



## **Building Act 2000**

**An Act to regulate the construction and maintenance of buildings and building and plumbing matters and to provide for permits, enforcement matters and resolution of disputes**

**[Royal Assent 20 DECEMBER 2000]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

### **PART 1 - Preliminary**

#### **1. Short title**

This Act may be cited as the *Building Act 2000*.

#### **2. Commencement**

The provisions of this Act commence on a day or days to be proclaimed.

#### **3. Interpretation**

(1) In this Act unless the contrary intention appears –

**"accredited building practitioner"** means a building practitioner who is accredited under Part 4 and whose accreditation is in force;

**"adequate washing facilities"** means a bath or shower required and installed in accordance with this Act;

**"adjoining occupier"** means an occupier of adjoining property;

**"adjoining owner"** means –

(a) the owner of adjoining property; and

(b) the agent of that owner appointed under section 123;

**"adjoining property"** includes any land that is, or is likely to be, at risk of significant damage from building work;

**"Advisory Committee"** means the Building Regulation Advisory Committee established under section 9;

**"alternative solution"** means an alternative building solution as defined by the Building Code of Australia;

**"Appeal Board"** means the Building Appeal Board established under section 203;

**"approved form"** means a form approved by the Director;

**"approved investigator"** means a person approved under section 34;

**"associated building work"** means any of the following relating to building work:

(a) designing and documenting;

(b) inspecting, reporting and advising;

(c) making, giving or issuing any permit, certificate, notice, order, decision, determination, accreditation or authorisation under this Act;

(d) accepting any certificate under this Act;

(e) taking any action under this Act;

(f) prohibiting or permitting anything under this Act;

**"associated plumbing work"** means any of the following relating to plumbing work:

(a) designing, placing, constructing, altering or maintaining a plumbing installation;

(b) inspecting, reporting and advising;

(c) giving, issuing or making any permit, certificate, notice, order, decision, determination, accreditation or authorisation under this Act;

(d) taking any action under this Act;

(e) prohibiting or permitting anything under this Act;

**"authorised body"** means a body authorised under Part 4 to accredit building practitioners;

**"authorised person"** means –

(a) the Director; and

(b) a building surveyor; and

(c) a permit authority; and

(d) a relevant general manager;

**"builder"** means –

(a) a person engaged by the owner of a building to manage or carry out building work on the building; or

(b) if such a person does not exist or is unable to be found, the owner of that building;

**"building"** includes a proposed building, part of a building, a structure and part of a structure;

**"building action"** means –

(a) any action for damages, other than damages for death or bodily injury, incurred as a result of –

(i) defective building work or defective associated building work; and

(ii) defective plumbing work or defective associated plumbing work; and

(b) a counterclaim to such an action;

**"building certificate"** means a certificate referred to in [section 119](#);

**"Building Code of Australia"** means the code produced by the Australian Building Code Board relating to the design and construction of buildings;

**"building line"**, in relation to a road, means –

(a) a line determined by by-law or planning instrument –

(i) as a building line; or

(ii) as a building set-back; or

(b) if a line is not so determined, a line which is –

(i) 18 metres from the middle of a highway or a road that is not within a city or town; or

(ii) 9 metres from the middle of a road, other than an alley, that is within a city or town;

**"building notice"** means a notice referred to in section 163;

**"building order"** means an order referred to in section 170, 171 or 173;

**"building owner"** means an owner who builds or intends to build a party wall or party structure;

**"building permit"** means a permit referred to in section 60;

**"building permit levy"** means a levy referred to in section 270;

**"building practitioner"** means a person of one of the following categories:

**(a)** a designer, other than a plumber, who is responsible for the design, documentation or certification of the design or inspection of building work, plumbing work, buildings or plumbing installations;

**(b)** a building surveyor or assistant building surveyor who is responsible for document assessment, certification, determination or inspection of building work or buildings;

**(c)** a builder who is responsible for the management, carrying out or certification of building work;

**"building product"** means any product used in building;

**"Building Regulations"** means regulations made under Division 1 of Part 13;

**"building system"** includes a construction method or design;

**"building work"** means work relating to –

**(a)** erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a building; and

**(b)** adding to a building; and

**(c)** excavating or filling incidental to an activity referred to in paragraph (a) or (b); and

**(d)** any other prescribed work;

**"certificate of completion (building work)"** means a certificate of completion referred to in section 112;

**"certificate of completion (plumbing work)"** means a certificate of completion referred to in section 113;

**"certificate of conformity"** means a certificate issued by the Australian Building Code Board certifying conformity with the Building Code of Australia;

**"certificate of final inspection"** means a certificate referred to in section 92;

**"certificate of likely compliance"** means a certificate referred to in section 62;

**"certificate of substantial compliance"** means a certificate referred to in section 183;

**"certificate to proceed"** means a certificate referred to in section 175;

**"classification"** means classification under the Building Code of Australia;

**"designer"** means an architect, engineer, draftsman, building designer or building services designer;

**"Director"** means the Director of Building Control appointed under section 6;

**"emergency order"** means an order referred to in section 162;

**"environmental health officer"** means a person appointed as such under the Public Health Act 1997;

**"essential safety and health features"** includes –

(a) safety and health equipment; and

(b) components and installations of such equipment;

**"essential safety and health measures"** includes –

(a) safety and health strategies; and

(b) management procedures relating to those strategies;

**"fire source feature"** means a fire source feature as defined in the Building Code of Australia;

**"fire upgrading notice"** means a notice referred to in section 167;

**"fire upgrading report"** means a report referred to in section 166;

**"function control authority"** means an authority –

(a) that is required under an Act to –

(i) issue a certificate, licence, registration or permit for a function or operation within a building; or

(ii) inspect or control a function or operation within a building; and

(b) that the Director specifies is a function control authority for the purpose of this Act;

**"Fund"** means the Building Administration Fund established under section 271;

**"general manager"** means a general manager appointed under the Local Government Act 1993;

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

**"inhabit"**, in relation to a building, means to stay, work, sleep, eat or cook in the building;

**"insurance"** includes –

(a) professional indemnity insurance; and

(b) a performance bond; and

(c) a guarantee; and

(d) an indemnity; and

(e) public liability insurance; and

(f) insurance relating to a particular building work or plumbing work; and

(g) insurance taken out by any body or person which relates to the work of a building practitioner; and

(h) any agreement or instrument in the nature of an item set out in paragraphs (a) to (g);

**"mandatory notification stage"** means a stage of building work that requires notification to the building surveyor under the Building Regulations;

**"occupancy permit"** means a permit that allows the occupancy of a building;

**"on-site waste water management system"** means an on-site system for the management of waste water that is –

(a) a disposal or treatment system servicing one or more blocks; or

(b) an on-site composting toilet or system; or

(c) an on-site incinerating toilet;

**"owner"**, in relation to any building or land, includes every person who jointly or severally, whether at law or in equity –

(a) is entitled to the building or land for any estate of freehold in possession; or

(b) has contracted to buy the building or land; or

(c) is entitled to receive or is in receipt of the rents and profits of the building or land, whether as beneficial owner, trustee, mortgagee in possession or otherwise;

**"owner builder"** means a person who –

(a) carries out building work on a building on land owned by the person; and

(b) is not carrying on the business of building; and

(c) has not constructed more than 2 buildings of any classification (including in the case of a Class 1 building more than two groups of buildings which in association constitute a Class 1 building), other than Class 10 building, in the last 10 years not including any years prior to the commencement of this Act; and

(d) has made a statement referred to in [section 24](#);

**"party arch"** means an arch that –

(a) separates adjoining buildings belonging to different owners or occupied by different persons; or

(b) separates a building from a public way or a private way leading to premises in other occupation;

**"party fence wall"** means a wall that separates adjoining lands of different owners and standing on lands of different owners that –

(a) is not part of a building; or

(b) does not have footings that project into the land of another owner;

**"party structure"** means a party wall, partition, floor or other structure separating vertically or horizontally buildings that is approached by a distinct staircase or separate entrance from without;

**"party wall"** means a wall forming part of a building that –

(a) separates adjoining buildings belonging to different owners or occupied by different persons; or

(b) stands to a greater extent than the projection of the footings on lands of different owners;

**"permit authority"** means a person or body authorised for that purpose by the council of the municipal area in which the relevant building work, building, plumbing work or plumbing installation is located;

**"permit of substantial compliance"** means a permit referred to in [section 168](#);

**"permit to proceed"** means a permit referred to in [section 178](#);

**"plumber"** means a person who holds an appropriate certificate of registration under the Plumbers and Gas-fitters Registration Act 1951;

**"plumbing installation"** means –

(a) a system of water supply; or

(b) a system of sewage or sullage drainage or disposal; or

(c) a system of stormwater drainage, roof drainage or trade waste drainage; or

(d) an on-site waste water management system;

**"plumbing notice"** means a notice referred to in section 164;

**"plumbing order"** means an order referred to in section 172;

**"plumbing permit"** means a permit referred to in section 75;

**"plumbing product"** means any product used in plumbing work;

**"Plumbing Regulations"** means regulations made under Division 2 of Part 13;

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

(a) installing, altering or maintaining a plumbing installation; or

(b) any other prescribed work;

**"professional misconduct"** means unsatisfactory professional conduct that is sufficiently serious as to justify suspension or cancellation of accreditation;

**"protection work"** means work that involves taking measures to protect an adjoining property;

**"public notice"** means a notice published –

(a) in the *Gazette*; or

(b) in a daily newspaper circulating generally in the State;

**"Recorder of Titles"** means the person appointed as such under the Land Titles Act 1980;

**"reporting authority"** means a body or person required under the Building Regulations to report on an application for a building permit or an occupancy permit;

**"required insurance"** means insurance required under section 48;

**"required report"** means a report required to be made in respect of a building permit or occupancy permit;

**"road"** means any land that is a public road or highway;

**"scheme"** means the scheme referred to in section 19(2)(a)(i);

**"sewerage installation"** means a sewerage installation as defined in the Plumbing Regulations;

**"special plumbing permit"** means a permit referred to in section 77;

**"special-use building"** means a building –

(a) in respect of which a function control authority exercises control; and

(b) to which Part H of the Building Code of Australia applies;

**"specified"** means specified by the Director;

**"Tasmanian Plumbing Code"** means the code issued by the Minister under section 58;

**"temporary occupancy permit"** means a permit required under section 105;

**"temporary structure"** includes any –

(a) booth, tent or other temporary enclosure, whether or not a part of the booth, tent or enclosure is permanent; or

(b) temporary seating structure; or

(c) any other prescribed structure;

**"testable backflow prevention device"** means such a device as defined in the Plumbing Regulations;

**"unregistrable relocatable building"** means a relocatable building that –

(a) is not registrable as a motor vehicle or trailer; and

(b) is designed to be moved between sites;

**"unsatisfactory professional conduct"** means conduct that –

(a) falls short of a reasonable standard of competence, diligence and integrity; or

(b) only partially fulfils requirements; or

(c) wilfully disregards relevant and appropriate matters; or

(d) fails to comply with this or any other Act or prescribed law.

