- (1) A valid building permit issued under the former Act that is in force immediately before the commencement day is taken, on and after the commencement day, to be a building permit under Part 11 of this Act issued and in force on the same terms and conditions.
- (2) A valid plumbing permit, or valid special plumbing permit, issued under the former Act that is in force immediately before the commencement day is taken, on and after the commencement day, to be a plumbing permit under Part 12 of this Act issued and in force on the same terms and conditions.
- (3) An application for a building permit under the former Act, that has been made but not determined before the commencement day, is taken, on and after the commencement day, to be –
  - (a) if the application solely relates to permit demolition work, an application for a demolition permit under Part 13 of this Act; or
  - (b) in any other case, an application for a building permit under Part 11 of this Act.

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- (4) An application for a plumbing permit or a special plumbing permit under the former Act, that has been made but not determined before the commencement day, is taken, on and after the commencement day, to be an application for a plumbing permit under Part 12 of this Act.

**7. Certificates of likely compliance under former Act**

- (1) An application for a certificate of likely compliance under section 62 of the former Act, that has been made but not determined before the commencement day, is taken, on and after the commencement day, to be an application under this Act for a certificate of likely compliance.
- (2) A valid certificate of likely compliance granted under the former Act that is in force immediately before the commencement day is taken, on and after the commencement day, to be a certificate of likely compliance issued under this Act and in force on the same terms and conditions.

**8. Written consent under former Act to vary work remains in force**

- (1) A valid written consent provided by a building surveyor under section 85(2) of the former Act to authorise building work to be performed other than in accordance with an certificate of likely compliance issued in respect of the work under the former Act is taken, on and after the commencement day, to be a written approval obtained under section 147(2) of this Act in respect of the building work.

- (2) A valid written consent provided by a permit authority under section 86(2) of the former Act to authorise plumbing work to be performed other than in accordance with a plumbing permit, or special plumbing permit, issued in respect of the work under the former Act is taken, on and after the commencement day, to be a written approval obtained under section 173(2) of this Act in respect of the plumbing work.

**9. Inspection direction under former Act**

- (1) A direction by a building surveyor under section 91 of the former Act as in force immediately before the commencement day is taken, on and after the commencement day, to be a direction under section 149 of this Act on the same terms and conditions.
- (2) A direction by a permit authority under section 91 of the former Act as in force immediately before the commencement day is taken, on and after the commencement day, to be a direction under section 175 of this Act on the same terms and conditions.

**10. Certificate of completion under former Act**

- (1) A certificate of completion issued under the former Act that is in force immediately before the commencement day is taken, on and after the commencement day, to be a certificate of completion for the purposes of this Act.

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- (2) An application for a certificate of completion under the former Act that has been made and not determined before the commencement day, is taken, on and after the commencement day, to be an application under this Act for a certificate of completion (permit building work).

**11. Occupancy permits and temporary occupancy permits under former Act**

- (1) An occupancy permit issued and in force under the former Act immediately before the commencement day is taken, on and after the commencement day, to be an occupancy permit issued and in force under this Act on the same terms and conditions.
- (2) A temporary occupancy permit issued and in force under the former Act immediately before the commencement day is taken, on and after the commencement day, to be a temporary occupancy permit issued and in force under this Act on the same terms and conditions.

**12. Occupancy permit not required in certain circumstances**

A building that, immediately before the commencement day, did not require an occupancy permit or temporary occupancy permit under the former Act does not require an occupancy permit or temporary occupancy permit under this Act while being occupied in the same manner as immediately before the commencement day.

**13. Building certificates under former Act**

- (1) A building certificate issued under section 119 of the former Act, and in force immediately before the commencement day, remains in force, on and after the commencement day, on the same terms and conditions.
- (2) A general manager may not take any action under this Act in relation to a building if such an action would not have been able to be taken under the former Act before the commencement day due to a building certificate that is in force under this Act by virtue of subclause (1).

**14. Matters relating to party walls and party structures under former Act**

- (1) A notice given before the commencement day under section 138(1) of the former Act in respect of a proposed party wall is, on and after the commencement day, taken to be a notice given under section 56 of this Act.
- (2) If –
  - (a) a notice was served before the commencement day under section 141 of the former Act in respect of proposed work on a party structure; and
  - (b) the proposed work was not begun before the commencement day –

that notice is taken to have been given under section 57(2) of this Act.

**15. Matters relating to protection work under former Act**

- (1) A notice of proposed protection work given to an adjoining owner and building surveyor under section 121 of the former Act –
  - (a) is taken to be a notice of proposed protection work given under section 76 of this Act; and
  - (b) the provisions of Part 6 of this Act apply in respect of the notice and the proposed protection work.
- (2) If –
  - (a) a notice of proposed protection work given under section 121 of the former Act relates to proposed protection work to be performed in relation to plumbing work; and
  - (b) the protection work to which the notice relates has not been completed under the former Act –

the person who gave the notice of proposed protection work under the former Act is to provide the relevant permit authority with a copy of the notice of proposed protection work.
- (3) If the Minister appointed an agent for an adjoining owner under section 123 of the former Act, on and after the commencement day that agent is taken to have been appointed as agent for the adjoining owner by the Director of

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Building Control under section 77 of this Act on the same terms and conditions.

