

CLAUSE NOTES

Building Bill 2016

PART I - PRELIMINARY

- Clause 1:** **Short title**
Sets out the name of the proposed Act.
- Clause 2:** **Commencement**
The Act is to commence on proclamation, to enable administrative processes to be developed for implementation of this Act and for other related legislation that is part of the Government's Building Legislation Framework Review package.
- Clause 3:** **Object of Act**
Sets out the objects of the Act to assist with interpretation.
- Clause 4:** **Interpretation**
Sets out the terms used in the Act and their meanings.
- Clause 5:** **Responsible person**
Defines the "responsible person" for the purposes of this Act. For building or demolition work this is the licensed builder; and for plumbing work this is the licensed plumber, engaged by the owner for the work, but if there is no licensed person, the owner is the responsible person.
- Clause 6:** **Act binds Crown**
Requires the Crown to comply in the same way as everybody else in the community.
- Clause 7:** **Act prevails**
This Act prevails over any other legislation relating to requirements for the design or construction of building or plumbing work.
- Clause 8:** **Delegation**
Powers and functions under this Act can be delegated, except the power of delegation.

Clause 9: Minister to approve certain statutory rules &c.

Subordinate legislation imposing requirements for the design or construction of building and or plumbing work is of no effect unless made with the approval of the Minister. This preserves the status of the National Construction Code as the sole consolidated provisions for technical building and plumbing requirements in Tasmania.

Clause 10: Application of Act to accretions from sea

To clarify that the functions and powers of this Act may be exercised in relation to any bridge, wharf, jetty, boat-house or other structure over water, and to the sea shore. Same clause as provided in the Land Use Planning and Approvals Act 1993.

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

Clause 11: All work must comply with Act and National Construction Code

This Act and the National Construction Code provide the overarching standards with which all work must comply.

Clause 12: Compliance of existing buildings

This clause clarifies that existing building need only comply with the standards that were in force at the time of construction and does not need to be upgraded to current standards unless additional building work is being performed.

Clause 13: National Construction Code may be modified in certain circumstances

The provisions of the NCC may be modified in relation to food premises, farm building or historic buildings under certain circumstances. This allows flexibility in application where a building surveyor or environmental health officer exercises their professional judgment.

Clause 14: Provision of other standards

Other technical standards (including those made by Standards Australia) only apply to building or plumbing work if they are expressly adopted by the NCC.

PART 3 – ADMINISTRATION

Division 1 – Director of Building Control

Clause 15: Director of Building Control

Describes the terms of appointment of the Director of Building Control.

- Clause 16: Functions of Director of Building Control**
Describes the functions of the Director of Building Control, including advising the Minister, liaising with permit authorities, liaising with building, plumbing and demolition industries and their national bodies, facilitating training and auditing performance.
- Clause 17: General powers of Director of Building Control**
Describes the powers of the Director of Building Control including the power to do all things necessary to perform his or her functions.
- Clause 18: Director of Building Control may authorise or accredit products**
Describes the requirements for accrediting building or plumbing products, or systems for use under this Act. A certificate of accreditation or authorisation is evidence that it complies with the requirements of the National Construction Code.
- Clause 19: Director of Building Control may issue guidelines**
Guidelines published by the Director of Building Control may include technical guidance, performance criteria, standards and tolerances, roles or functions of persons performing work under this Act, or procedures, such as for inspections.
Guidelines are practice notes that should be followed.
- Clause 20: Director of Building Control may make determinations**
Determinations published by the Director of Building Control may include types of work in low, medium and high risk categories and any other matters under this Act.
Determinations must be complied with. There is a penalty for non-compliance.
- Clause 21: Assistance to Director of Building Control**
The Director of Building Control may arrange for State Service employees to assist in the performance of his or her duties.
- Clause 22: Compliance audit by Director of Building Control**
Describes the Director's role and responsibilities in relation to conducting compliance audits of the work of persons or bodies specified in section 15(g).
Establishes penalties for persons not complying with written notice or a request to cooperate with an audit.

Clause 23: Publication of documents by Director of Building Control

A document is taken to be published if it is made available for viewing by members of the public, for example on a website.

Division 2 – Permit authorities

Clause 24: Who is a permit authority

Describes the appointment of a permit authority that performs statutory functions under the Act.

The amended *Occupational Licensing Act 2005* allows for the introduction of licensing for permit authorities. This allows the Director of Building Control to require a council to have a licensed person in this role.

The intention is to introduce the new permit authority licence at some stage after the commencement of this Act, following consultation with General Managers.

A number of council staff have already attended a course that would provide the qualification required, and this course continues to be offered at a greatly subsidised rate for local government and state government staff.

Clause 25: Functions of permit authorities

Describes the functions of a permit authority with respect to applications submitted under this Act and compliance activities.

These functions are similar to the current Building Act with regard to plumbing or building work which requires a permit.

Clause 26: Powers of permit authority

Describes the powers that can be exercised by a permit authority in performing its functions, including carrying out inspections and requiring production of records.

Clause 27: Records of permit authority

Describes the requirements regarding keeping and managing information relating to this Act, and the release of that information.

This remains an important role for the permit authority which will be required to retain records of permit work and notifiable work.

Although the permit authority is responsible for keeping the records, it is the council's responsibility to retain the records for the prescribed period.

Division 3 – Building surveyor

Clause 28: Who is a building surveyor

Describes the role, appointment and licensing requirements of a building surveyor. Restrictions on who can be employed are specified, including where a potential conflict of interest may arise.

Establishes a penalty for operating where a conflict of interest occurs.

Establishes a penalty for failing to provide a complete schedule of fees to the person engaging the building surveyor.

This clause strengthens the requirement for the building surveyor to represent the best interests of the owner and so identifies situations where a building surveyor could be seen to have a conflict of interest by being too closely associated with interests of the builder or designer.

In certain circumstances, the Director of Building Control may be appointed as building surveyor, for example if the building surveyor dies, or is removed from the contract. This would normally be an interim arrangement until another building surveyor could be appointed.

Clause 29: Person must not act as building surveyor

Defines the offence of acting as a building surveyor when not engaged to do so, or is not licensed, and the associated penalty.

Clause 30: Functions of a building surveyor

Defines the functions of a building surveyor including issuing certificates, inspections or occupancy permits, providing the permit authority with copies of these, keeping a register of these documents, assessing documentation and granting permission to proceed with building stages following agreed inspections.

Provides the penalty for not performing the specified functions.

Clause 31: Powers of building surveyors

Defines the powers of a building surveyor to enter premises, inspect work, issue notices or orders about defective work, issue directions and require production of documents or records.

Establishes a penalty for failing to comply with a request from building surveyor under this Act.

Clause 32: Building surveyor must exercise powers

Defines an offence where building surveyor fails to perform the appropriate functions or exercise powers, and the associated penalty.

- Clause 33: Building services provider may act as advisor**
A building services provider may provide professional advice without being engaged as a building surveyor, if they have not been engaged as a building surveyor by the person seeking advice.
- Clause 34: Building surveyor may seek second opinion on performance solution**
This clause allows for the engaged building surveyor to seek another opinion from a second licensed building surveyor, regarding complex, difficult or novel performance-based building solutions, to ensure compliance with the National Construction Code
- Clause 35: Only one building surveyor to be appointed for work**
Creates an offence of having more than one building surveyor engaged at the same time, and identifies the penalty for doing so.
The intention of this clause is to prevent “building surveyor shopping” by owners, unhappy with a direction to comply with the Act.
- Clause 36: Change of building surveyor at owner’s request**
Owners cannot unilaterally remove their building surveyor until they have exercised all their statutory functions. That prevents “building surveyor shopping”. Only the Director of Building Control may consent to the removal of a building surveyor. Grounds for removal include incapacity to perform functions, no longer qualified or has engaged in professional misconduct.
Identifies a penalty for removing a building surveyor without consent.
- Clause 37: Change of building surveyor at building surveyor’s request**
A building surveyor cannot resign from their engagement without consent from the Director. However their resignation is permitted if it is more than three years since they were engaged. If a building surveyor resigns, all relevant documentation must be forwarded to the permit authority.
Establishes a penalty for such an offence.
- Clause 38: Change of building surveyor where both parties agree**
If both the owner and the building surveyor agree to the building surveyor referring the matter to another building surveyor, consent of the Director is not required. Any change of building surveyor requires the relevant permit authority to be notified.
- Clause 39: Transfer of documents in certain circumstances**
A former building surveyor is required to transfer all documentation relating to their work as a building surveyor if so requested by the owner. If there is

no request, the building surveyor must forward the documents to the permit authority within 28 days of cessation of that engagement.

Establishes a penalty for non-compliance.

Clause 40: Notification of change of building surveyor

If a new building surveyor is appointed in accordance with section 39, the permit authority must be notified.

A new building surveyor is not required to inspect or review the work of the previous building surveyor unless they consider it necessary.

Division 4 – Other authorities

Clause 41: Councils

Responsibility of council with regard to work under this Act, including ensuring property owners are aware of their responsibilities, making itself aware of work under this Act, the use and occupation of buildings and to institute proceedings and enforce orders where appropriate.

Identifies that the general manager of a council is an authorised person and may enter premises or land for performing compliance functions under this Act.