(2) The nature, purpose or use of a building is to be determined –

(a) from its design; or

(b) if it is suitable for different purposes or uses, according to its most natural purpose or use as inferred from its design, its situation and the declared intentions of the owner when an application is made.

#### **4. Act binds Crown**

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

#### **5. Act prevails**

This Act prevails over the provisions of any other Act or any regulation, rule, by-law, guidelines, planning instrument, standard, condition, determination or directive made under any other Act relating to the design of any building, building work or plumbing work.

### **PART 2 - Administration**

#### ***Division 1 - Director of Building Control***

#### **6. Director of Building Control**

The Minister administering the *Tasmanian State Service Act 1984* may appoint a person employed under that Act to be the Director of Building Control and that person holds that office in conjunction with a position or an office under that Act.

#### **7. General functions of Director**

The Director has the following functions:

(a) to advise the Minister about all matters under this Act and the administration of this Act;

(b) to advise the Minister on legislation regarding matters relating to building and plumbing;

(c) to liaise with any permit authority or council on its functions under this Act;

(d) to liaise with the building and plumbing industries and other interested groups or bodies on matters relating to building and plumbing;

(e) to liaise with, and represent the State on, in respect of any matter under this Act, any national body established to deal with matters relating to building and plumbing;

(f) to facilitate training in respect of matters under this Act;

**(g)** to publish reports and disseminate information on matters relating to building and plumbing;

**(h)** to review the performance of authorised bodies, building practitioners, permit authorities and councils;

**(i)** to carry out any other function the Minister determines.

## **8. Assistance to Director**

**(1)** The Director may make arrangements with the Head of an Agency, within the meaning of the *Tasmanian State Service Act 1984*, for employees employed in that Agency to be made available to the Director to enable the Director to perform his or her functions and exercise his or her powers under this Act.

**(2)** A person may be made available to the Director in conjunction with a position in the State Service.

### ***Division 2 - Building Regulation Advisory Committee***

## **9. Advisory Committee**

**(1)** There is established the Building Regulation Advisory Committee.

**(2)** The Advisory Committee consists of –

**(a)** the Director, who is the chairperson; and

**(b)** at least 9 other members appointed by the Minister from nominations made under subsection (3) who between them have knowledge and expertise in all of the following areas:

**(i)** building surveying;

**(ii)** architecture;

**(iii)** engineering;

**(iv)** building;

**(v)** plumbing;

**(vi)** local government;

**(vii)** firefighting and fire safety;

- (viii) the interests of the community;
- (ix) environmental and public health; and
- (c) any other person appointed by the Minister.

(3) The Minister, by public notice, is to call for nominations for membership of the Advisory Committee.

(4) Schedule 1 has effect with respect to the membership and meetings of the Advisory Committee.

## **10. Functions of Advisory Committee**

(1) The Advisory Committee has the following functions:

- (a) to advise the Minister on the administration of this Act;
- (b) to advise the Minister in relation to proposed regulations under this Act;
- (c) to investigate and report to the Minister on any matter related to this Act that is referred to it by the Minister;
- (d) any other function the Minister determines in relation to building and plumbing matters;
- (e) to advise the Minister in relation to matters relating to the Fund.

(2) The Advisory Committee may request the Director to make arrangements for the provision of services of a body or person to assist it in performing its functions.

### ***Division 3 - Delegation***

## **11. Delegation**

(1) The Minister may delegate to any person any of the Minister's powers and functions under this Act, other than this power of delegation.

(2) The Director may delegate to any person any of the Director's powers and functions under this Act, other than this power of delegation.

(3) A permit authority may delegate to any person any of its powers and functions under this Act, other than this power of delegation.

(4) A council may delegate to any person any of its powers and functions under this Act, other than this power of delegation.

(5) A general manager may delegate to any person any of the general manager's powers and functions under this Act, other than this power of delegation.

### **PART 3 - Duties of persons**

#### **12. Duties of owners**

(1) The owner of a building who authorises building work in respect of the building, so far as is reasonably practicable, is to ensure that –

(a) any person engaged to carry out the building work and associated building work is an accredited building practitioner if so required under this Act; and

(b) correct information is provided to any person engaged to carry out the building work and associated building work; and

(c) the building or land on which the building work is to be carried out is clearly identifiable; and

(d) provisions for the protection of adjoining property are carried out in accordance with this Act; and

(e) the building is not occupied until an occupancy permit has been issued; and

(f) sufficient information is supplied to the next owner for that owner to maintain the building in accordance with this Act.

(2) An owner who engages a person to carry out any plumbing work is to ensure, so far as is reasonably practicable, that the person is a plumber if so required under the *Plumbers and Gas-fitters Registration Act 1951*.

(3) An owner who engages a person to design plumbing work is to ensure, so far as is reasonably practicable, that the person is –

(a) an accredited building practitioner; or

(b) a plumber.

(4) The owner of a building, so far as is reasonably practicable, is to ensure that the building is used and maintained for the intended purpose in accordance with this Act.

#### **13. Duties of designers**

A designer is to ensure that –

- (a) he or she acts only within the area of his or her competence; and
- (b) so far as is reasonably practicable –
  - (i) the design of the building or plumbing work is in accordance with the standards and requirements of this Act; and
  - (ii) the documentation relating to the design includes sufficient information for the assessment of the work in accordance with this Act; and
  - (iii) the documentation relating to the design is sufficiently detailed for a builder or a plumber to carry out the work in accordance with the documents and this Act.

#### **14. Duties of builders and plumbers**

(1) A builder or plumber is to ensure that he or she acts only within the area of his or her competence.

(2) A builder who carries out building work or a plumber who carries out plumbing work is to ensure that –

- (a) a relevant permit, authorisation or notification is issued for the work before it is commenced; and
- (b) any directions under this Act are complied with.

(3) A builder who carries out building work or a plumber who carries out plumbing work, so far as is reasonably practicable, is to ensure that –

(a) the work is carried out in accordance with the relevant permit or authorisation and this Act; and

(b) the quality of the materials used in the work is in accordance with the relevant permit or authorisation and this Act; and

(c) the building work is located on land owned by the owner; and

(d) the work is carried out in a manner that does not cause –

(i) a public health risk; or

(ii) a danger to the public; or

(iii) a nuisance to an adjoining owner; or

(iv) damage to infrastructure; and

(e) sufficient information is supplied to the owner for the owner to maintain the building in accordance with this Act.

### **15. Duties of building surveyors**

(1) A building surveyor is to ensure that he or she acts only within the area of his or her competence.

(2) A building surveyor, as far as is reasonably practicable, is to ensure that building work is carried out in accordance with this Act.

### **16. Duties of permit authorities**

A permit authority who issues a building permit or plumbing permit, so far as is reasonably practicable, is to ensure that –

(a) the permit is in accordance with this Act; and

(b) any required matters are taken into account in accordance with this Act; and

(c) registers are kept in accordance with this Act; and

(d) a certificate of completion (building work) or a certificate of completion (plumbing work) is issued in accordance with this Act.

### **17. Duties of reporting authorities**

A reporting authority who reports on building work is to ensure that –

(a) it acts only within the area of its competence; and

(b) it reports to the building surveyor on any required matters in relation to permits in accordance with this Act; and

(c) it reports to the building surveyor on any inspections of required matters in accordance with this Act.

### **18. Duties of councils**

A council of a municipal area, as far as is reasonably practicable, is to –

(a) ensure that the owners of property are informed of their duties under this Act –

(i) in relation to any building work or plumbing work; and

- (ii) in maintaining and using a building; and
- (b) make itself aware of –
  - (i) building work and plumbing work; and
  - (ii) the use and occupation of buildings; and
- (c) ensure that proceedings are instituted against any person or body failing to comply with this Act.

## **PART 4 - Accredited building practitioners**

### *Division 1 - Authorised bodies*

#### **19. Application to be authorised body**

(1) An incorporated body or statutory body may apply to the Minister to be an authorised body for the purpose of accrediting a specified category of building practitioner.

(2) An application is to be accompanied by –

- (a) a statement detailing –
  - (i) the scheme under which the body proposes to grant accreditation; and
  - (ii) the code of conduct by which the body proposes to measure the performance of accredited building practitioners; and
  - (iii) the categories, and classes of those categories, of accreditation available and the minimum qualifications and experience or competency required for each category and class; and
- (b) a statement specifying the representation on proposed committees of the body; and
- (c) a prescribed fee.

#### **20. Granting application**

(1) The Minister may authorise a body to be an authorised body if satisfied that –

- (a) the body has competence and expertise in accrediting building practitioners; and

(b) the statements referred to in section 19 demonstrate that the body is suitable to be an authorised body; and

(c) the proposed scheme meets any guidelines determined by the Minister.

(2) The Minister may authorise more than one body to be an authorised body for accrediting a specified category of building practitioner.

(3) The Minister may authorise a body to be an authorised body subject to any conditions the Minister considers appropriate.

(4) The Minister, by public notice, is to notify the authorisation of an authorised body.

(5) The Minister may issue guidelines in respect of matters relating to a scheme under which accreditation is granted.

## **21. Withdrawal of authorisation**

The Minister, by public notice, may withdraw the authorisation of a body to be an authorised body if –

(a) the body fails to comply with any condition of the authorisation; or

(b) the Minister is no longer satisfied as to any matter referred to in section 20(1).

## **22. General functions of authorised bodies**

An authorised body is to –

(a) monitor compliance by accredited building practitioners with this Part; and

(b) provide a report to the Director as required by the Director.

### ***Division 2 - Accreditation***

## **23. Offences relating to accreditation**

(1) A person must not carry out the work of a building practitioner that requires a building permit and the cost of which exceeds \$5 000 unless the person is accredited under this Part in the relevant category and class.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person must not purport to be an accredited building practitioner unless the person is accredited under this Part.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(3) Subsection (1) does not apply to –

(a) an owner builder or a person engaged by an owner builder to carry out building work; or

(b) a plumber carrying out a class of plumbing work as defined by the *Plumbers and Gas-fitters Registration Act 1951* that requires a building permit; or

(c) a plumber carrying out the replacement of roof decking that requires a building permit; or

(d) a person carrying out electrical work as defined by the *Electricity Industry Safety and Administration Act 1997* that requires a building permit; or

(e) an owner builder who designs their own building work.

## **24. Owner builder**

(1) A person intending to be an owner builder is to make a statement in an approved form declaring that the person is aware of his or her obligations as an owner builder.

(2) The Minister, on application by a person who is not an owner builder, may designate the person as an owner builder in respect of a particular building work if the Minister considers special circumstances exist.

## **25. Bodies corporate and partnerships**

If a building practitioner is a body corporate or partnership, the person who is to be accredited under this Part is –

- (a) a director of the body; or
- (b) a partner in the partnership; or
- (c) a permanent employee nominated by the body or the partners.

## **26. Application for accreditation**

(1) A person may apply to an authorised body to be an accredited building practitioner in a particular category and class.