- (4) An agreement between an owner and adjoining owners in respect of protection work to be performed under the former Act is taken, on and after the commencement day, to be an agreement between the owner and adjoining owners to perform that protection work, on the same terms and conditions, under this Act.
- (5) If a disagreement in respect of proposed protection work had been referred to a building surveyor under section 126 of the former Act before the commencement day and the building surveyor had not made a determination under that section before the commencement day –
  - (a) on and after the commencement day, that section of the former Act remains in force in respect of the referral until the building surveyor has made a determination under that section; and
  - (b) a determination made under that section is taken, on and after the commencement day, to be a determination under section 80 of this Act on the same terms and conditions.
- (6) A person who holds a contract of insurance in respect of protection work as required under section 131 of the former Act is taken, while he or she holds that contract of insurance for an equal or higher amount, to hold insurance as

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required under section 82 of this Act for the purposes of that protection work.

**16. Reports under former Act**

- (1) A fire upgrading report under section 166 of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a fire upgrading report under section 238 of this Act on the same terms and conditions.
- (2) A dilapidated building report under section 167A of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a dilapidated building report under section 240 of this Act on the same terms and conditions.

**17. Notices under former Act**

- (1) A building notice under section 163 of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a building notice under section 236 of this Act on the same terms and conditions.
- (2) A plumbing notice under section 164 of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a building notice under section 237 of this Act on the same terms and conditions.

- (3) A fire upgrading notice under section 167 of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a fire upgrading notice under section 239 of this Act on the same terms and conditions.
- (4) A dilapidated building notice under section 167B of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a dilapidated building notice under section 241 of this Act on the same terms and conditions.

## **18. Orders under former Act**

- (1) An emergency order under section 162 of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be an emergency order under section 244 of this Act on the same terms and conditions.
- (2) A building order under sections 170, 171, 173 or 173A of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a building order under this Act on the same terms and conditions.
- (3) A plumbing order under section 172 of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a plumbing order under section 249 of this Act on the same terms and conditions.

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- (4) A demolition order under section 191 of the former Act in force immediately before the commencement day is taken, on and after the commencement day, to be a demolition order under section 266 of this Act on the same terms and conditions.

**19. Certificates and permits of substantial compliance and certificates and permits to proceed under former Act**

- (1) An application for a certificate of substantial compliance under section 183 of the former Act, or an application for a certificate to proceed under section 175 of the former Act, that had not been determined before the commencement day is taken, on and after the commencement day, to be an application for a certificate of substantial compliance made under section 254 of this Act.
- (2) A certificate of substantial compliance issued under section 184 of the former Act, or a certificate to proceed issued under section 176 of the former Act, that was in force immediately before the commencement day is taken, on and after the commencement day, to be a certificate of substantial compliance under section 256 of this Act on the same terms and conditions.
- (3) An application for a permit of substantial compliance under section 186 of the former Act, or an application for a permit to proceed under section 178 of the former Act, that had not been determined before the commencement day is taken, on and after the commencement day, to be

an application for a permit of substantial compliance made under section 257 of this Act.

- (4) A permit of substantial compliance issued under section 188 of the former Act, or a permit to proceed issued under section 180 of the former Act, that was in force immediately before the commencement day is taken, on and after the commencement day, to be a permit of substantial compliance under section 259 of this Act on the same terms and conditions.

**17. Appeals and applications for determination under former Act**

- (1) An appeal or application made under Part 12 of the former Act and not determined before the commencement day may, on and after the commencement day, be continued under that Part until determined as if that Part had not been repealed.
- (2) If, but for the commencement of this Act, a person would be eligible to make an appeal or application under Part 12 of the former Act in respect of a matter, the person may make an appeal or application under Part 19 of this Act in respect of the matter.

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**SCHEDULE 3 – LEGISLATION REPEALED**

Section 331

*Building Act 2000* (No. 100 of 2000)

*Building Amendment Act 2006* (No. 20 of 2006)

*Building Amendment Act 2009* (No. 18 of 2009)

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**SCHEDULE 4 – LEGISLATION RESCINDED**

Section 332

*Building Amendment (Installation of Solar Panels)*  
*Regulations 2013* (No. 79 of 2013)

*Building Regulations 2014* (No. 57 of 2014)

*Plumbing Regulations 2014* (No. 58 of 2014)

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**SCHEDULE 5 – LEGISLATION REVOKED**

Section 333

*Proclamation under the Building Act 2000* (No. 93 of 2003)

*Proclamation under the Building (Consequential  
Amendments) Act 2003* (No. 94 of 2003)

*Proclamation under the Building Act 2000* (No. 41 of 2004)

*Proclamation under the Building (Consequential  
Amendments) Act 2003* (No. 42 of 2004)

*Proclamation under the Building Amendment Act 2012* (No.  
103 of 2012)