Clause 42: Other professionals and experts

Identifies the requirement to only act within one's area of expertise when providing building or plumbing professional services under this Act.

PART 4 – PARTIES TO WORK

Division 1 - Designers

Clause 43: Designers

Outlines the requirements for designers under this Act, including working within area of competence, being appropriately licensed and meeting the required standards.

It is an offence to operate unlicensed.

Clause 44: Minimum standards of design work

Sets out the minimum standards for design work, including producing designs that are likely to result in work complying with the National Construction Code, including in the use of performance solutions.

Division 2 - Builders

Clause 45: Builders

Outlines the requirements for builders under this Act, including working within area of competence, being appropriately licensed, obtaining required permits and meeting the required standards.

A builder must ensure work is undertaken safely, with respect to people and property, and comply with any directions under this Act.

Identifies the penalty for operating without a licence.

Clause 46: Owner builders

An owner builder has the same duties as a licensed builder and they, where required by the Occupational Licensing Act 2005, must obtain an owner builder permit for performance of proposed work.

Clause 47: Minimum standards for building work

The builder has responsibility for ensuring work complies with this Act and meets national standards.

Division 3 - Plumbers

Clause 48: Licensed plumbers

Outlines the requirements for plumbers under this Act, including working within area of competence, being appropriately licensed, obtaining required permits and meeting the required standards.

A plumber must ensure work is undertaken safely, with respect to people and property, and comply with any directions under this Act.

Clause 49: Minimum standards of plumbing work

Gives the person responsible for plumbing work responsibility for ensuring work complies with this Act and meets national standards.

Clause 50: Owners

Sets out responsibilities of owners, including engaging licensed persons, providing correct information, ensuring any adjoining buildings are protected, notifying the permit authority of a change of the responsible person or building surveyor, and ensuring a permit has not expired before the completion of work.

Clause 51: Change of parties involved in certain building work

Sets out the responsibilities of the owner to inform building surveyor of the building services providers undertaking work and notify the building surveyor if this changes, or the owner changes before the building work is complete.

Establishes penalty for failing to notify any changes.

Clause 52: Change of parties involved in certain plumbing work

Sets out the responsibilities of the owner to inform the permit authority of who is undertaking plumbing work and notify the permit authority if this changes, or the owner changes before the plumbing work is complete.

Establishes penalty for failing to notify any changes.

PART 5 – SPECIAL CATEGORIES OF WORK

Division 1 – Works on existing buildings

Clause 53: Existing buildings to be upgraded if altered

Sets out the conditions under which changes (new works) to an existing building will trigger the requirement to upgrade the entire building to comply with the NCC, and the conditions under which the building surveyor may consent to partial compliance.

This means that some work can be done without having to bring the building up to today's standards, but if more than half of the volume of the original building is being altered, the entire building must be brought up to today's standards.

The provision allows for the building surveyor to apply their professional judgement in applying appropriate concessions from the full application of NCC to the works, so long as occupant safety and the structural integrity of the building is not compromised.

This provision provides clarity when extensive alterations and additions to an existing building will trigger an upgrade of the existing parts and allows a holistic approach to the safety requirements in building complexes.

Clause 54: Alteration to existing exits and paths to exits

Sets out the requirement for compliance with the NCC regarding exits and paths to exits, following new building work, and the conditions under which a building surveyor may consent to partial compliance.

Clause 55: Change of building use or classification

Sets out the requirements and restrictions regarding a change of use of a building, where that new use would have different requirements under the NCC.

It also provides for where the building's Classification under the NCC changes and that changed Class would have different requirements under the NCC, then new work is required to meet those requirements.

There are penalties for non-compliance.

This is to ensure that the building is still safe for occupation following a change of use.

Clause 56: Party walls

Sets out the process and requirements for building a party wall, including the rights of both parties who jointly own that wall. With minor changes this part continues provisions in the Building Act 2000 relating to party structures.

Clause 57: Party structures

Sets out the responsibility and process for performing work on a party structure (walls or floors separating buildings).

Establishes penalties for non-compliance.

Clause 58: Rights of adjoining owners

Sets out the rights of owners of adjoining properties where building work is being done.

Establishes penalty for failure to comply with a written request.

Clause 59: Reply to notices

No response to notices regarding proposed work is taken as to be an agreement.

Clause 60: Work on party structures to be performed if agreed

This protects the rights of an owner of an adjoining premises to not have work undertaken on any shared wall or structure without their agreement.

Clause 61: Entry to premises

Sets out the conditions for entry by an owner to adjoining land or premises while building work is being undertaken. At least 14 days' notice must be given.

Clause 62: Expenses payable by owners

Sets out responsibility and process for meeting expenses for the owner and the adjoining owner. Usually costs are shared equally if both owners use that structure.

Clause 63: Liability not affected
Confirms that liability continues and protection work may be completed without being subject to proceedings for an injunction.

Clause 64: Savings for easements
Legal rights in respect of a demolished or rebuilt party wall are preserved.

Clause 65: Resolution of differences
Sets out the dispute resolution process for any difference arising between an owner and an adjoining owner.

Division 3 – Works in hazardous areas

Clause 66: Interpretation
Defines what are the existing landslip areas A and B declared under the Mineral Resources Development Act 1995.

Clause 67: Works in landslip areas
Sets out the restrictions on building work in a declared landslip area, and the associated penalties for non-compliance.

Clause 68: Compensation not payable for certain damage to buildings erected in known landslip areas
Once a landslip area has been registered, no compensation or other relief is payable for any damage caused by earth movement to a building erected since that area was registered.

Clause 69: Works on contaminated or undrainable premises
Sets out restrictions on performing building work on land that is contaminated or undrainable, and the associated penalties for non-compliance.

Clause 70: Works on or around building line
Defines a building line and establishes an offence for erecting a building between the building line and the boundary of a road.

Clause 71: Works that amend existing building boundary
Sets out the responsibilities of a person intending to change an allotment or strata title boundary, whereby that action may bring an existing building into non-compliance with the Act (fire separation is removed).

Establishes an offence for non-compliance.

Clause 72: Works involving, or in proximity of, existing drains

Sets out restrictions on performing building work over an existing drain, and specifies the powers of the general manager to impose conditions on such work.

Establishes an offence for non-compliance.

Clause 73: Works involving, or in proximity of, service easements

Sets out restrictions on performing building work over or near a service easement.

Establishes an offence for non-compliance.

PART 6 – PROTECTION WORK

Clause 74: Interpretation

Defines terms used in this Part.

Clause 75: Protection work

Sets out when protection work must be undertaken and who by.

Clause 76: Notice of proposed protection work

Requires an owner who is required by the Building Regulations to carry out protection work (where building up to adjoining land) to notify the building surveyor and the adjoining owner. Provides for the format of the notification. Sets out the duties of the owner regarding proposed protection work and the information that must be made available to adjoining owners, building surveyor, and/or permit authority.

Establishes an offence for non-compliance.

Clause 77: Absent or incapable adjoining owner

The Director of Building Control can appoint an agent if the adjoining owner is absent or incapable of responding to a notice.

Clause 78: Adjoining owner may respond to protection work notice

Sets out the options and processes regarding the response of an adjoining owner with regard to a protection work notice.

Failure to respond within the prescribed period is taken as agreement.

- Clause 79: Protection work to be performed if agreed**
Protection work must not be performed unless all adjoining owners have agreed, or are taken to have agreed.
- Clause 80: Effect of disagreement in relation to proposed protection work**
Sets out the process for dealing with a disagreement over protection work.
Provides that if there is no agreement then the owner is to refer the matter to a building surveyor who is to examine the proposed protection work and determine if it is appropriate. In determining the matter the building surveyor may make inquiries and require additional information to be provided. The building surveyor is required to give the owner and the adjoining owner notice of his or her determination.
- Clause 81: Carrying out protection work**
Establishes the penalty for not carrying out protection work in accordance with this Act.
- Clause 82: Insurance cover**
Sets out requirements for owner to have appropriate insurance before performing protection work. The amount of the insurance to be agreed to by the parties.
Establishes an offence for non-compliance.
- Clause 83: Condition of adjoining premises**
Sets out responsibilities of an owner to assess and record the condition of an adjoining building before carrying out protection work.
- Clause 84: Entry to carry out protection work**
Sets out process for entering adjoining land or a building to perform agreed protection work.
Establishes an offence for non-compliance.
- Clause 85: Offence to prevent protection work**
Establishes an offence for preventing, obstructing or hindering protection work.
Establishes an offence for non-compliance.

- Clause 86: Plans of protection work**
Sets out requirement of owner to provide a complete set of drawings and specification of the work carried out to adjoining owners, the building surveyor, and/or permit authority.
Establishes an offence for non-compliance.
- Clause 87: Expenses of adjoining owner**
Sets out responsibility for any costs and expenses incurred by an adjoining owner regarding protection work.
- Clause 88: Compensation**
Sets out responsibility for compensation if any inconvenience, loss or damage results from protection work.
- Clause 89: Failure to perform adequate protection work**
Establishes penalty if owner fails to ensure that protection work is carried out in accordance with agreement and the NCC.
Establishes an offence for non-compliance.

PART 7 – LOW-RISK WORK

- Clause 90: Low-risk work**
The Director of Building Control may determine what constitutes low-risk building work, plumbing work or demolition work.
- Clause 91: Application of Act to low-risk work**
This Act and standards under the NCC still apply to low-risk work.