(2) An authorised body may –

- (a) grant an application for accreditation with or without conditions; or
- (b) refuse to grant the application if satisfied that the applicant –
  - (i) does not have the qualifications, experience or competence to perform the functions of or to carry out work of an accredited building practitioner as appropriate for the category and class of accreditation applicable to the applicant; or
  - (ii) is not, or is not likely to be, adequately covered by the required insurance; or
  - (iii) does not, or is not likely to, meet any requirement of the scheme.

(3) An authorised body is not to grant an application for accreditation to a person whose accreditation was previously cancelled or refused without examining the details of that cancellation or refusal.

(4) An authorised body is to provide the applicant with written reasons for the refusal to grant an application for accreditation.

## **27. Certificate of accreditation**

(1) Except as provided in subsection (3), the authorised body is to issue a certificate of accreditation in the approved form to a person who is an accredited building practitioner.

(2) The authorised body, as soon as practicable, is to notify the Director of the specified details of –

- (a) each applicant to whom it grants accreditation; and
- (b) each certificate issued under subsection (1).

(3) The Director is to issue a certificate of accreditation if –

(a) the applicant, for reasons of religious conscience, has requested that the Director issues the certificate; and

(b) the Director is satisfied as to those reasons.

## **28. Period of certificate**

(1) A certificate of accreditation remains in force for a period of 3 years after the date on which it is issued.

(2) A certificate of accreditation expires if –

(a) it is not renewed; or

(b) the accredited building practitioner is no longer adequately covered by the required insurance.

## **29. Renewal of certificates**

(1) An accredited building practitioner may apply to an authorised body for the renewal of a certificate of accreditation.

(2) An application for renewal is to be made not earlier than 3 months before the certificate expires.

(3) An authorised body is to issue a renewal of a certificate of accreditation if satisfied that the applicant –

(a) has complied with this Part; and

(b) is covered by the required insurance; and

(c) has undertaken professional development as required by the scheme.

## ***Division 3 - Audits***

### **30. Audit by authorised body**

(1) An authorised body is to arrange for audits to be carried out of the work of building practitioners accredited under its scheme.

(2) An accredited building practitioner is to assist in and cooperate with the audit.

(3) If an authorised body finds professional misconduct or unsatisfactory professional conduct while auditing the work of an accredited building practitioner, it is to investigate the matter under Division 5 as if it were a complaint.

### **31. Audit by Director**

(1) The Director may authorise any person to audit the work of an accredited building practitioner as if that person was carrying out an audit as an authorised body.

(2) The person carrying out an audit is to report to the Director on the results of the audit.

(3) If satisfied that the report indicates that the accredited building practitioner is or may be guilty of unsatisfactory professional conduct or professional misconduct, the Director –

(a) is to give a copy of the report to the accredited building practitioner; and

(b) is to give a copy of the report to the relevant authorised body; and

(c) may make a complaint against the accredited building practitioner with respect to any matter arising from the report.

### ***Division 4 - Complaints***

### **32. Complaints**

(1) A person may make a complaint to the relevant authorised body in respect of the professional misconduct or unsatisfactory professional conduct of a building practitioner accredited by that body.

(2) A complaint is to –

(a) be in writing; and

(b) contain particulars of the grounds of the complaint; and

(c) be supported by statutory declaration.

(3) An authorised body may require the complainant to give further particulars of the complaint supported by statutory declaration.

(4) An authorised body, by notice in writing sent to the complainant, may dismiss any complaint without investigation if –

- (a) further particulars are not given when required; or
- (b) the complaint or further particulars are not supported by statutory declaration;  
or
- (c) the complaint is vexatious or frivolous.

### **33. Notification to building practitioner**

(1) After receiving a complaint, an authorised body, by written notice, is to –

- (a) inform the accredited building practitioner within the specified period of the nature of the complaint; and
- (b) provide to the accredited building practitioner any relevant documents; and
- (c) invite the accredited building practitioner to make, within the period stated in the notice, representations about the complaint.

(2) The period stated in the notice is to be at least 14 days after the date of the notice.

(3) Any representation made under subsection (1)(c) forms part of the particulars of the complaint.

### ***Division 5 - Investigations***

#### **34. Approved investigator**

For the purpose of this Division, an authorised body may approve a person as an approved investigator on any terms and conditions it considers appropriate.

#### **35. Investigations**

(1) An authorised body or approved investigator is to conduct an investigation into a complaint as soon as practicable after receiving the complaint.

(2) An authorised body or approved investigator may deal with one or more complaints about an accredited building practitioner in the same investigation.

(3) If during an investigation an authorised body or approved investigator is satisfied there is matter about which another complaint could have been made against the accredited building practitioner, it may investigate the matter as if a complaint had been made about the matter.

(4) An authorised body or approved investigator is to invite the accredited building practitioner who is the subject of a complaint to make submissions in relation to the complaint.

### **36. Production of documents**

(1) An authorised body or approved investigator, by written notice, may require an accredited building practitioner to produce a document to it.

(2) The notice –

(a) is to state the time by which and place at which the document is to be produced; and

(b) may require the document to be verified by statutory declaration.

(3) The time specified in the notice is to be a reasonable time.

(4) An accredited building practitioner must comply with a notice.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

(5) An authorised body or an approved investigator may –

(a) inspect any document produced under this section; and

(b) copy all or part of the document.

### **37. Powers of entry and inspection**

In investigating a complaint, an authorised body or an approved investigator may enter and inspect a building –

(a) with the consent of the person in control of the building; or

(b) as authorised by a warrant under section 38.

### **38. Warrant**

(1) An authorised body or an approved investigator may apply to a magistrate for a warrant to enter and inspect a specified building.

(2) A magistrate may require information to be provided orally or by affidavit before issuing the warrant.

(3) A magistrate may issue a warrant if satisfied that there are reasonable grounds for the authorised body or approved investigator to enter and inspect the building for the purpose of this Act.

(4) A warrant is to specify –

(a) the building in respect of which it is made; and

(b) the times during which entry and inspection may be made; and

(c) the day on which the warrant ceases to have effect, which is to be not more than 14 days after its issue.

(5) An authorised body or approved investigator named in the warrant may enter and inspect the specified building using any necessary and reasonable help and force.

### **39. Offences**

An accredited building practitioner is guilty of professional misconduct if he or she –

(a) fails to assist and cooperate with an investigation; or

(b) misleads or obstructs an authorised body or an approved investigator in the exercise of any power or performance of any function under this Division.

### **40. Decision of authorised body**

(1) An approved investigator is to provide a report of an investigation carried out by him or her to the relevant authorised body.

(2) After investigating a complaint or receiving a report from an approved investigator, an authorised body may decide that the accredited building practitioner to whom the complaint or report relates –

(a) is guilty of unsatisfactory professional conduct; or

(b) is guilty of professional misconduct; or

(c) is not guilty of professional misconduct or unsatisfactory professional conduct.

(3) If an authorised body makes a decision under subsection (2)(a), it may –

(a) caution or reprimand the accredited building practitioner; and

(b) impose any condition it considers appropriate on the building practitioner's accreditation; and

(c) direct the accredited building practitioner to complete any course or training directed by the authorised body; and

(d) direct the accredited building practitioner to report on his or her practice as an accredited building practitioner in the manner directed by the authorised body; and

(e) impose a fine not exceeding a specified amount.

(4) If an authorised body makes a decision under subsection (2)(b), it may –

(a) suspend the building practitioner's accreditation for any period it considers appropriate; or

(b) cancel the building practitioner's accreditation.

#### **41. Notice of decision by authorised body**

(1) An authorised body, by notice in writing served on the complainant and the accredited building practitioner, is to notify –

(a) the decision reached under section 40; and

(b) the reason for that decision; and

(c) that an appeal may be made under Division 6.

(2) The notice takes effect –

(a) if an appeal is made under Division 6 and the Appeal Board makes a decision in accordance with section 40(2)(a) or (b) on the date of that decision; or

(b) if an appeal is not made under Division 6, at the end of 28 days after the date of service of the notice.

(3) A person must comply with the notice when it takes effect.

Penalty:

In the case of –

**(a)** a natural person, a fine not exceeding 50 penalty units; or

**(b)** a body corporate, a fine not exceeding 250 penalty units.

**(4)** A person who fails to comply with a notice in respect of a decision under section 40(3)(b), (c), (d) or (e) when it takes effect is guilty of professional misconduct.

### ***Division 6 - Appeals***

#### **42. Appeals to Appeal Board**

**(1)** A complainant or an accredited building practitioner may appeal to the Appeal Board against any decision or action of an authorised body under section 26, 32 or 40.

**(2)** An appeal is to be made within 28 days after the date of service of a notice under section 41.

#### **43. Hearing by Appeal Board**

**(1)** The Appeal Board is to hear an appeal as if it were investigating a complaint under Division 5.

**(2)** In hearing the appeal, the Appeal Board has the same powers as an authorised body under Division 5.

#### **44. Decision of Appeal Board**

**(1)** After hearing an appeal, the Appeal Board may –

**(a)** confirm the decision or action of the authorised body; or

**(b)** quash the decision or action of the authorised body and substitute its own decision in accordance with section 40.

**(2)** If the Appeal Board makes a decision in accordance with section 40(2)(a) or (b), it may direct the authorised body to take any action specified in section 40(3) or (4).

**(3)** An authorised body must comply with a direction of the Appeal Board.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 50 penalty units; or
- (b) a body corporate, a fine not exceeding 250 penalty units.

#### **45. Notice of decision of Appeal Board**

(1) The Appeal Board, by service of a notice, is to give a copy of its decision to –

- (a) the accredited building practitioner; and
- (b) the complainant; and
- (c) the authorised body.

(2) The notice takes effect –

- (a) if an appeal is made under section 46 and the magistrate makes a decision in accordance with section 40(2)(a) or (b), on the date of that decision; or
- (b) if an appeal is not made under section 46, at the end of 28 days after the date of service of the notice.

(3) A person must comply with the notice when it takes effect.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 50 penalty units; or
- (b) a body corporate, a fine not exceeding 250 penalty units.

#### **46. Appeal to magistrate**

(1) A person may appeal to a magistrate against –

- (a) a decision of the Appeal Board under section 44(1); or
- (b) a direction of the Appeal Board under section 44(2).

(2) An appeal is to be made within 28 days after service of a notice under section 45.

#### **47. Findings of magistrate**

- (1) After hearing an appeal, the magistrate may –
- (a) order the authorised body to take any action specified in section 40(3) or (4); and
  - (b) impose a fine not exceeding 50 penalty units on the accredited building practitioner; and
  - (c) order the accredited building practitioner to pay to the complainant or another person any amount the magistrate considers appropriate as compensation for –
    - (i) any costs in bringing the complaint; and
    - (ii) any damage suffered by the complainant or the other person as a result of the professional misconduct or unsatisfactory professional conduct of the accredited building practitioner; and
  - (d) make any other order the magistrate considers appropriate.