PART 8 – NOTIFIABLE BUILDING WORK

Division 1 - General

- Clause 92: Notifiable building work**
Work types have been determined by the Director based on risk to occupants or the public.
The Director of Building Control may determine building work that is classified as notifiable.
Only low to medium risk work is to be categorised as “notifiable”. High risk work will still require a building permit.

Notifiable building work is work that can be performed without a building permit, but the relevant permit authority must be notified once a certificate of likely compliance has been issued by a building surveyor.

Clause 93: Requirements for notifiable building work

Sets out the requirements for notifiable building work, including being designed by a designer, performed by a licensed builder and inspected in accordance with this Act by a building surveyor.

Clause 94: Building surveyor to be engaged in respect of notifiable building work

A building surveyor must be engaged where notifiable building work is proposed.

Establishes an offence to not engage a building surveyor for this type of work.

Division 2 – Before performing notifiable building work

Clause 95: Notification before performing notifiable building work

Sets out the conditions for performing notifiable building work, and establishes an offence for failing to comply with these requirements.

Clause 96: Notice of work

Requires that the responsible builder is to notify the building surveyor, to receive their authorisation to start the work as described on the Certificate of Likely Compliance (CLC). A notice of work specifies details of the work to be performed. It must be in a form specified by the Director of Building Control and include the prescribed information.

It must be given to the building surveyor to enable the building surveyor to assess the proposed work.

A new notice must be provided if the work to be performed changes significantly, or the responsible person changes.

Clause 97: Certificate of likely compliance (notifiable building work)

When a building surveyor receives a notice of work it is assessed to determine whether the proposed work is likely to comply with this Act. This includes determining whether the work proposed is actually notifiable work or should instead be permit work.

If the building surveyor is satisfied that the proposed work is likely to comply with this Act, he or she should issue a certificate of likely compliance and ensure that a copy is lodged with the relevant permit authority.

If a building surveyor refuses to issue this certificate, they must notify the responsible person in writing and provide reasons for the refusal.

Division 3 – Performance of notifiable building work

Clause 98: Performing notifiable building work

Notifiable building work must not be started until a certificate of likely compliance (notifiable building work) is in force, the building surveyor has been informed of the intention to start work and they have provided authorisation for the work to start.

Establishes an offence for starting work without these steps being completed.

The work must be completed in accordance with the notice of work and certificate of likely compliance. It is an offence not to comply.

If the responsible builder changes, the work must stop until the building surveyor has been informed of the new builder.

Clause 99: Inspection of notifiable building work

Sets out the duties of a building surveyor with regard to inspections of notifiable building work.

The Director of Building Control may issue guidelines regarding the number and type of inspections that should take place for notifiable work.

Clause 100: Directions relating to non-compliant notifiable building work

A building surveyor who discovers non-compliant notifiable building work is to direct the builder to perform rectification work so that it complies with the certificate of likely compliance and this Act.

A direction may be given orally or in writing and if given orally requires that it be confirmed in writing. Details the action which can be taken if a person fails to comply.

Division 4 – Completion of notifiable building work

Clause 101: Completion of notifiable building work

When notifiable building work has been completed, the building surveyor must be notified and will then arrange to inspect the completed work.

Establishes an offence for non-compliance.

Clause 102: Standard of work certificate (notifiable building work)

The responsible person must provide a standard of work certificate (notifiable building work) in an approved form to the building surveyor and owner within a prescribed period of building work being completed.

This certifies that the work has been completed according to the design and is in accordance with the standards of the National Construction Code.

A copy of any “as constructed” plans for variations made to the notified work must also be provided to the building surveyor.

Notifiable work is not taken to be complete until it has been inspected.

Clause 103: Certificate of completion (notifiable building work)

Requires building work to be completed within a specified period and the owner or agent to obtain a certificate of completion. The period will be specified by the Director.

A building surveyor is to issue a certificate of completion for the building work if all the documents have been provided and all conditions of the certificate of likely compliance are met.

PART 9 – NOTIFIABLE PLUMBING WORK

Division 1 – General

Clause 104: Notifiable plumbing work

Notifiable plumbing work is general low to medium risk plumbing work that can be competently performed by a licensed plumber. Notifiable plumbing work does not require a plumbing permit.

The Director of Building Control will determine plumbing work which is classed as “notifiable”.

Clause 105: Requirements for notifiable plumbing work

Sets out the requirements for notifiable plumbing work including being designed by a licensed designer and performed by a licensed plumber.

Division 2 – Before performing notifiable plumbing work

Clause 106: Notification before performing notifiable plumbing work

When notifiable plumbing is proposed, a notice of work must first be given to a permit authority who will assess the work and determine whether it is likely to comply with this Act and the NCC, and if it is appropriate as notifiable work.

If the permit authority is satisfied, a certificate of likely compliance (notifiable plumbing work) will be issued.

Work must not begin until these steps have been completed and a notice of work provided.

The work to be performed must be in accordance with the certificate of likely compliance (notifiable plumbing work) and performed by the responsible person or under supervision of the responsible person.

Establishes an offence for non-compliance.

Clause 107: Notice of work

Sets out the requirements for a notice of work to the permit authority for notifiable plumbing work.

Clause 108: Certificate of likely compliance (notifiable plumbing work)

Sets out the matters that the permit authority is to take into account before granting a certificate of likely compliance (notifiable plumbing work).

Division 3 – Performance of notifiable plumbing work

Clause 109: Performing notifiable plumbing work

Once a certificate of likely compliance (notifiable plumbing work) has been issued, the responsible person must notify the relevant permit authority that work is going to begin and receive authorisation to start.

The work must be performed in accordance with the notice of work provided and certificate of likely compliance (notifiable plumbing work).

If the responsible person changes, work must stop and the permit authority must be notified by the proposed new responsible person before work can continue.

Establishes an offence for non-compliance.

Clause 110: Inspection of notifiable plumbing work

The Director of Building Control may issue guidelines for the types and number of inspections of notifiable plumbing work by the permit authority.

The permit authority may determine the number of inspections within these guidelines.

Clause 111: Directions relating to non-compliant notifiable plumbing work

A permit authority who discovers non-compliant notifiable building work is to direct the plumber to perform rectification work so that it complies with the certificate of likely compliance and this Act.

A direction may be given orally or in writing and if given orally requires that it be confirmed in writing. Details the action which can be taken if a person fails to comply.

Division 4 – Completion of notifiable plumbing work

Clause 112: Completion of notifiable plumbing work

When notifiable plumbing work is completed, the responsible person must notify the relevant permit authority who will then arrange an inspection.

It is an offence to fail to notify the permit authority.

Clause 113: Standard of work certificate (notifiable plumbing work)

The responsible person must provide a standard of work certificate (notifiable plumbing work) to the permit authority and the owner.

This certifies that work has been completed in accordance with designs and national standards.

A copy of any “as constructed” plans of the work should also be provided to the permit authority.

When notifiable plumbing work has been inspected and found to be compliant, only then is it considered to be completed.

Clause 114: Certificate of completion (notifiable plumbing work)

Requires notifiable plumbing work to be completed within a specified period and the owner or agent to obtain a certificate of completion. The period will be specified by the Director.

A permit authority is to issue a certificate of completion for the building work if all the documents have been provided and all conditions of the certificate of likely compliance are met.

PART 10 – NOTIFIABLE DEMOLITION WORK

Division 1 - General

Clause 115: Notifiable demolition work

Demolition work has been clearly separated from building work in this Act as different considerations apply to its assessment and performance.

As for building and plumbing work, some demolition work is considered to have low or medium risk and therefore has a simpler approval process.

The Director of Building Control may determine which demolition work is classed as notifiable demolition work.

Clause 116: Requirements for notifiable demolition work

Notifiable demolition work must be designed by an appropriately qualified designer (for site plans and of process of demolition work), performed by an

appropriately licensed person (builder or demolisher) and may be inspected by a building surveyor in accordance with this Act.

Clause 117: Building surveyor to be engaged in respect of notifiable demolition work

A building surveyor must be engaged before starting any notifiable demolition work.

Establishes an offence for non-compliance.

Division 2 – Before performing notifiable demolition work

Clause 118: Notification before performing notifiable demolition work

Before performing notifiable demolition work, the responsible person must have given a notice of work to their building surveyor and received a certificate of likely compliance,

Establishes an offence for non-compliance.

Clause 119: Notice of work

The notice of work for notifiable demolition work must be provided to the building surveyor and specify the proposed work to be performed. If the work is to be substantially different to that specified, a new notice of work must be provided.

If the responsible person changes, the building surveyor must be notified.

Clause 120: Certificate of likely compliance (notifiable demolition work)

When a building surveyor receives a notice of proposed demolition work, they will assess the work to ensure it complies with the notifiable work category, appropriate protection work has been carried out, or planned, and all documentation has been received including any other required permits, consents or orders.

If the building surveyor is satisfied the work will comply, and appropriate fees have been paid, he or she will issue a certificate of likely compliance (notifiable demolition work) and forward a copy to the relevant permit authority.

If the building surveyor refuses to issue the certificate they must advise the person responsible in writing and provide reasons for the refusal.

Demolition work should be completed within 12 months of the certificate being issued or the certificate will expire.

Division 3 – Performance of notifiable demolition work

Clause 121: Performing notifiable demolition work

Demolition work must not begin until the certificate of likely compliance (notifiable demolition work) has been issued, the building surveyor has been notified of the intention to start work and authorisation has been received.

Work must be performed in accordance with the most recent notice or work and the certificate of likely compliance, and the building surveyor notified of any change of responsible person.

Establishes an offence for non-compliance.

Clause 122: Inspection of notifiable demolition work

The Director of Building Control may issue guidelines for the inspection of notifiable demolition work, and a building surveyor may inspect work within these guidelines.

Clause 123: Directions relating to non-compliant notifiable demolition work

A building surveyor who discovers non-compliant notifiable demolition work is to direct the builder or demolisher to perform rectification work so that it complies with the certificate of likely compliance and this Act.

A direction may be given orally or in writing and if given orally requires that it be confirmed in writing. Details the action which can be taken if a person fails to comply.

Division 4 – Completion of notifiable demolition work

Clause 124: Completion of notifiable demolition work

When notifiable demolition work is complete, the responsible person must notify the building surveyor who will then arrange an inspection.

Clause 125: Standard of work certificate (notifiable demolition work)

the responsible person must provide the building surveyor and the owner with a standard of work certificate, which certifies that the work has been completed in accordance with the design and relevant standards.

Clause 126: Certificate of completion (notifiable demolition work)

Requires notifiable demolition work to be completed within a specified period and the owner or agent to obtain a certificate of completion. The period will be specified by the Director.

A building surveyor is to issue a certificate of completion for the demolition work if all the documents have been provided and all conditions of the certificate of likely compliance are met.

PART 11 – PERMIT BUILDING WORK

Division 1 – General

Clause 127: Permit building work

Permit building work is all high risk building work that is inappropriate for the low-risk or notifiable categories. Permit work is formally approved by the involvement of the building surveyor and the permit authority in a similar process as work under the *Building Act 2000*.

Clause 128: Requirements for permit building work

Like notifiable building work, permit building work must be designed by a licensed designer, performed by a licensed builder and inspected by a building surveyor.

Division 2 – Before performing permit building work

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

Clause 129: Application for certificate of likely compliance (permit building work)

The first step in gaining a permit is to apply to the building surveyor for a certificate of likely compliance (permit building work) as a technical assessment of the proposed work.

This clause sets out the process.

Clause 130: Required report from reporting authority

A report may be required under the Building Regulations in respect of the proposed work. This may be related to a fire safety issue, or in relation to food premises. The regulations will prescribe the Reporting Authorities. .

The building surveyor must receive the report before granting the certificate of likely compliance, unless the reporting authority has failed to supply it within the prescribed period.

- Clause 131: Determining application for certificate of likely compliance (permit building work)**
The building surveyor must take into account certain matters when assessing the application and may then grant a certificate of likely compliance (permit building work).
- Clause 132: Refusing application for certificate of likely compliance (permit building work)**
If the building surveyor refuses an application for a certificate of likely compliance (permit building work), he or she must notify the applicant and the relevant permit authority in writing and include the reasons for their refusal.
- Clause 133: Granting application for certificate of likely compliance (permit building work)**
If a building surveyor grants an application for a certificate of likely compliance (permit building work), it may be granted with conditions. The building surveyor must then issue the applicant with the certificate and provide a copy to the owner if this is not the applicant.
- Clause 134: Duration of certificate of likely compliance (permit building work)**
Certificate lapses after 12 months unless submitted as part of an application for a building permit.
- Clause 135: Variation of certificate of likely compliance (permit building work)**
Allows for variation of a certificate of likely compliance (permit building work) already issued.
- Clause 136: Revocation of certificate of likely compliance (permit building work)**
Sets out the circumstances under which a certificate of likely compliance can be revoked by the engaged building surveyor or by Director of Building Control.
- Clause 137: Building permit required before performing permit building work**
Building work which requires a permit must not be started before a building permit has been granted by the permit authority.
Establishes an offence for non-compliance.
As well as a fine, a permit authority may take other compliance action to ensure the work complies with this Act.
- Clause 138: Application for building permit**
Once an applicant has been issued with a certificate of likely compliance (permit building work), they can apply to the permit authority for a building

permit. The application must be accompanied by the certificate and the appropriate building administration fee, and any other required documentation or fees.

Clause 139: Additional application requirements for alternative performance solutions

If the proposed work uses a performance solution under the NCC (an alternative building solution meaning a complex, novel or unusual methodology is proposed) then additional information is required in an application for a building permit in those circumstances.

Clause 140: Determining application for building permit

When a permit authority receives an application for a building permit they may take a number of actions to take into account information to assist them in determining the application, including: consulting with other persons, requesting further information. There is also taken into consideration the stability of the site and suitability of the premises for the proposed work, check protection work will be performed and means of road access to premises.

A permit authority requires all fees to be paid before an application is granted.

Clause 141: Refusal of application for building permit

If a permit authority refuses an application for a building permit, they must notify the applicant in writing and provide reasons for the refusal.

Clause 142: Granting of application for building permit

If a permit authority grants a building permit, they may do so subject to any relevant and reasonable conditions. The permit will be issued to the applicant, with a copy to the owner, the building surveyor and the licensed builder named on the permit, or any other prescribed persons.

The permit may be issued as a staged permit where the certificate of completion is only required with respect to the last stage.

Clause 143: Form of building permit

Identifies the form and content of a building permit.

Clause 144: Conditions on building permit

Sets out the circumstances under which conditions may be added, varied or revoked on a building permit.

Clause 145: Duration of building permit

Sets out the conditions under which a permit will expire, to ensure that work is completed within a reasonable time frame. If no work within 12 months it expires. If work is started within the 12 months it must be completed within two years where possible.

Clause 146: Extension of duration of building permit

The duration of a building permit may be extended beyond two years if the owner submits an application and fee which meets the Director's requirements and that application is approved by the permit authority.

Division 3 – Performance of permit building work

Clause 147: Permit building work must be performed in accordance with building permit

Establishes the penalty for performing permit building work without a building permit, and identifies the conditions under which a building surveyor may approve any building work that varies from the permit granted.

Clause 148: Inspection of permit building work

Inspections are an important part of identifying issues at an early stage.

There are mandatory inspection stages, where the responsible person must notify the building surveyor so the work can be inspected. A building surveyor may also choose to inspect at any stage or arrange an inspection by another appropriate person.

The building inspector can request that building work be demolished, opened, cut into or tested if reasonably required for an inspection to be carried out.

It is an offence to proceed beyond a mandatory inspection stage without an inspection having taken place or the consent of the building surveyor to proceed.

Clause 149: Directions relating to non-compliant permit building work

If work is found to be non-compliant during an inspection, the building surveyor can give an inspection direction for the work to be rectified, if the builder fails to comply with this direction, the building surveyor can issue a legally enforceable building order.

Division 4 – Completion of permit building work

Clause 150: Standard of work certificate (permit building work)

When the permit building work has been completed, the responsible person must provide a standard of work certificate to the building surveyor and owner.

This certifies that the work has been completed in accordance with plans, and with this Act. The certificate should be accompanied by a copy of “as constructed” plans if not previously provided, so that a complete record of the building work as performed is available.

Clause 151: Certificate of final inspection (building)

Once the building work is complete and a final inspection has been carried out, a building surveyor may issue a certificate of final inspection (building) indicating that the work has been completed in accordance with this Act, as far as it is reasonably practicable to inspect.

A copy of this goes to the applicant/ owner, and to the permit authority and builder specified in the permit.

Clause 152: Certificate of completion (permit building work)

Following the receipt of a certificate of final inspection (building), the standard of work certificate and all other relevant certificates (for example a certificate of completion (plumbing)) a person may apply to the relevant permit authority for a certificate of completion (building).

This is the final step in the permit building process.

PART 12 – PERMIT PLUMBING WORK

Division 1 – General

Clause 153: Permit plumbing work

Defines permit plumbing work as covering all high risk work relating to plumbing or drainage.

Clause 154: Requirements for permit plumbing work

Permit plumbing work must be designed by a designer and performed by a licensed plumber.

Division 2 – Before performing permit plumbing work

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

- Clause 155: Application for certificate of likely compliance (permit plumbing work)**
Sets out the process for applying for a certificate of likely compliance for proposed plumbing work, and the matters that the permit authority is required from the applicant to assess that application.
- Clause 156: Required report from reporting authority**
A certificate of likely compliance (permit plumbing work) is not to be granted with regard to the proposed work if a report is required by the Plumbing Regulations.
- Clause 157: Determining application for certificate of likely compliance (permit plumbing work)**
Sets out the matters that of the permit authority is to take into account to assess that application for a certificate of likely compliance (permit plumbing work).
- Clause 158: Refusing application for certificate of likely compliance (permit plumbing work)**
If the proposed plumbing work is not likely to comply with the Act, the permit authority is to refuse to grant the application and must notify the applicant in writing, including the reasons for refusal.
- Clause 159: Granting application for certificate of likely compliance (permit plumbing work)**
Sets out the process for granting a certificate of likely compliance for proposed permit plumbing work, and what the permit authority is to be satisfied of.
- Clause 160: Duration of certificate of likely compliance (permit plumbing work)**
Sets out the conditions under which a certificate will expire, to ensure that work is completed within a reasonable time frame where possible.
- Clause 161: Variation of certificate of likely compliance (permit plumbing work)**
Allows for variation of a certificate of likely compliance (permit plumbing work) with the consent of the permit authority.