(2) If a magistrate orders the authorised body to cancel the accreditation of a building practitioner, the magistrate may order that the accredited building practitioner must not reapply for accreditation by any authorised body within the period specified in the order.

### ***Division 7 - Insurance***

#### **48. Order requiring insurance**

- (1) The Minister, by order published in the *Gazette*, may –
- (a) require accredited building practitioners in particular categories or classes of building practitioners in respect of particular building work or associated building work to be covered by insurance; and
  - (b) determine the type and amount of such insurance; and
  - (c) determine the reporting requirements of the insurer; and
  - (d) determine the type and amount of insurance required for owner builders under section 50(2).
- (2) An order takes effect on a date specified in the order, being a date at least one month after the date of its publication.
- (3) The Minister may amend, vary or revoke an order.

(4) An order is not a statutory rule within the meaning of the *Rules Publication Act 1953*.

#### **49. Insurance cover**

A person is covered by the required insurance if –

- (a) the person holds the required insurance; or
- (b) the building work carried out by or on behalf of the person is covered by the required insurance; or
- (c) the person is not a party to the required insurance but is specified or referred to in that insurance by name or otherwise as a person covered by that insurance.

#### **50. Offences relating to insurance**

(1) A person must not carry out the work of a building practitioner unless covered by the required insurance.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(2) An owner builder must not sell a building built by the owner builder within the period referred to in section 255 unless the building is covered by the required insurance.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(3) A person who is not covered by the required insurance must not hold out as being covered by such insurance.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

## **PART 5 - Building surveyors**

### **51. Exercise of powers by assistant building surveyor**

(1) An assistant building surveyor may exercise the powers of a building surveyor under this Act only in respect of buildings classified as Class 1 or Class 10 under the Building Code of Australia.

(2) An assistant building surveyor must exercise the powers of a building surveyor under this Act as if he or she were a building surveyor.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

### **52. Exercise of powers prohibited**

A building surveyor must not exercise any power under this Act in relation to any building work or building if the building surveyor –

(a) prepared the design of, or an alternative solution for, the building work or building; or

(b) was employed within the previous 12 months by a person who prepared the design of the building work or building; or

(c) has a direct or indirect pecuniary interest –

(i) in the person who prepared the design of the building work or building; or

(ii) in the building work or building; or

(iii) in any person associated with the building work or building.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

### **53. Referral to other building surveyors**

(1) A person must not engage a building surveyor in relation to a matter in respect of which another building surveyor has already exercised, refused to exercise or is taken to have refused to exercise any power under this Act unless the matter was referred by that other building surveyor.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A building surveyor may refer a matter to another building surveyor to be dealt with by that other building surveyor if the other building surveyor agrees.

### **54. Change of building surveyor**

(1) A person who engaged a building surveyor must not remove that building surveyor from that engagement without the consent of the Director before the building surveyor has exercised all the relevant powers under this Act.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) If a building surveyor resigns from an engagement, dies or becomes incapable for any reason of exercising the powers for which he or she was engaged, the owner, with the consent of the Director, may engage another building surveyor.

## **PART 6 - Building and plumbing standards**

### ***Division 1 - Building standards***

### **55. Compliance with Building Code**

(1) Building work and the use and maintenance of buildings are to comply with the Building Code of Australia and this Act.

(2) An environmental health officer, in accordance with the Building Regulations, may determine that any provision of the Building Code of Australia in relation to food premises be altered.

(3) A building surveyor, in accordance with the Building Regulations, may determine that any provision of the Building Code of Australia in relation to farm buildings or historic buildings be altered.

## **56. Evidence of compliance for building products and systems**

A building product or building system for which a certificate of conformity is issued is evidence that the building product or building system conforms with the Building Code of Australia.

### *Division 2 - Plumbing standards*

## **57. Standards of plumbing work**

Plumbing work is to comply with the Tasmanian Plumbing Code and this Act.

## **58. Tasmanian Plumbing Code**

The Minister may issue a code to provide for requirements in respect of –

- (a) plumbing work, plumbing installations and plumbing products; and
- (b) the testing of plumbing products and plumbing systems.

## **59. Authorisation and accreditation**

(1) The Minister may authorise a plumbing product for the purpose of this Act subject to any condition the Minister determines.

(2) The Minister may accredit the use of a plumbing system for the purpose of this Act subject to any condition the Minister determines.

## **PART 7 - Building and plumbing permits**

### *Division 1 - Requirement for building permit*

## **60. Building permit required**

(1) A person must not carry out any building work unless a building permit is in force that allows the carrying out of that work.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) Subsection (1) does not apply if the building work –

(a) is exempted under the Building Regulations from the requirement of a building permit; or

(b) in the opinion of a building surveyor, consists of minor alterations or minor repairs.

(3) The building surveyor is to notify the permit authority if any building work consists of minor alterations or minor repairs.

## **61. Building work without permit**

If building work in relation to a building or part of a building is carried out without a building permit, a general manager is to take the appropriate action under Part 11.

### *Division 2 - Certificates of likely compliance*

## **62. Certificate of likely compliance required**

(1) An owner or agent of the owner, before applying for a building permit, is to obtain a certificate of likely compliance from a building surveyor.

(2) An application for a certificate of likely compliance is to be accompanied by any document or certificate required by the building surveyor.

## **63. Required report from reporting authority**

(1) A building surveyor is not to grant an application for a certificate of likely compliance for building work in respect of which a report is required in accordance with the Building Regulations until the report is supplied to the building surveyor.

(2) A building surveyor is taken to have been supplied with a required report if the reporting authority fails to supply it within the period specified.

(3) A reporting authority is taken to have supplied a report if the report is not supplied within the specified period.

(4) A building surveyor is not required to implement anything contained in a required report.

(5) If a building surveyor does not implement anything contained in the required report, the building surveyor is to –

(a) notify the reporting authority; and

(b) provide the reporting authority with –

(i) a copy of the certificate of likely compliance; and

(ii) the reasons for not implementing anything contained in the report.

#### **64. Referral of documents to function control authority**

(1) If a person makes an application for a certificate of likely compliance to build a special-use building, the building surveyor is to forward copies of the following documents to the relevant function control authority for its information within the specified period:

(a) any document submitted with the application that the building surveyor considers relevant;

(b) a referral in an approved form.

(2) If the function control authority considers that an alteration is to be made to building work in order to comply with its requirements under any other Act, the function control authority is to notify the building surveyor of that alteration within the specified period.

#### **65. Special-use buildings**

A building surveyor may grant an application for a certificate of likely compliance for building work to a special-use building that does not comply with this Act if –

(a) a function control authority, in exercising a power under any Act, requires that building work to be carried out; or

(b) the function control authority agrees to the building work.

#### **66. Consideration of application for certificate of likely compliance**

In considering an application for a certificate of likely compliance, a building surveyor is to take into account the following matters:

- (a) any required reports from a reporting authority;
- (b) any certificate provided with the application;
- (c) in relation to a special-use building, any notification given by a function control authority;
- (d) any building work required to upgrade an existing special-use building by a function control authority;
- (e) any standards relating to a food premises required to be altered by an environmental health officer;
- (f) any need for standard requirements to be altered for a historic or farm building;
- (g) any relevant requirements of any permit or consent in force under any other Act.

#### **67. Granting certificate of likely compliance**

(1) A building surveyor is to grant an application for a certificate of likely compliance within the specified period if –

- (a) the application is in accordance with section 62; and
- (b) satisfied that the building work to which it applies is likely to comply with this Act.

(2) A certificate of likely compliance may be subject to –

- (a) any relevant and reasonable condition; and
- (b) any condition specified in a document or certificate referred to in section 62.

(3) A building surveyor is not to make any condition that imposes a lesser or greater standard or requirement than that specified in this Act.

(4) If a building surveyor grants the application, he or she is to issue a certificate of likely compliance in the approved form.

#### **68. Refusing certificate of likely compliance**

(1) A building surveyor is to refuse an application for a certificate of likely compliance if the building work is not likely to comply with this Act.

(2) A building surveyor is not to refuse an application for a certificate of likely compliance on the grounds that any building product or building system is unsatisfactory if a certificate of conformity is in force in respect of that building product or building system.

(3) A building surveyor, by notice in writing, is to notify an applicant of –

(a) the refusal to grant the application for a certificate of likely compliance; and

(b) the reasons for the refusal; and

(c) the right of an appeal under this Act.

(4) The building surveyor is to provide a copy of the notice of refusal to the permit authority.

### *Division 3 - Applications for building permits*

#### **69. Application for building permit**

(1) An owner, or an agent of an owner, of a building or land may apply to a permit authority for a building permit –

(a) for building work in respect of that building or land; and

(b) for a stage of the building work.

(2) A person acting as an agent of an owner must not make an application under subsection (1) on behalf of the owner unless authorised to do so in writing by the owner.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

(3) A permit authority is not required to inquire whether a person is authorised to make an application under subsection (1).

#### **70. Form of application for building permit**

- (1) An application for a building permit is to be –
- (a) in an approved form; and
  - (b) accompanied by any specified documents; and
  - (c) accompanied by a certificate of likely compliance; and
  - (d) accompanied by any fees required by the permit authority.

- (2) A permit authority may require the applicant, within a specified period, to –
- (a) provide the specified documents and certificate of likely compliance; or
  - (b) amend the application.

(3) If an applicant fails to comply with a requirement under subsection (2), the permit authority may treat the application as having lapsed.

## **71. Consideration of application for building permit**

In considering an application for a building permit, a permit authority is to take into account the following matters:

- (a) the stability of the site;
- (b) the provision of water to the site;
- (c) the means of road access to the site;
- (d) any relevant requirements of any permit or consent in force under any other Act;
- (e) any relevant provisions of this Act or the Building Regulations.

## **72. Granting building permit**

(1) A permit authority is to grant an application for a building permit within the specified period if –

- (a) the application is in accordance with section 70; and
- (b) satisfied as to the matters referred to in section 71.

- (2) A building permit is subject to –
- (a) any relevant and reasonable condition; and

(b) any condition specified in a document or certificate referred to in section 70(1).

(3) If a permit authority grants the application, it is to –

(a) issue a building permit to the applicant in the approved form; and

(b) provide a copy of the building permit to the building surveyor.

### **73. Refusing building permit**

(1) A permit authority is to refuse an application for a building permit in respect of any building work if –

(a) it is not in accordance with section 70; or

(b) it is not satisfied as to the matters referred to in section 71.

(2) A permit authority, by notice in writing within the specified period, is to notify an applicant of –

(a) the refusal to grant the application for a building permit; and

(b) the reasons for the refusal; and

(c) the right of an appeal under this Act.

### **74. Conditions of building permit binding**

(1) An owner must comply with any condition of a building permit.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person's successors in title are bound by any conditions relating to a building permit.

### ***Division 4 - Requirement for plumbing permit***

### **75. Plumbing permit required**

(1) A person must not carry out any plumbing work unless a plumbing permit is in force that allows the carrying out of that work.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(2) Subsection (1) does not apply if the plumbing work is exempted under the Plumbing Regulations from the requirements of a plumbing permit.