Clause 162: Revocation of certificate of likely compliance (permit plumbing work)
Sets out the conditions under which a permit authority may revoke a certificate of likely compliance (permit plumbing work).

Subdivision 2 – Plumbing permit

Clause 163: Plumbing permit required before performing permit plumbing work
Establishes an offence for performing permit plumbing work without a plumbing permit.

Clause 164: Application for plumbing permit
Sets out the process for applying for a plumbing permit, once a certificate of likely compliance (permit plumbing work) has been granted.

Clause 165: Additional application requirements for alternative performance solutions
Sets out the requirements for additional information and evidence that must be included if the proposed plumbing work includes a performance solution (an alternative solution) under the NCC if the proposed work uses a performance solution under the NCC (an alternative plumbing solution, meaning a complex, novel or unusual methodology is proposed).

Clause 166: Determining application for plumbing permit
Sets out the powers available to the permit authority in seeking to determine an application for a plumbing permit, including carrying out inquiries, consulting with other persons, requiring further information, and taking into account the stability of the site and suitability of the premises proposed for the permit plumbing work.

Clause 167: Refusal of application for plumbing permit
Sets out the circumstances under which a permit authority is to refuse an application for a plumbing permit, and the requirement of notifying the applicant of the refusal.

Clause 168: Granting of application for plumbing permit
Sets out the process for granting an application for a plumbing permit and the persons to whom a copy is provided.

Clause 169: Form of plumbing permit
Sets out the form and content of a plumbing permit.

- Clause 170: Conditions on plumbing permit**
Sets out the circumstances under which a permit authority may impose relevant and reasonable conditions on a plumbing permit.
- Clause 171: Duration of plumbing permit**
Sets out the conditions under which a plumbing permit expires to ensure that work is completed in a reasonable timeframe. (work to be started within 12 months and completed within 2 years)
- Clause 172: Extension of duration of plumbing permit**
The duration of a plumbing permit may be extended if a person submits an application and fee and is approved by the permit authority.

Division 3 – Performance of permit plumbing work

- Clause 173: Permit plumbing work must be performed in accordance with plumbing permit**
Establishes an offence for performing permit plumbing work without a plumbing permit.
Work permitted may be varied with the written consent of the permit authority.
- Clause 174: Inspection of permit plumbing work**
Establishes an offence for continuing work beyond a mandatory notification stage before an inspection has been completed or the prescribed period for waiting for an inspection has elapsed.
- Clause 175: Directions relating to non-compliant permit plumbing work**
Sets out the actions that may be taken if work is found to be non-compliant during an inspection. The permit authority may issue an inspection direction to rectify and if that is not complied with, a plumbing notice or order.

Division 4 – Completion of permit plumbing work

- Clause 176: Standard of work certificate (permit plumbing work)**
Following the completion of permit plumbing work, the responsible person must provide a standard of work certificate (permit plumbing work) certifying that the work complies with the permit, the design and the NCC.

- Clause 177: **Certificate of completion (permit plumbing work)**
Sets out the conditions under which a permit authority may grant a certificate of completion (plumbing).

PART 13 – PERMIT DEMOLITION WORK

Division 1 – General

- Clause 178: **Permit demolition work**
Defines permit demolition work, which is all high risk demolition work.
- Clause 179: **Requirements for permit demolition work**
Sets out the requirements for permit demolition work including being performed by a licensed person and inspected by a building surveyor.

Division 2 – Before performing permit demolition work

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

- Clause 180: **Application for certificate of likely compliance (permit demolition work)**
Sets out the process by which an applicant can apply to a building surveyor for a certificate of likely compliance for proposed permit demolition work.
- Clause 181: **Required report from reporting authority**
The building surveyor can only grant a certificate of likely compliance for permit demolition work if any required report has been received, or if the prescribed period for supplying such a report has elapsed.
- Clause 182: **Determining application for certificate of likely compliance (permit demolition work)**
Sets out the matters a building surveyor is to take into account before determining an application for a certificate of likely compliance for permit demolition work, and the responsibilities of the building surveyor regarding notifying any relevant reporting authority.
- Clause 183: **Refusing application for certificate of likely compliance (permit demolition work)**
Sets out the circumstances under which a building surveyor must refuse an application for a certificate of likely compliance for permit demolition work, and the process for doing so.

- Clause 184: Granting application for certificate of likely compliance (permit demolition work)**
Sets out the conditions under which a building surveyor may grant an application and the process for doing so.
- Clause 185: Duration of certificate of likely compliance (permit demolition work)**
Sets out the period for which a certificate of likely compliance remains valid (12 months).
- Clause 186: Variation of certificate of likely compliance (permit demolition work)**
Sets out the conditions under which a certificate of likely compliance can be varied by the building surveyor.
- Clause 187: Revocation of certificate of likely compliance (permit demolition work)**
Sets out the conditions under which a certificate of likely compliance may be revoked by the building surveyor .

Subdivision 2 – Demolition permits

- Clause 188: Demolition permit required before performing permit demolition work**
Establishes an offence for performing permit demolition work without a demolition permit.
- Clause 189: Application for demolition permit**
Sets out the process for applying for a demolition permit.
- Clause 190: Determining application for demolition permit**
Sets out the process that the permit authority is to take into account follow to determine an application for a demolition permit.
- Clause 191: Refusal of application for demolition permit**
Sets out the conditions under which a permit authority may refuse an application for a demolition permit, and the process for doing so.
- Clause 192: Granting of application for demolition permit**
Sets out the process for granting an application, including informing the applicant of the building administration fee payable, , and the duration of the permit.

- Clause 193: Form of demolition permit**
Sets out the form and content of a demolition permit.
- Clause 194: Conditions on demolition permit**
Sets out the circumstances under which conditions may be included on a demolition permit, and the process for adding, varying or revoking conditions on a demolition permit.
- Clause 195: Duration of demolition permit**
Sets out the circumstances under which a demolition permit expires.
- Clause 196: Extension of duration of demolition permit**
Sets out the process for applying for an extension of the period for a demolition permit, and the process for assessing such an application.

Division 3 – Performance of permit demolition work

- Clause 197: Permit demolition work must be performed in accordance with demolition permit**
Establishes an offence for performing demolition work not in accordance with a valid demolition permit.
Written approval is required from a building surveyor for the demolition work to vary from the permit.
- Clause 198: Inspection of permit demolition work**
Sets out the obligations of the person responsible for performing permit demolition work to notify the building surveyor at the mandatory inspection stages and the penalties for non-compliance.
- Clause 199: Directions relating to non-compliant permit demolition work**
Inspection directions may be given following an inspection of defective permit demolition work.
- Clause 200: Standard of work certificate (permit demolition work)**
Following the completion of permit demolition work, the responsible person must provide a standard of work certificate (permit demolition work) certifying that the work complies with the permit, any plans and relevant standards.

Clause 201: **Certificate of final inspection (permit demolition work)**
Requires a building surveyor to issue a certificate (on completion of a final inspection) if satisfied the demolition work is completed, any directions have been complied with and the work is in compliance with the Act as far as it is reasonably practical to inspect. The format and distribution of the certificate is included – to the owner, the licensed demolisher or builder and the permit authority.

Clause 202: **Certificate of completion (permit demolition work)**
Identifies the circumstances under which a permit authority is to issue a certificate of completion when permit demolition work has been completed, and the process for doing so.

PART 14 – MAINTENANCE WORK

Clause 203: **Interpretation**
In addition to the definition of owner in s.4, this section specifically includes *owners* of a strata titled building as having responsibilities regarding maintenance of prescribed Essential Building Services and sets out the penalties for failing to fulfil these responsibilities.

Clause 204: **Performance of maintenance work**
Essential Building Services will be prescribed and will include features or measures for safety of building occupants including fire safety equipment, plumbing features

Clause 205: **Schedule of maintenance**
Establishes an offence if an owner of a building fails to ensure that a maintenance schedule has been prepared, approved, reviewed and updated when changes to the building occur. The owner is also required to keep appropriate records of work performed by their contractors to maintain the prescribed Essential Building Services.

PART 15 – DEFECTIVE WORK

Clause 206: **Defective work**
Defines what is defective building, plumbing or demolition work for the purposes of this Act.

- Clause 207: Discovery of defective building work**
Sets out the process that is to be followed if defective building work is discovered, and establishes an offence for failing to notify the specified persons.
- Clause 208: Rectification of defective building work**
Identifies the parties who have the responsibility for rectification of defective building work and the penalty for failing to do so.
- Clause 209: Discovery of defective plumbing work**
Sets out the process that is to be followed if defective plumbing work is discovered, and establishes an offence for failing to notify the specified persons.
- Clause 210: Rectification of defective plumbing work**
Identifies the parties who have the responsibility for rectification of defective plumbing work and the penalty for failing to do so.
- Clause 211: Discovery of defective demolition work**
Sets out the process that is to be followed if defective demolition work is discovered, and establishes an offence for failing to notify the specified persons.
- Clause 212: Rectification of deflection demolition work**
Identifies the parties who have the responsibility for rectification of defective plumbing work and the penalty for failing to do so.