## **76. Plumbing work without permit**

If plumbing work is carried out without a plumbing permit, a general manager is to take the appropriate action under Part 11.

## **77. Special plumbing permit**

A plumber must not carry out any of the following plumbing work, or cause or permit any of the following plumbing work under his or her control to be carried out, without a special plumbing permit:

- (a) the installation of a fixture or appliance that –
  - (i) discharges waste into a sewerage system; and
  - (ii) is located on a floor of a building or structure wholly or partly below ground level;
- (b) the installation of a sanitary or food waste disposal unit;
- (c) the installation of drainage from a polluted area or a swimming pool;
- (d) the installation of an inlet for a sewerage installation at a level that is lower than 150 millimetres above the declared flood level for the land on which the sewerage installation is located;
- (e) the installation of an on-site waste water management system;
- (f) the installation of a testable backflow prevention device;
- (g) the connection of an unregistrable relocatable building to a water supply or sewerage system;
- (h) the installation of trade waste drainage;

(i) the discharge of trade waste into a sewerage system;

(j) plumbing work involving the retention of an existing plumbing product or material that does not comply with the Plumbing Regulations.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

### *Division 5 - Applications for plumbing permits*

#### **78. Application for plumbing permit**

(1) An owner, or an agent of an owner, of a building or land may apply to a permit authority for a plumbing permit –

(a) in respect of that building or land; and

(b) for a stage of plumbing work.

(2) A person acting as an agent of an owner must not make an application under subsection (1) on behalf of the owner unless authorised to do so in writing by the owner.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

(3) A permit authority is not required to inquire whether a person is authorised to make an application under subsection (1).

#### **79. Application for special plumbing permit**

(1) An owner, or an agent of an owner, of a building or land may apply to a permit authority for a special plumbing permit.

(2) A person acting as an agent of an owner must not make an application under subsection (1) on behalf of the owner unless authorised to do so by the owner.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 10 penalty units; or
- (b) a body corporate, a fine not exceeding 50 penalty units.

(3) A permit authority is not required to inquire whether a person is authorised to make an application under subsection (1).

### **80. Form of application for plumbing permit**

(1) An application for a plumbing permit or special plumbing permit is to be –

- (a) in an approved form; and
- (b) accompanied by any specified documents; and
- (c) accompanied by any fee required by a permit authority.

(2) A permit authority may require the applicant, within the specified period, to –

- (a) provide the specified documents; or
- (b) amend the application.

(3) If an applicant fails to comply with a requirement under subsection (2), a permit authority may treat the application as having lapsed.

### **81. Consideration of application for plumbing permit**

In considering an application for a plumbing permit or special plumbing permit, a permit authority is to take into account any relevant provision of this Act and the Plumbing Regulations.

### **82. Granting plumbing permit**

(1) A permit authority is to grant an application for a plumbing permit or special plumbing permit within the specified period if –

(a) the application is in accordance with section 80; and

(b) satisfied that the relevant provisions of the Plumbing Regulations are complied with.

(2) A plumbing permit or special plumbing permit is subject to –

(a) any relevant and reasonable condition; and

(b) any condition specified in a document referred to in section 80(1)(b).

(3) If a permit authority grants the application, it is to issue a plumbing permit or special plumbing permit to the applicant in the approved form.

### **83. Refusing plumbing permit**

(1) A permit authority is to refuse an application for a plumbing permit or special plumbing permit in respect of any plumbing work if the work is not likely to comply with the Act.

(2) A permit authority, by notice in writing within the specified period, is to notify an applicant of –

(a) the refusal to grant the application for a plumbing permit or special plumbing permit; and

(b) the reasons for the refusal; and

(c) the right of an appeal under this Act.

### **84. Conditions of plumbing permit binding**

(1) An owner must comply with any condition of a plumbing permit or special plumbing permit.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person's successors in title are bound by any conditions relating to a plumbing permit or special plumbing permit.

(3) A special plumbing permit is cancelled if a person or his or her successor in title fails to comply with any condition.

## **PART 8 - Building work, plumbing work, inspection, occupation and completion**

### *Division 1 - Carrying out work and authorisation*

#### **85. Carrying out building work**

(1) Subject to subsection (2), a person must carry out any building work in accordance with this Act and the building permit.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person may carry out building work that varies from the certificate of likely compliance –

(a) if the building work is likely to affect any matter referred to in section 71, with the consent of the building surveyor and the permit authority; or

(b) in any other case, with the consent of the building surveyor.

#### **86. Carrying out plumbing work**

(1) Subject to subsection (2), a person must carry out any plumbing work in accordance with this Act, the plumbing permit and the special plumbing permit.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person may carry out plumbing work that varies from the plumbing permit or special plumbing permit with the consent of the permit authority.

#### **87. Starting building or plumbing work**

(1) Any building work or plumbing work is to be started within the specified period.

(2) If building work or plumbing work is not started within the specified period, the building permit or plumbing permit in respect of that work lapses.

(3) A person must not start –

(a) any plumbing work, or cause or permit any plumbing work under his or her control, to be started without an authorisation to start work under the Plumbing Regulations; or

(b) any building work, or cause or permit any building work under his or her control, to be started before notifying the building surveyor in accordance with the Building Regulations.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 50 penalty units; or

(b) a body corporate, a fine not exceeding 250 penalty units.

(4) On receipt of notification under subsection (3) from an owner builder, the building surveyor is to notify the Director in accordance with the Building Regulations.

(5) Subsection (3) does not apply if –

(a) the plumbing work is required in an emergency situation; and

(b) the plumber obtains the authorisation on or before the first working day following the day on which the plumbing work is started.

### *Division 2 - Inspections*

#### **88. Notification during building or plumbing work**

(1) A builder carrying out building work for which a building permit has been issued must –

(a) notify the building surveyor within the specified period before completion of each mandatory notification stage of that work; and

**(b)** stop carrying out that work or any part of that work on completion of a mandatory notification stage until permitted to proceed under the Building Regulations.

Penalty:

In the case of –

**(a)** a natural person, a fine not exceeding 50 penalty units; or

**(b)** a body corporate, a fine not exceeding 250 penalty units.

**(2)** A plumber carrying out plumbing work for which a plumbing permit is issued must –

**(a)** notify the permit authority within the specified period before completion of each mandatory notification stage of that work; and

**(b)** stop carrying out that work or any part of that work on completion of a mandatory notification stage until permitted to proceed under the Plumbing Regulations.

Penalty:

In the case of –

**(a)** a natural person, a fine not exceeding 50 penalty units; or

**(b)** a body corporate, a fine not exceeding 250 penalty units.

## **89. Inspections**

**(1)** On being notified that a mandatory notification stage in respect of any building work is to be completed, the building surveyor may inspect or cause to be inspected the building work within the specified period.

**(2)** A building surveyor may inspect or cause building work for which a building permit has been issued to be inspected at any time, whether or not a mandatory notification stage has been completed.

**(3)** On being notified that a mandatory notification stage in respect of any plumbing work is to be completed, the permit authority may, within the specified period, inspect or cause to be inspected the plumbing work.

(4) A permit authority may inspect or cause plumbing work for which a plumbing permit has been issued to be inspected at any time, whether or not a mandatory notification stage has been completed.

## **90. Powers in relation to inspections**

(1) A building surveyor, in accordance with the Building Regulations, may cause any building work to be demolished, opened, cut into or tested if it is reasonably required to facilitate an inspection under this Act.

(2) A permit authority, in accordance with the Plumbing Regulations, may cause any plumbing work to be demolished, opened, cut into or tested if it is reasonably required to facilitate an inspection under this Act.

## **91. Directions relating to building and plumbing work**

(1) After inspecting the building work, a building surveyor may direct the builder to carry out the building work so that it complies with the building permit issued in respect of the building work.

(2) After inspecting the plumbing work, a permit authority may direct the plumber to carry out the plumbing work so that it complies with the plumbing permit issued in respect of the plumbing work.

(3) A direction may be given orally or in writing.

(4) A person who gives an oral direction is to confirm it in writing within the specified period to the person to whom it was given.

(5) If a person fails to comply with a direction under subsection (1), the building surveyor may –

(a) serve a building notice under Division 2 of Part 11; and

(b) take any other appropriate action under this Act.

(6) If a person fails to comply with a direction under subsection (2), the permit authority may –

(a) serve a plumbing notice under Division 2 of Part 11; and

(b) take any appropriate action under this Act.

## **92. Certificate of final inspection**

(1) A building surveyor is to issue a certificate in an approved form on completion of the final inspection following the final mandatory notification stage of the building work if satisfied that –

(a) the building work is completed; and

(b) all directions given under this Act in respect of the building work have been complied with; and

(c) the building work is substantially in compliance with this Act.

(2) A building surveyor is to –

(a) issue the certificate of final inspection to the owner or an agent of the owner; and

(b) provide a copy of it to the permit authority and the builder.

### ***Division 3 - Occupancy permits***

#### **93. Occupancy permit required**

(1) A person must not occupy a building in respect of which building work is being or has been carried out unless –

(a) an occupancy permit is in force in respect of that building; or

(b) the Building Regulations provide that an occupancy permit is not required for that building.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) If building work is carried out to refurbish a building, an owner must obtain a new occupancy permit on completion of the refurbishment even though the building was occupied during refurbishment.

Penalty:

Fine not exceeding 50 penalty units.

(3) If the use of a building changes, a person must not occupy the building unless a new occupancy permit is in force before the commencement of the new use.

Penalty:

Fine not exceeding 50 penalty units.

#### **94. Application for occupancy permit**

(1) An owner, or an agent of the owner, of a building may apply to –

(a) the building surveyor who granted a certificate of likely compliance for a permit to occupy that building or part of that building; or

(b) another building surveyor engaged under section 54.

(2) An owner, or an agent of the owner, of a building for which a change of use is proposed and in respect of which building work is not being carried out may apply to a building surveyor for a new occupancy permit.

(3) A person acting as an agent of an owner must not make an application under subsection (1) unless authorised to do so in writing by the owner.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

(4) The building surveyor is not required to inquire whether a person is authorised to make an application under subsection (1).

#### **95. Form of application for occupancy permit**

(1) An application for an occupancy permit is to be –

(a) in an approved form; and

(b) accompanied by any documents and information the building surveyor requires.

(2) The building surveyor may require an applicant, within the specified period –

(a) to provide additional information and documents; and

(b) to amend the application.

(3) If an applicant fails to comply with a requirement under subsection (2), the building surveyor may treat the application as having lapsed.

#### **96. Required report from reporting authority**

(1) The building surveyor is not to grant an application for an occupancy permit in respect of which a report is required in accordance with the Building Regulations until the report is supplied to the building surveyor.

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

(3) A reporting authority is taken to have supplied a report if the report is not supplied within the specified period.

#### **97. Consideration of application for occupancy permit**

In considering an application for an occupancy permit, the building surveyor is to take into account a required report.

#### **98. Granting occupancy permit**

(1) The building surveyor is to grant an application for an occupancy permit within the specified period if –

(a) the application is in accordance with section 95; and

(b) the building surveyor is satisfied that the building or part of the building is suitable for occupation.

(2) An occupancy permit is subject to any relevant and reasonable condition that does not impose a lesser or greater standard or requirement than that required by this Act.

(3) The building surveyor is not required to implement anything contained in a required report.

(4) If the building surveyor does not implement anything contained in that report, the building surveyor is to –

(a) notify the reporting authority; and

- (b) provide the reporting authority with –
  - (i) a copy of the occupancy permit; and
  - (ii) the reasons for not implementing anything contained in the report.

### **99. Refusing application for occupancy permit**

(1) The building surveyor is to refuse an application for an occupancy permit in respect of a building if –

- (a) it is not in accordance with section 95; and
- (b) satisfied that the building is not suitable for occupation.

(2) The building surveyor, by notice in writing within the specified period, is to notify an applicant of –

- (a) the refusal to grant the application; and
- (b) the reasons for that refusal; and
- (c) the right of an appeal under this Act.

### **100. Issue of occupancy permits**

(1) If the building surveyor grants an application for an occupancy permit, the building surveyor is to issue an occupancy permit to the applicant.

(2) An occupancy permit is to –

- (a) be in an approved form; and
- (b) state the use or uses to which the building may be put; and
- (c) state the conditions of the permit.

(3) The building surveyor is to provide a copy of the occupancy permit to the builder.

(4) An owner, in accordance with the Building Regulations, must display an occupancy permit in respect of a building in a prominent place in the building.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

### **101. Conditions of occupancy permit binding**

(1) A person and his or her successors in title are bound by any conditions relating to an occupancy permit.

(2) An occupancy permit is cancelled if –

(a) a person uses the building for a use –

(i) other than that stated in the occupancy permit; or

(ii) to which the building may not be put; and

(b) a person or his or her successor in title fails to comply with any condition of the occupancy permit.

### **102. Notification to permit authority**

A building surveyor who issues an occupancy permit must –

(a) notify the permit authority in writing within the specified period; and

(b) provide it with a copy of the permit.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

### **103. Occupation in contravention of occupancy permit**

A person must not occupy a building in contravention of the occupancy permit in respect of that building.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units and a further fine not exceeding 2 penalty units for each day during which the offence continues; or

(b) a body corporate, a fine not exceeding 500 penalty units and a further fine not exceeding 10 penalty units for each day during which the offence continues.

#### **104. Period of occupancy permit**

An occupancy permit in respect of a building remains in force until –

- (a) another occupancy permit in respect of the building is issued; or
- (b) it is cancelled.

#### ***Division 4 - Temporary occupancy permit***

#### **105. Temporary occupancy**

A person must not occupy an existing building or a temporary structure in respect of which an occupancy permit is not, or is not likely to be, issued unless –

- (a) a temporary occupancy permit is in force in respect of that building or temporary structure; or
- (b) the Building Regulations provide that a temporary occupancy permit is not required for that building or temporary structure.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

#### **106. Application for temporary occupancy permit**

(1) An owner, or an agent of the owner, of an existing building or temporary structure may apply to the general manager for a temporary occupancy permit to occupy the building or temporary structure.

(2) A person acting as an agent of an owner must not make an application under subsection (1) on behalf of the owner unless authorised to do so in writing by the owner.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

(3) The general manager is not required to inquire whether a person is authorised to make an application under subsection (1).

### **107. Form of application for temporary occupancy permit**

An application for a temporary occupancy permit is to be –

(a) in an approved form; and

(b) accompanied by any documents and information the general manager requires.

### **108. Granting temporary occupancy permit**

(1) A general manager may grant an application for a temporary occupancy permit if satisfied that the building or temporary structure is suitable for occupation.

(2) If a general manager grants the application, he or she is to issue an occupancy permit to the applicant in the approved form.

(3) A permit is subject to any reasonable and relevant conditions.

### **109. Cancellation of temporary occupancy permit**

A general manager may cancel a temporary occupancy permit if –

(a) the building or temporary structure is unsafe or unhealthy; or

(b) any condition of the permit is not complied with.

### **110. Refusing application for temporary occupancy permit**

(1) A general manager must refuse an application for a temporary occupancy permit if satisfied that the building or temporary structure is not suitable for temporary occupation.

(2) A general manager, by notice in writing within the specified period, is to notify an applicant of –

(a) the refusal to grant the application; and

(b) the reasons for the refusal; and

(c) the right of an appeal under this Act.

### **111. Notification to permit authority**

A general manager who issues a temporary occupancy permit is to –

(a) notify the permit authority in writing; and

(b) provide it with a copy of the temporary occupancy permit.

## ***Division 5 - Completion of building and plumbing work***

### **112. Completion of building work**

(1) Building work is to be completed within the specified period.

(2) An owner or agent of the owner is to obtain a certificate of completion (building work) within the specified period.

(3) A permit authority is to issue a certificate of completion (building work) if satisfied that –

(a) if required, an occupancy permit has been issued; and

(b) a certificate of final inspection has been provided; and

(c) all conditions of the building permit have been met.

(4) A certificate of completion (building work) is to be in an approved form.

### **113. Completion of plumbing work**

(1) Plumbing work is to be completed within the specified period.

(2) An owner or agent of the owner is to obtain a certificate of completion (plumbing work) within the specified period.

(3) A permit authority is to issue a certificate of completion (plumbing work) if –

(a) satisfied, after inspection, that the completed plumbing work complies with the Plumbing Regulations; or

(b) it accepts a certificate from a plumber that the plumbing work complies with the Plumbing Regulations.

(4) The permit authority is to refuse to issue a certificate of completion (plumbing work) if not satisfied that the plumbing work complies with the Plumbing Regulations.

(5) A certificate of completion (plumbing work) is to be in an approved form.

#### **114. Defective plumbing work**

A person who carried out plumbing work or under whose control plumbing work was carried out must make good a defect in the plumbing work at his or her own expense if –

(a) the defect is found within one year after the day on which the certificate of completion (plumbing work) was issued for the plumbing work; and

(b) the permit authority certifies that the defect is due to faulty workmanship or the use of a defective or unauthorised material, fitting or plumbing product.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 20 penalty units; or

(b) a body corporate, a fine not exceeding 100 penalty units.

### **PART 9 - Existing buildings**

#### ***Division 1 - General provisions***

#### **115. Construction of existing buildings**

A building constructed before the commencement of this Act in accordance with any relevant Act or any relevant provision of any Act relating to buildings is taken to be constructed in accordance with this Act.

#### **116. Habitation of certain buildings**

A person, without the consent of the general manager, must not inhabit a building that is not built as a dwelling for a period exceeding one month.

Penalty:

Fine not exceeding 50 penalty units.

#### **117. Change of use**

**(1)** A person must not change the use of a building, whether erected before or after the commencement of this Act, if the new use –

**(a)** requires a change of classification of the building; or

**(b)** would have to satisfy different requirements within the same classification.

**(2)** Subsection (1) does not apply if the building complies with this Act in respect of the changed use.

Penalty:

In the case of –

**(a)** a natural person, a fine not exceeding 100 penalty units; or

**(b)** a body corporate, a fine not exceeding 500 penalty units.

**(3)** A person must obtain –

**(a)** a building permit if the change of use requires building work to be done; or

**(b)** a new occupancy permit for the building for the changed use if building work is not required.

Penalty:

In the case of –

**(a)** a natural person, a fine not exceeding 100 penalty units; or

**(b)** a body corporate, a fine not exceeding 500 penalty units.

**(4)** A building surveyor may consent to a departure from the requirements of this Act in respect of an application that relates to a change of use of a building if of the opinion that an adverse effect is not likely on –

**(a)** the safety, health and amenity of persons accommodated in or using the building; or

**(b)** the risk of the spread of fire between adjacent buildings or from a fire source feature.

**(5)** A building surveyor is not to grant a new occupancy permit without the agreement of the relevant function control authority if –

(a) the permit is in respect of a special-use building; and

(b) the building does not conform with the requirements of Part H of the Building Code of Australia.

(6) The re-use of a building for which a new registration, licensing or approval is required by a function control authority is taken to be a change of use of the building for the purpose of this section.

### **118. Restriction on use of land**

Except with the consent of the general manager, a person must not erect a fence, building or any other structure so as to restrict the use, in connection with a building, of any unoccupied area of the land on which it is built.

Penalty:

Fine not exceeding 50 penalty units.

### **119. Building certificates**

(1) Any of the following persons may apply to a general manager for a building certificate certifying that the general manager does not intend to take any action under this Act in relation to a building:

(a) the owner of the building;

(b) the purchaser of the building;

(c) any other person who is authorised by the owner or purchaser of the building to apply for the certificate.

(2) An application for a building certificate is to be made under the Building Regulations.

### **120. Maintenance of certain features**

(1) An owner of a building, in accordance with the Building Regulations, must maintain –

(a) any essential safety and health features of the building; and

(b) any essential safety and health measures necessary to ensure the safety of persons using the building.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(2) An owner of a building that includes any essential safety and health features and measures must publicly display an annual statement in accordance with the Building Regulations that the features and measures –

- (a) have been assessed by an appropriately qualified person; and
- (b) are performing to a standard to which they were originally designed.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 10 penalty units; or
- (b) a body corporate, a fine not exceeding 50 penalty units.

### ***Division 2 - Protection of adjoining properties***

#### **121. Notice of proposed building work**

(1) An owner who is required by the Building Regulations to carry out protection work must notify the adjoining owner and the building surveyor of the proposed building work and the proposed protection work.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 50 penalty units; or
- (b) a body corporate, a fine not exceeding 250 penalty units.

(2) The notice is to –

- (a) be in the approved form; and
- (b) include details of the proposed building work as at the date of the notice; and
- (c) include details of the proposed protection work setting out –
  - (i) the nature and particulars of the protection work; and

(ii) the proposed program for undertaking the protection work.

### **122. Absent or incapable owner**

(1) If the adjoining owner is unable to be found or is incapable of acting in the matter, the owner may apply to the Minister for the appointment of a person to act as an agent for the adjoining owner during the adjoining owner's absence or incapacity.

(2) The application is to –

(a) be in writing; and

(b) specify –

(i) the circumstances of the case; and

(ii) the grounds of the application.

### **123. Appointment of agent for adjoining owner**

(1) If the Minister is satisfied that the adjoining owner is unable to be found or is incapable of acting in the matter, the Minister may appoint a suitable person to act as the agent of the adjoining owner for the purpose of this Division.

(2) The appointment of an agent is subject to any terms and conditions relating to the duties and the payment of fees and any other matters the Minister considers appropriate.

(3) The Minister is to notify an agent in writing of –

(a) the appointment; and

(b) the nature of the agent's duties; and

(c) any fees to be paid to the agent by the adjoining owner; and

(d) any other terms and conditions of the appointment.