PART 16 – EMERGENCY WORK

- Clause 213: Emergency work**
Defines emergency work.
- Clause 214: Requirements for emergency work**
Identifies the process for performing emergency work and the penalties for failing to follow this process.

PART 17 – OCCUPANCY REQUIREMENTS

Division 1 – Occupancy permit

- Clause 215: Occupancy permit required**
Identifies the types of building work for which an occupancy permit is required, or when a new permit is required upon a change of use. Provides an offence for occupying a building without a valid occupancy permit.
- Clause 216: Application for occupancy permit**
Sets out the process for the applicant applying an occupancy permit from a building surveyor.
- Clause 217: Form of application for occupancy permit**
Identifies the form and content of an application for an occupancy permit.
- Clause 218: Required report from reporting authority**
An occupancy permit must not be granted if a report is required from a Reporting Authority unless the prescribed period for supplying the report has elapsed.
- Clause 219: Determination of application for occupancy permit**
Sets out the matters a building surveyor is to take into account in determining whether to grant an occupancy permit and consideration regarding a required report from a Reporting Authority.
- Clause 220: Refusing application for occupancy permit**
Sets out the circumstances under which a building surveyor is to refuse to grant an occupancy permit and the process for doing so.
- Clause 221: Granting application for occupancy permit**
Sets out the circumstances under which a building surveyor may grant an occupancy permit and matters to take into account.
- Clause 222: Issue of occupancy permits**
Sets out the process for the issuing of an occupancy permit.
Establishes an offence for not displaying an occupancy permit in the building.

- Clause 223: Notification to permit authority of occupancy permit**
Establishes an offence if building surveyor fails to notify the permit authority when an occupancy permit has been issued.
Identifies the requirement to provide a copy of the occupancy permit to a reporting authority if a required report was part of the application.
- Clause 224: Occupancy permit**
Establishes an offence for failing to comply with an occupancy permit and any relevant conditions of the permit.
- Clause 225: Cancellation of occupancy permit**
Identifies the circumstances under which a building surveyor may cancel an occupancy permit.
- Clause 226: Duration of occupancy permit**
Sets out the conditions under which an remains in force. It continues until cancelled or revoked by another occupancy permit.

Division 2 – Temporary occupancy permit

- Clause 227: Occupancy of temporary structure**
Establishes an offence for occupying a temporary structure without a temporary occupancy permit.
- Clause 228: Temporary occupancy of existing building**
Establishes an offence for occupying an existing building for a use not covered by the building's occupancy permit, or without a temporary occupancy permit being in force, if required for a changed use.
- Clause 229: Application for temporary occupancy permit**
Sets out the process for applying for a temporary occupancy permit.
- Clause 230: Refusing application for temporary occupancy permit**
Sets out the conditions under which a building surveyor must refuse an application for a temporary occupancy permit, and the process for doing so.
- Clause 231: Granting temporary occupancy permit**
Sets out the process for granting a temporary occupancy permit.

Clause 232: Occupation in contravention of temporary occupancy permit
Establishes an offence for occupying a building or temporary structure in contravention of the temporary occupancy permit and its conditions.

Clause 233: Cancellation of temporary occupancy permit
Identifies the circumstances under which a temporary occupancy permit may be cancelled and the process for doing so.

PART 18 – ACTIONS FOR NON-COMPLIANCE

Division 1 – Interpretation

Clause 234: Fire hazards
Defines what is a fire hazard for the purpose of this Act.

Clause 235: Application of Part
The intent of this clause is to ensure that work that didn't comply with legislation that was in force at the time construction is still covered.

Division 2 – Notification of requirement to comply

Clause 236: Building notice
Establishes the conditions under which a building surveyor or permit authority is to issue a building notice, in an approved form, and the parties who should receive a copy.

Clause 237: Plumbing notice
Establishes the circumstances under which a permit authority is to issue a plumbing notice, and the form it should take.

Clause 238: Fire upgrading report
Establishes the powers of the permit authority regarding fire hazards, including inspections, and the form a fire upgrading report should take.

Clause 239: Fire upgrading notice
Establishes the responsibility of the permit authority to issue a fire upgrading notice if a fire upgrading report identifies a fire hazard, and sets out the content of the fire upgrading notice.

- Clause 240: Dilapidated building report**
Establishes the responsibility of the permit authority with regard to dilapidated buildings, including the preparation of a dilapidated building report.
- Clause 241: Dilapidated building notice**
Establishes the power of a permit authority to issue a dilapidated building notice, and identifies what such a notice should contain.
- Clause 242: Representations relating to notices**
Establishes the right of a person receiving a notice to make representations regarding any building or plumbing notice that was served on them.
- Clause 243: Revocation of notices**
Identifies the circumstances under which any building or plumbing notice may be revoked.

Division 3 – Compliance orders

- Clause 244: Emergency order**
Establishes the power of a general manager to make an emergency order, the form this may take and the process that should be followed.
Identifies the penalty should a person fail to comply with an emergency order.
Allows the general manager to revoke an emergency order if circumstances change.
Does not allow someone performing work under an emergency order to be found guilty of an offence relating to that work.
- Clause 245: Building orders**
Outlines the process for a building surveyor or permit authority to issue a building order following the serving of a building notice that was not complied with.
Identifies the actions that may be included as part of a building order, and the circumstances in which a building order may be issued without first issuing a building notice.
Establishes an offence for failing to comply with a building order.
A person performing work required by a building order has a defence relating to the performance of that work.

- Clause 246: Building order relating to illegal building work**
Establishes responsibility of permit authority who served a building notice for non-compliance with the Act is to serve a building order, requiring the owner to do perform actions, including or perform building work (including to demolish the work) or to regularise the illegal building work in accordance with this Act.
Such a building order may be separate or combined with a building order under sections 235 or 237.
- Clause 247: Building order relating to fire hazards**
Outlines the responsibility of the permit authority to serve a building order relating to a fire hazard if a fire upgrading notice has not been complied with. The order is to require a program of works to comply, and identifies the form and content of such a notice.
- Clause 248: Building order relating to dilapidated building**
Outlines the responsibility of the permit authority to serve a building order relating to a dilapidated building if a dilapidated building notice has not been complied with, and identifies the form the building order may take.
- Clause 249: Plumbing orders**
Outlines the responsibility of the permit authority to serve a plumbing order if a plumbing notice has not been complied with.
The plumbing order will require action from the person on whom it was served (may be the plumber, person in charge of the site, or the owner)
Establishes an offence for failing to comply with such an order.
- Clause 250: Court orders**
Outlines the powers available to the Director of Building Control or general manager to seek a court order in relation to a contravention of this Act or a notice, order or determination under this Act.
- Clause 251: Certain orders to be made within certain period**
Sets time maximum periods for which orders may be served once an authorised person is aware of the circumstances requiring the serving of the order.
- Clause 252: Permit authority to be notified of building order**
A copy of a building order served by a building surveyor is to be provided to the relevant permit authority for their records.

Clause 253: Duration of orders

An order under this Division remains in force until complied with or revoked.

Division 4 – Process for illegal building work

Subdivision 1 – Certificate of substantial compliance

Clause 254: Application for certificate of substantial compliance

This Division outlines the process for dealing with illegal building work (built without authorisation). The Permit Authority may order that the owner is to apply to have illegal building work regularised by obtaining a certificate of substantial compliance from a building surveyor, and later, apply to the permit authority for a permit of substantial compliance.

Clause 255: Refusal of application for certificate of substantial compliance

Sets out the conditions under which a building surveyor is to refuse to grant a certificate of substantial compliance, and the process for doing so.

Clause 256: Grant of application for certificate of substantial compliance

Sets out the conditions under which a building surveyor may grant a certificate of substantial compliance for illegal building work.

Subdivision 2 – Permit of substantial compliance

Clause 257: Application for permit of substantial compliance

Sets out the process for applying to a permit authority for a permit of substantial compliance, and the steps a permit authority may take before determining an application for a permit of substantial compliance. It must be satisfied that 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. .

Clause 258: Refusing permit of substantial compliance

A permit authority requires a certificate of substantial compliance before a permit of substantial compliance can be granted. Refusal must be notified in writing, with reasons and information regarding right to appeal.

Clause 259: Grant of permit of substantial compliance

Sets out the circumstances under which a permit authority is to grant a permit of substantial compliance.

Establishes an offence for non-compliance with a permit of substantial compliance.

Clause 260: Conditions on permit of substantial compliance

Sets out the circumstances under which a permit authority may impose conditions on a permit of substantial compliance, and the process for adding, varying or revoking such conditions.

Clause 261: Duration of permit of substantial compliance

Sets out the conditions under which a permit of substantial compliance will expire.

Clause 262: Effect of permit of substantial compliance

A permit of substantial compliance is granted where the permit authority is willing to allow the owner to regularise illegal building works. The owner is then to obtain a certificate, and a permit, of substantial compliance. Other provisions in the Act for obtaining approval for any works (inspections, occupancy, completion) also apply to the permit of substantial compliance, as if it were the usual application for a building permit.