(4) The Minister is to notify the owner of the appointment of the agent.

### **124. Adjoining owner to reply**

(1) An adjoining owner, within the specified period after receiving notice of proposed building work and proposed protection work, is to notify the owner that he or she –

- (a) agrees to, or disagrees with, the details of the proposed protection work; or
- (b) requests changes to be made.

(2) An adjoining owner who fails to respond within the specified period is taken to have agreed to the proposed protection work.

### **125. Effect of agreement**

An owner may proceed to carry out protection work only if the adjoining owner agrees or is taken to have agreed to the proposed protection work.

### **126. Effect of disagreement**

(1) If an adjoining owner notifies the owner that he or she disagrees with the proposed protection work, the owner must –

- (a) refer the matter to a building surveyor; and
- (b) notify the adjoining owner of the referral.

(2) On receiving the referral, the building surveyor is to –

- (a) examine the proposal for protection work; and
- (b) determine if the proposed protection work is appropriate.

(3) The building surveyor may make any inquiries and require any additional information to be provided by the owner or adjoining owner in order to make the determination.

(4) The building surveyor is to provide a copy of any additional information provided by a person under subsection (3) to the other person.

(5) The building surveyor is to give the owner and the adjoining owner notice in writing of his or her determination.

(6) The building surveyor is not required to give any person a hearing.

### **127. Work not to be carried out in certain cases**

An owner must not carry out any building work until –

- (a) the adjoining owner agrees or is taken to have agreed to the proposed protection work; or

(b) in the case of a disagreement, a building surveyor determines that the proposed protection work is appropriate; or

(c) in the case of an appeal in relation to the proposed protection work, the appeal is determined by the Appeal Board.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

### **128. Inspection of plans**

If a notice of proposed building work is issued, a building surveyor is to make available for inspection to an adjoining owner, on request, any drawings and specifications of the proposed building work that are in his or her possession or control.

### **129. Emergency protection work**

(1) A building surveyor, by notice in writing, may require an owner to carry out emergency protection work specified in that notice in respect of an adjoining property if of the opinion that there is, or there is likely to be, a danger to life or property.

(2) An owner must comply with the notice.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(3) The provisions of sections 124, 125, 126 and 127 do not apply to any protection work carried out under subsection (1).

(4) The building surveyor must notify the permit authority of a requirement made under subsection (1).

### **130. Protection work**

Any protection work must be carried out –

(a) in accordance with –

(i) any agreement under section 124; or

(ii) any requirements of a building surveyor under section 129; or

(iii) any determination of the Appeal Board in respect of the matter; and

(b) as quickly as practicable in the circumstances; and

(c) in accordance with this Act.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

### **131. Insurance cover**

(1) A person, before commencing any protection work, must enter into a contract of insurance with an insurer in respect of –

(a) damage by the proposed protection work to the adjoining property; and

(b) any liability likely to be incurred to the adjoining owner and members of the public.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) The contract of insurance is to be for an amount agreed to by the parties.

(3) The contract of insurance is to –

(a) contain a provision prohibiting cancellation or withdrawal; and

(b) be lodged with the adjoining owner before the commencement of the protection work; and

(c) be renewed or extended so as to expire 12 months after the protection work is finished.

### **132. Record of condition of adjoining property**

(1) An owner, before carrying out any protection work and accompanied by the adjoining owner, is to make –

(a) a full and adequate survey of the adjoining property; and

(b) a record of all existing cracks and defects in the adjoining property.

(2) The record is to be signed or otherwise acknowledged as an agreed record of the condition of the adjoining property before the commencement of any protection work.

(3) The record is –

(a) admissible in evidence in any proceedings relating to the adjoining property; and

(b) evidence of the condition of the adjoining property at the time the record was made.

### **133. Entry to carry out protection work**

(1) For the purpose of carrying out any protection work, an owner may –

(a) enter into the adjoining property or the airspace above any adjoining property between the hours of 8 a.m. and 6 p.m. or at other agreed times; and

(b) carry out any necessary work for that purpose.

(2) The owner must give not less than 24 hours' notice or any other agreed notice of the intention to enter the adjoining property for the purpose of carrying out any protection work.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

(3) In carrying out any protection work, a person, without doing any unnecessary damage, may remove any furniture or fittings or do any other thing that may be necessary to carry out the protection work.

#### **134. Offence by adjoining owner**

An adjoining owner or adjoining occupier must not –

(a) refuse to admit anyone in accordance with any notice or agreement for the purpose of carrying out any survey or protection work; or

(b) obstruct or hinder the carrying out of the survey or protection work.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 50 penalty units; or

(b) a body corporate, a fine not exceeding 250 penalty units.

#### **135. Lodgment of plans**

(1) An owner must serve on the adjoining owner and a building surveyor, within the specified period after the completion of the protection work, a complete set of drawings and specifications showing the protection work carried out.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 10 penalty units; or

(b) a body corporate, a fine not exceeding 50 penalty units.

(2) The building surveyor, within the specified period, is to give a copy of the complete set to the permit authority.

#### **136. Expenses of adjoining owner**

(1) Any costs and expenses necessarily incurred by an adjoining owner in ensuring that the protection work is carried out as agreed are payable by the owner as agreed to between the parties.

(2) If there is no agreement as to the amount of costs and expenses necessarily incurred, each party may apply to the Appeal Board to hear and determine the matter under Part 12.

(3) The costs and expenses payable to an adjoining owner are recoverable in a court of competent jurisdiction as a debt due by the owner to the adjoining owner.

### **137. Compensation**

(1) An owner is to compensate an adjoining owner or adjoining occupier for any inconvenience, loss or damage suffered in carrying out protection work.

(2) An adjoining owner or adjoining occupier who suffers any inconvenience, loss or damage may apply to the Appeal Board to determine the amount of any compensation payable.

(3) Any amount of compensation payable to an adjoining owner or adjoining occupier is recoverable in a court of competent jurisdiction as a debt due by the owner.

### ***Division 3 - Party walls and structures***

### **138. Party walls**

(1) An owner who proposes to build a party wall on the boundary of an adjoining property is to give written notice to the adjoining owner describing the proposed party wall.

(2) If the adjoining owner consents to the building of a party wall, the wall is to be built –

(a) half on the land of the owner and half on the land of the adjoining owner; or

(b) in any other position the owner and the adjoining owner agree.

(3) Any expense incurred in building the party wall is payable by the owner and the adjoining owner as agreed.

(4) If a party wall is built on land under the Land Titles Act 1980, an instrument creating an easement of support in respect of the party wall is to be prepared, executed and registered as agreed.

(5) The owner is not to build a party wall if the adjoining owner –

(a) does not consent to it; or

(b) does not agree as to the payment of expenses; or

(c) does not agree as to the preparation, execution or registration of the instrument under subsection (4).

### **139. Ownership of party wall**

(1) If an adjoining owner is liable to contribute to the expenses incurred in building a party wall, the owner has sole possession of the party wall until the adjoining owner pays the due contribution.

(2) If the party wall is on land under the *Land Titles Act 1980*, the right conferred on the owner is not available against the proprietor of an interest registered after the right arose unless the owner gives the prescribed notice under that Act.

(3) On receipt of the prescribed notice, the Recorder of Titles is to enter a memorandum in the Register.

(4) Until a memorandum is entered, the party wall is excluded from the certificate of title of the adjoining owner and included in the certificate of title of the owner.

(5) On the production to the Recorder of Titles of sufficient evidence of payment or release of the contribution, the Recorder of Titles is to cause a memorandum to that effect to be entered in the Register.

### **140. Party structures**

(1) An owner may do any of the following in relation to party structures that are defective or out of repair:

(a) make good or repair;

(b) pull down and rebuild;

(c) raise and underpin;

(d) perform any other necessary works incidental to the connection of a party structure with any adjoining building or structure.

(2) An owner must not do anything specified in subsection (1) in a manner or at a time that causes unnecessary inconvenience to an adjoining owner or adjoining occupier.

(3) An owner who lays open a part of the adjoining property must, at his or her own expense, make and maintain a proper hoarding and shoring to protect the adjoining property.

#### **141. Notice of proposed work**

(1) An owner, except with the consent in writing of an adjoining owner or adjoining occupier, must not do anything specified in section 140 unless the owner has served on the adjoining owner or adjoining occupier at least 6 weeks beforehand a notice stating –

- (a) the nature and particulars of the proposed work; and
- (b) the proposed program for undertaking the proposed work.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(2) A notice under subsection (1) is effective only if the work to which it relates is begun within 6 months after service of the notice.

#### **142. Rights of adjoining owner**

(1) If an owner proposes to do anything specified in section 140, an adjoining owner, by notice in writing, may require the owner to build on any party structure affected any works reasonably required for the convenience of the adjoining owner.

(2) The owner must comply with the notice if the execution of the specified works is not likely to be detrimental to the adjoining owner or cause unnecessary inconvenience or unnecessary delay.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

#### **143. Reply to notices**

If a person does not consent to a notice under this Division within the specified period, the person is taken to have dissented and a difference is taken to have arisen between the owners.

#### **144. Entry to premises**

(1) For the purpose of carrying out any work referred to in this Division, an owner may –

(a) enter and remain on any land between the hours of 8 a.m. and 6 p.m. or at other agreed times; and

(b) carry out any necessary work for that purpose.

(2) Before entering any premises for the purpose of this section, the owner must give –

(a) 14 days' notice to the adjoining occupier and adjoining owner; or

(b) in the case of emergency, any notice as is reasonably practicable.

(3) In carrying out the work, a person, without doing any unnecessary damage, may remove any furniture or fittings or do any other thing that may be necessary to carry out that work.

#### **145. Expenses payable by owners**

(1) Any expenses incurred in taking any action under section 140(1) are payable by the owner and adjoining owner in due proportion, taking into account the use that each owner makes or may make of the structure.

(2) Within one month after the completion of any work, the owner is to give the adjoining owner an account in writing specifying the expenses incurred.

(3) An adjoining owner is liable for all expenses incurred by the owner in relation to any additional work requested by the adjoining owner.

(4) An amount payable to the owner under this section is recoverable in a court of competent jurisdiction as a debt due by the adjoining owner to the owner.

#### **146. Saving for easements**

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

(a) preserve any right in respect of a party wall that is demolished or rebuilt; or

(b) take any necessary steps for that purpose.

## **147. Differences**

A difference arising between an owner and an adjoining owner in respect of any matter arising out of work to which Division 2 or 3 of this Part relates, on application by the owner or adjoining owner, may be heard and determined by the Appeal Board.

## **PART 10 - Restrictions on buildings**

### ***Division 1 - Landslip areas***

## **148. Declaration of landslip areas**

(1) The Minister, by order and on the recommendation of the Director, may declare any specified area of a municipal area to be an A landslip area or a B landslip area.

(2) Before making a recommendation, the Director is to –

(a) be satisfied that the area is subject to earth movement because of inherent instability; and

(b) notify the general manager of the proposed recommendation; and

(c) consider any objection received under subsection (4).