Division 5 – Process for illegal plumbing work

Clause 263: Illegal plumbing work to be subject of plumbing permit

If plumbing work has been performed illegally, and does not comply with this Act, the owner can apply for a plumbing permit which allows work to be done to ensure compliance.

Division 6 – Failure to comply with compliance orders

Clause 264: Failure to comply with emergency, building or plumbing order

Sets out the steps that may be taken if a person fails to comply with an emergency order, building order or a plumbing order.

Clause 265: Possession of building

Sets out the circumstances under which a council may take possession of a building in order to ensure that required building or plumbing work is actually performed as per the order made.

Clause 266: Demolition order

Where an owner has been ordered to regularise illegal work (through a permit of substantial compliance) and fails to comply with that order, the council can then serve a demolition order on the owner of premises on which the illegal building work was performed.

Division 7 – General matters

Clause 267: Endorsements on certificates

Building work that was not the subject of the normal application, permit and inspection procedures (meaning it was regularised through the permit of substantial compliance process) then there is a requirement to endorse any building certificate, occupancy permit or certificate of completion with a notation to that effect. That is a warning to any prospective owners (they may then be more prudent in their inspection of the building).

Clause 268: Recovery of performance costs

Establishes responsibility for costs of work not performed by an owner and process for recovery of costs incurred by a council in the enforcement and performance of building works required by an order.

Clause 269: Recovery of compliance costs

Provides that a person who has had to perform enforcement actions may recover the reasonable costs and expenses of that enforcement action from the wrongdoer.

Clause 270: Purchasing buildings and materials

Sets out the conditions following demolition, under which a building or materials can be sold by a council to recoup costs incurred in the enforcement and performance of building works, and the rights and responsibilities of a purchaser.

Clause 271: Police assistance

Sets out the circumstances under which a general manager may request the assistance of a police officer, in respect of enforcement of an emergency order, building order or plumbing order.

Clause 272: Notification of completion of work

Establishes an offence for the owner failing to notify the person who issued the order when the specified work is completed.

Clause 273: Amendment or revocation of building, plumbing or demolition orders
Establishes a process by which an owner required to comply with a building order, plumber order or demolition order may request that the order be amended or revoked if circumstances have changed since the order was served.

Clause 274: Compliance with regulations
Work that is required by an order must comply with the regulations under this Act, except in the circumstances set out here.
Establishes a penalty for non-compliance.

PART 19 – APPEALS AND DETERMINATIONS

Division 1 – Appeals

Clause 275: Appeals relating to permits
Defines the term *relevant permit* and sets out the conditions under which a person may appeal.

Clause 276: Appeals relating to notifiable work
Sets out the rights of a person to appeal regarding certificates relating to notifiable work.

Clause 277: Appeals relating to orders
Sets out the rights of an owner to appeal regarding an emergency order, building order or plumbing order.

Clause 278: Appeals relating to protection work
Sets out rights of owner of premises, and owner of adjoining premises relating to protection work.

Clause 279: Appeals relating to building surveyor
Sets out rights of appeal with respect to powers exercised, or not exercised by a building surveyor under this Act.

Clause 280: Appeals relating to permit authority
Sets out rights of appeal with respect to powers exercised, or not exercised by a permit authority under this Act.

Clause 281: Appeals relating to fire regulations
Sets out right of appeal of an owner of premises relating to an exercise of powers under the General Fire Regulations.

Division 2 - Determinations

Clause 282: Determination of application of relevant Code
Sets out the circumstances under which a person may apply to the appeal tribunal for a determination regarding the correct provision of the National Construction Code, and the process that the appeal tribunal should follow, including notifying the Director of Building control and relevant building surveyor or permit authority.

Clause 283: Determination for modification or non-application of access provision of Code
Defines *access provision of the National Construction Code*. Sets out the process for making an application to the appeal tribunal for a determination regarding a provision of the Code relating to access for persons with a disability, and the matters the appeal tribunal should take into account when determining the extent to which compliance is required.

Division 3 – General

Clause 284: Form of application
Sets out the time period (28 days) for making an application to the appeal tribunal for an appeal relating to a decision made under the Act.

Clause 285: Onus of proof in certain cases
Identifies situations where a general manager or building surveyor must prove a case before the appeal can be dismissed.

PART 20 – REGULATIONS

Division 1 – Building Regulations

Clause 286: Building Regulations
Provides for the making of building regulations relating to this Act.

Clause 287: Non-application of Building Regulations
Identifies circumstances under which a provision of the Building Regulations does not apply.

Division 2 – Plumbing Regulations

Clause 288: Plumbing Regulations
Provides for the making of plumbing regulations relating to this Act.

Clause 289: Non-application of Plumbing Regulations
Identifies circumstances under which a provision of the Plumbing Regulations do not apply.

Division 3 – General provisions

Clause 290: General provisions
Allows for Regulations made under this Act to establish an offence, provide for imposition of a fine, authorise a person or body to determine any matter and be subject to conditions.
Gives the Director of Building control the power to publish trade names where required.

Clause 291: Inspection provisions
The Governor may make regulations under this Act in relation to inspecting or testing of works under this Act.

Clause 292: Fees
The Governor may make regulations under this Act to prescribe fees payable.

Clause 293: Exemptions
The Governor may make regulations under this Act relating to the exemption of work from any or all of the provisions of the regulations.

Clause 294: Savings and transitional
The Governor may make regulations that allow for the transition from the *Building Act 2000* to the *Building Act 2016*.

PART 21 – MISCELLANEOUS

Division 1 – Building administration fee

Clause 295: Building administration fee

The building administration fee replaces the building levy referred to in the *Building Act 2000*.

Funds collected are used to administer this Act.

It sets the monetary threshold (\$12,000) for which the fee is payable. This represents an increase from the \$5000 threshold in the current Act.

It also sets the fee rate, of 0.1% of the costs of the building work over \$12,000. This is the same rate as in the current Act.

The fee is payable on the contract price, or if there is no contract at the time the fee is collected, then on an estimate of the costs of the work provided by the building surveyor.

The calculation of the fee includes the costs of the plumbing work that are associated with the building work.

Allows for the Director of Building control to refund all or part of the building administration fee under certain circumstances, or to recover a fee as a debt.

Clause 296: Additional building administration fee payable in certain circumstances

Allows for an additional amount to be payable if the cost of work is higher than the original estimate, and the process for doing so.

Clause 297: Determination of value of staged building work

Allows for fees to be payable when work is performed in stages, some of which may not require a fee be paid. The intent is to ensure work cannot be split into stages which do not attract a fee when the stages taken together would require that a fee be payable.

Clause 298: Further information to be provided if requested

Allows a permit authority to seek further information from the applicant, building surveyor, builder or plumber.

Establishes an offence for failing to comply with a requirement to provide further information.

Clause 299: Payment of building administration fee

Sets out the process for paying a building administration fee for notifiable work and permit work, and the process to be followed by the permit authority when a fee is received.

- Clause 300: Offence for non-payment of building administration fee**
Establishes an offence for failing to pay the building administration fee.
- Clause 301: Director of Building Control may waive, refund or recover building administration fee**
The Director may decide to relinquish the building administration fee in certain circumstances.

Division 2 – Offences generally

- Clause 302: Offences by bodies corporate**
Establishes who is the person held responsible if a body corporate commits an offence under this Act, and outlines the defence available to that person.
- Clause 303: False and misleading statements**
Establishes an offence for making a false or misleading statement under this Act.
- Clause 304: Offences relating to Director of Building Control**
Establishes an offence of impeding the Director of Building Control in performing his or her duties, providing false information or refusing to provide information requested under this Act.
- Clause 305: Offences relating to authorised persons**
Establishes an offence of impeding an authorised person in performing his or her duties, providing false information or refusing to provide information or impersonating an authorised person under this Act.
- Clause 306: Offences relating to building surveyors**
Establishes an offence related to the building surveyor to accept a payment, gratuity or gift to perform his or her duties in any way other than as required under this Act.

Establishes an offence for a person to give such a payment, gratuity or gift to a building surveyor to perform his or her duties in any way other than as required under this Act.
- Clause 307: Habitation of certain buildings**
Defines *inhabit* and establishes an offence of inhabiting a building for more than 30 days without the appropriate occupancy permit or temporary occupancy permit.

- Clause 308: Restriction on use of land**
Establishes an offence of erecting a fence, building or other structure to restrict use of any unoccupied area of the surrounding land.
- Clause 309: Prosecution of offences**
Establishes the timeframe under which proceedings must be commenced.
- Clause 310: Defence of compliance with Act**
Allows compliance with standards at the time work was performed to be used as a defence, unless work was required to be upgraded under another Act.

Division 3 - Evidence

- Clause 311: Evidentiary provisions**
A determination made by the Appeal Tribunal is conclusive evidence of that determination.
- Clause 312: Evidence of compliant building work**
Building work is required to comply with the National Construction Code. If a certificate of completion has been issued for building work, then that work is taken to comply with the NCC.
- Clause 313: Evidence of compliant plumbing work**
Plumbing work is required to comply with the National Construction Code. If a certificate of completion has been issued for plumbing work, then that work is taken to comply with the NCC.
- Clause 314: Evidence of compliant demolition work**
Demolition work is required to comply with the National Construction Code. If a certificate of completion has been issued for demolition work, then that work is taken to comply with the NCC.
- Clause 315: Evidence of occupancy permit**
An occupancy permit is not sufficient by itself to provide evidence that a building complies with the Act and the particular use of the building has been authorised.

This is to ensure that any change of use of a particular building is not given legality by the existence of an occupancy permit.

Clause 316: Evidence of final inspection

A certificate of final inspection (building) is not sufficient by itself to provide evidence that a building complies with this Act.

This is to ensure that work commenced after the final inspection is not automatically covered by that inspection.

Clause 317: Evidence of compliance

It is sufficient for a building surveyor to make a statement that protection work complies with regulations, drawings and specifications, unless evidence is provided to the contrary.

Clause 318: Evidence of authority

Written proof that a building surveyor has been engaged is sufficient for the building surveyor to act as an agent of the owner in any proceedings relating to work under this Act.

Evidence to the contrary might include the removal of the building surveyor by the Director of Building Control.

Clause 319: Authentication of documents

The signature of the chairperson of the appeal tribunal on documents is sufficient for authentication without the need for an official seal.

Clause 320: Reliance on certification

Defines the term *assessable item*.

An appropriately qualified person may provide a certificate that an assessable item complies with this Act, and that certificate may be relied on by an authorised person (under the meaning of this Act) as sufficient evidence.

For example, an energy assessor or a fire safety specialist may provide reports in their area of expertise which the building surveyor can then rely on to confirm compliance with the Act.

The Director of Building Control may specify the classes of qualified persons and the nature of their qualification, and the approved form and content of such certificates.

Clause 321: Reliance on actions of others

Provides that where a new building surveyor has taken over a building project from the previous building surveyor, they may rely upon the performance by the first practitioner of their statutory functions. This prevents the wasteful duplication of more inspections, reports and certification of work already performed.

Clause 322: Evidence relating to infringement notice
Provides for the complete separation of the administration of Infringement Notices from court proceedings for the same offence.

Division 4 – Infringement notices

Clause 323: Infringement notices
Infringement notices for offences under this Act may be issued by the Director of Building control, an authorised officer of a permit authority or an authorised person other than a building surveyor or permit authority.
Sets out the content of an infringement notice and the payment arrangements.

Division 5 – Liability

Clause 324: Immunity from liability
This clause clarifies the immunity from liability for certain people performing statutory functions or exercising powers under this Act.
It provides that a person acting in good faith, or making an honest omission not to be held personally liable.
This is a standard form of personal liability clause.

Clause 325: Immunity from liability for building surveyor
This clause strengthens the immunity from liability provisions for building surveyors exercising powers or performing functions under this Act. If a building surveyor is acting in good faith and has relied on certificates, advice or performance of others provided in accordance with this Act, they cannot be held personally liable for an act done or an omission made.

Clause 326: Accrual of cause of action
Defines *cause of action* in relation to a building action for building or plumbing work.
This clause sets specific time limits (up to 10 years) on when an owner can start litigation (claim for damages) resulting from defective building or plumbing work. This limitation gives certainty to the building industry and it has been the law since 1997.
The date from which a cause of action is taken to accrue will depend on the building or plumbing approval process and whether or not the building was occupied. Notifiable or permit work has a 10 year limit, low risk work has a cap of 2 years.

Clause 327: Documents to be translated

All required records, documents and statements must be accompanied by a legible English translation if the original is in a language other than English.

Clause 328: Building Administration Fund

The Building Administration Fund is used to fund all the administration of this Act and other activities related to supporting the building and construction industry in Tasmania, as determined by the Minister.

The Building Administration Fund was created under the *Building Act 2000*.

Under this new Act the building administration fee will be paid into the Building Administration Fund.

This allows the Director of Building Control to operate compliance and audit activities in the building sector, provide training and information sessions in areas where there may be skill gaps, and provide resources to assist practitioners in complying with the Act.

Clause 329: Administration of Act

The Minister for Building and Construction and the Department of Justice are responsible for the administration of this Act.

Clause 330: Legislation repealed

The *Building Act 2000* will be repealed once this Act is commenced. Appropriate savings and transitional arrangements will be made (in Schedule 2 and by the Building (Consequential Amendments Act) 2016

Clause 331: Legislation rescinded

Subordinate legislation including *Building Regulations 2014* and *Plumbing Regulations 2014* will be rescinded and replaced with appropriate regulations for this Act.

The *Building Amendment (Installation of Solar Panels) Regulations 2013* will also be rescinded.

SCHEDULE I – INFORMATION REGISTERS

Clause I Registers

This clause lists the information registers that a permit authority is required to keep, and gives the Director of Building Control the power to determine the content, form and availability of the register.

Clause 2 **Records**

A permit authority is required to keep records of the number of applications granted and refused for building, plumbing and demolition permits, as well as any extension, variation or cancellation of such permits.

The Director of Building Control may determine form and content of the record.

Clause 3 **Building administration fees records**

Provides the requirements for retention of records held by the permit authority relating to the building administration fee.

SCHEDULE 2 – SAVINGS AND TRANSITIONALS

PART 1 - PRELIMINARY

Clause 1 **Interpretation**

This schedule specifies that arrangements that are put in place once this new Building Act commences, to ensure that any proceedings already underway under the former *Building Act 2000* are still valid.

PART 2 – APPOINTMENTS AND FUND

Clause 1 **Director of Building Control**

The Director of Building Control under the former Act remains the Director of Building Control under the new Act.

Clause 2 **Permit authority**

A permit authority appointed under the former Act may continue as a permit authority under this Act, for at least two years or until new arrangements for their licensing and reappointment are introduced.

PART 3 – APPLICATIONS AND DETERMINATIONS

Clause 1 **Application under former Act for consent to change building surveyor**

Any applications that have not been determined will be processed under the new Act.

Clause 2 **Determinations under former Act**

All determinations under section 55 of the former Act remain in force under the same terms and conditions.

- Clause 3** **Required reports under former Act**
A report provided by a Reporting Authority under the former Act is taken to have been supplied under this Act.
- Clause 4** **Building and plumbing permits under former Act**
All building and plumbing permits made under the former Act remain valid and subject to the same terms and conditions.
An application for a building or plumbing permit under the former Act which hasn't yet been determined will be assessed under the new Act.
- Clause 5** **Certificates of likely compliance under former Act**
Applications that have not yet been determined will be assessed under the new Act.
Any valid certificate of likely compliance in force under the former Act will be taken to be a certificate of likely compliance under the new Act.
- Clause 6** **Written consent under former Act to vary work remains in force**
If there was written consent to vary permitted work under the former Act, this will carry over to the new Act.
- Clause 7** **Inspection direction under former Act**
A direction under the former Act and not complied with, continues as a direction under this Act.
- Clause 8** **Certificate of completion under former Act**
Any certificates of completion currently in force under the former Act will be translated to the equivalent certificate of completion under the new Act.
Any applications for a certificate of completion that have not yet been determined will be translated to an application for the appropriate certificate of completion under the current Act.
- Clause 9** **Occupancy permits and temporary occupancy permits under former Act**
All occupancy permits and temporary occupancy permits in force under the former Act will remain valid under the new Act.
If a building did not require an occupancy permit under the former Act, it will not require one under the new Act unless occupancy changes.
- Clause 10** **Occupancy permit not required in certain circumstances**

- Clause 11 Building certificates under former Act**
A building certificate that was issued by a general manager, to the effect that the council does not intend to take compliance actions, continues to have effect under this Act.
- Clause 12 Matters relating to party walls and party structures under former Act**
All notices of proposed protection work under the former Act carry over to the new Act.
Notices of proposed protection work relating to plumbing work which have not been completed should be provided to the relevant permit authority.
The requirement to hold insurance with respect to protection work carries over to the new Act.
- Clause 13 Matters relating to protection work under former Act**
Administrative processes already commenced regarding protection work will continue under the new Act. Includes the serving of notices on adjoining owners, insurance and appointment of an agent for an absent owner.
- Clause 14 Reports under former Act**
Any of the following in force under the former Act, carry over to the new Act with the same terms and conditions:
- Fire upgrading report
 - Dilapidated building report
- Clause 15 Notices under former Act**
Any of the following in force under the former Act, carry over to the new Act with the same terms and conditions:
- Building notice
 - Plumbing notice
 - Fire upgrading notice
 - Dilapidated building notice
- Clause 16 Orders under former Act**
Any of the following in force under the former Act, carry over to the new Act with the same terms and conditions:
- Emergency order
 - Building order
 - Plumbing order
 - Demolition order

Clause 17 Certificates and permits of substantial compliance and certificates and permits to proceed under former Act

A certificate of substantial compliance issued under the former Act carries over to the new Act.

An application for a certificate of substantial compliance made under the former Act will be taken to be an application under the new Act.

Clause 18 Appeals and applications for determination under former Act

Any appeals currently underway under the former Act will be continued under the new Act.

Persons who would have been eligible to make an appeal under the former act, will continue to be able to do so under this Act.

SCHEDULE 3 – LEGISLATION REPEALED

The *Building Act 2000* is repealed.

SCHEDULE 4 – LEGISLATION RESCINDED

All regulations and amendments associated with the *Building Act 2000* are rescinded. New regulations will be made in accordance with the new Act.