(3) On receipt of a notification, the general manager is to give written notice to the owners of any land in the area likely to be affected by the making of the order.

(4) An owner may object to the proposed recommendation to the Director within 30 days after receipt of the notice.

(5) Subsections (3) and (4) do not apply if the Director considers urgent action is required.

(6) An order takes effect on the day specified in the order that is at least 30 days after its making is notified in the *Gazette*.

## **149. Registration of landslip area order**

(1) The Minister is to cause an order made under section 148 to be registered –

(a) in the case of land under the Land Titles Act 1980, by lodging with the Recorder of Titles –

- (i) a copy of the order; and
  - (ii) a statement signed by the Minister specifying the titles affected by the order; or
- (b) in any other case, by filing a certified copy of the order under the Registration of Deeds Act 1935 as if it were an instrument to which the Minister is a party.

(2) The Recorder of Titles is to record the particulars of an order registered under subsection (1)(a) on any title to land affected by the order.

(3) An order recorded on a title to land is an interest for the purpose of section 40 of the Land Titles Act 1980.

(4) The Director-General of Lands is to –

- (a) endorse a certified copy of an order registered under subsection (1)(b) with a statement stating that the order has been registered under this section; and
- (b) keep all the relevant documents relating to the order.

#### **150. Effect of order in A landslip area**

(1) A person must not erect, alter or add to a building in an A landslip area except in accordance with subsection (2).

Penalty:

Fine not exceeding 100 penalty units.

(2) The Minister, on the recommendation of a general manager, may permit a person to –

(a) erect, in an A landslip area –

(i) a shed; or

(ii) a building that has a total floor area not exceeding 25 square metres and is not more than one storey high; or

(b) carry out building work, other than erections, in respect of a building in an A landslip area; or

(c) erect a building within the boundaries of a wharf in an A landslip area.

#### **151. Effect of order in B landslip area**

(1) A person must not erect, alter or add to a building in a B landslip area except in accordance with the Building Regulations.

Penalty:

Fine not exceeding 100 penalty units.

(2) A person must not store in a B landslip area –

(a) more than 10 000 litres of water; or

(b) any explosive, flammable liquid or other dangerous substance.

Penalty:

Fine not exceeding 100 penalty units.

### **152. Activities prohibited in landslip areas**

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

Penalty:

Fine not exceeding 100 penalty units.

(2) Except in accordance with the Building Regulations, a person must not, in a landslip area –

(a) excavate or deposit material; or

(b) use earthmoving or vibrating compaction equipment; or

(c) remove any vegetation.

Penalty:

Fine not exceeding 100 penalty units.

### **153. Revocation or amendment of landslip area order**

(1) The Minister, by order and on the recommendation of the Director, may –

(a) revoke an order made under section 148; or

(b) amend the order by –

(i) changing the category of a landslip area; or

(ii) altering the area of a landslip area.

(2) The Minister is to register an order under subsection (1) in accordance with section 149.

(3) The provisions of sections 148, 149, 150, 151, 152 and 154 apply to an order by which –

(a) land that is not part of a landslip area becomes part of one; or

(b) land in a B landslip area becomes part of an A landslip area.

### **154. Compensation not payable**

Compensation or other relief is not payable for any damage caused by earth movement to any building that is erected in an A landslip area or a B landslip area after an order is registered and has not been revoked.

## ***Division 2 - Building line***

### **155. Building between building line and boundary**

A person must not erect a building between the building line and the boundary of a road.

Penalty:

Fine not exceeding 100 penalty units.

### **156. Fire source feature**

For the purpose of determining fire protection requirements under the Building Code of Australia, the area between a building line and the boundary of a road is not a fire source feature under that Code if buildings do not or cannot exist in that area.

## ***Division 3 - Site restrictions***

### **157. Contaminated or undrainable sites**

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

Penalty:

Fine not exceeding 50 penalty units.

(2) A person must not carry out any building work on land unless the surface of the land is capable of being drained into an existing stormwater drain or channel or other suitable outlet, to the satisfaction of the general manager.

Penalty:

Fine not exceeding 50 penalty units.

### **158. Requirement for effluent disposal**

A person must not erect or place on land a building that contains habitable rooms or from which effluent normally flows unless –

(a) effluent from the building can be drained into a sewerage system to the satisfaction of the general manager; or

(b) a special plumbing permit is issued for an on-site waste water management system in respect of the building.

Penalty:

Fine not exceeding 50 penalty units.

### **159. Land subject to flooding**

A person must not erect or place a building containing habitable rooms on land subject to flooding unless the floor level of each habitable room in the building is 300 millimetres or more above the prescribed designated flood level for that land.

Penalty:

Fine not exceeding 50 penalty units.

### **160. Protection of existing drains**

(1) A person must not carry out any building work over an existing drain or within one metre from the edge of an existing drain measured horizontally unless the owner of the building obtains written consent from the general manager.

Penalty:

Fine not exceeding 50 penalty units.

(2) The general manager may impose any reasonable condition on permission given under subsection (1).

(3) The general manager may require an owner of a building to give a written undertaking not to hold the council liable for damage or inconvenience arising from the building work carried out pursuant to this section.

### **161. Protection of service easements**

A person must not carry out any building work over or within a service easement unless the person obtains written consent from the appropriate authority to do so.

Penalty:

Fine not exceeding 50 penalty units.

## **PART 11 - Enforcement**

### ***Division 1 - Emergency orders***

### **162. Emergency order**

(1) A general manager may make an emergency order if of the opinion that a threat to life may arise out of the condition or use of a building or temporary structure.

(2) An emergency order may –

(a) require an owner or an occupier of a building or temporary structure to –

(i) evacuate the building or temporary structure; or

(ii) stop work or to carry out building work or other work; and

(b) prohibit the occupation of a building or temporary structure.

(3) An emergency order is to –

(a) be in an approved form; and

(b) contain any specified matter.

(4) A person must comply with an emergency order.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

(5) A general manager may revoke an emergency order if the circumstances giving rise to the making of the order have changed.

(6) A general manager is to provide a copy of an emergency order to the permit authority within 7 days of making the order.

### *Division 2 - Notices, orders and fire reports*

#### **163. Building notices**

(1) A general manager is to issue a building notice to the owner of a building or temporary structure if –

- (a) building work is carried out on the building without a building permit; or
- (b) building work is carried out on a temporary structure in contravention of –
  - (i) the permit; or
  - (ii) this Act; or
- (c) the use of the building or temporary structure contravenes this Act; or
- (d) the building or temporary structure –
  - (i) is unfit for use or occupation; or
  - (ii) is a danger to users of the building or temporary structure or to users of adjoining land; or
- (e) the essential health and safety features of the building are not maintained in accordance with the Building Regulations.

(2) A building surveyor, if of the opinion that any circumstance specified in subsection (1) exists in respect of any building work for which the building surveyor has been engaged, is to issue a building notice to –

- (a) the owner of a building or temporary structure in relation to which the building surveyor is carrying out work; or

**(b)** the builder carrying out any building work.

**(3)** A building notice is to require the owner or builder to show cause within the specified period –

**(a)** why occupation of the building or structure should not be prohibited; or

**(b)** why the owner or builder should not do either or both of the following things:

**(i)** evacuate the building or temporary structure;

**(ii)** carry out building work or other work specified in the notice.

**(4)** A building notice is to be in an approved form.

#### **164. Plumbing notice**

**(1)** A general manager is to issue a plumbing notice to an owner of land if plumbing work is carried out on the land without a plumbing permit.

**(2)** A permit authority, if plumbing work in respect of which it has authority contravenes this Act, is to issue a plumbing notice to –

**(a)** the owner of the land; or

**(b)** the person carrying out plumbing work in respect of which the permit authority has issued a plumbing permit.

**(3)** A plumbing notice is to require the owner or person to show cause within the specified period why plumbing work or other work specified in the notice should not be carried out.

**(4)** A plumbing notice is to be in an approved form.

#### **165. Fire hazards**

A building or temporary structure is a fire hazard if –

**(a)** it has –

**(i)** insufficient means of escape for its occupants in the event of fire; or

**(ii)** insufficient measures to manage smoke hazard; or

**(iii)** insufficient measures to detect and suppress fire and to alert occupants; and

(b) the general manager considers it presents a risk to life or property.

### **166. Fire upgrading report**

(1) If a general manager is of the opinion that a building or temporary structure may be a fire hazard, the general manager –

(a) may inspect the building or temporary structure; and

(b) is to prepare a report on the matter.

(2) A fire upgrading report is to state –

(a) whether or not the building or temporary structure is a fire hazard; and

(b) a program for work to overcome any fire hazard; and

(c) the specified period and manner in which representations may be made; and

(d) any other specified matter.

(3) A general manager may obtain a statement as to any matter relating to a fire upgrading report from any relevant reporting authority.

### **167. Fire upgrading notice**

(1) A general manager is to issue a fire upgrading notice to an owner if a fire upgrading report states that a fire hazard exists.

(2) A fire upgrading notice is to –

(a) require the owner to show cause within the specified period why the owner should not carry out the program of work specified in the fire upgrading report; and

(b) be accompanied by a copy of the fire upgrading report.

### **168. Representations relating to notices**

(1) A person to whom a notice is issued under this Division may make representations to the person who issued the notice about any matter contained in the notice.

(2) Representations are to be made in the manner, and within the period, stated in the notice.

## **169. Revocation of notices**

A person who issued a notice under this Division may revoke the notice if satisfied that it is appropriate to do so after –

- (a) considering any representations made under section 168; or
- (b) receiving any other information.

## **170. Building orders**

(1) If a person does not revoke a building notice, the person is to serve a building order on the owner after the end of the period stated in the building notice for making representations.

(2) A building order may –

- (a) prohibit the occupation of a building or temporary structure; and
- (b) require the owner of a building or temporary structure to do either or both of the following:
  - (i) evacuate the building or temporary structure;
  - (ii) carry out building work or other specified work; and
- (c) require the owner or any other person to stop building work.

(3) A building order requiring building work or other work to be carried out may be served without first issuing a building notice if the general manager or building surveyor is of the opinion that the building work or other work is of a minor nature.

(4) An order under subsection (2)(c) may be made if, in the opinion of the general manager or building surveyor, the building work –

- (a) contravenes this Act; or
- (b) is a danger to the public; or
- (c) affects the support of any adjoining property.

(5) An order under subsection (2)(c) may be served on any person apparently in charge of a site on which the building work is being carried out and the owner.

(6) A building order is to be in an approved form.

(7) A person must not fail to comply with a building order.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

### **171. Building order relating to work without permit**

(1) In addition to a building order under section 170, a general manager is to serve a building order on an owner of land on which building work is carried out without a permit if the general manager does not revoke a building notice in respect of that building work.

(2) A building order in respect of building work carried out without a building permit is to require the owner at the owner's choice –

(a) to demolish the building work or building; or

(b) if the building work is not completed, to obtain the following:

(i) a certificate to proceed;

(ii) a permit to proceed;

(iii) an occupancy permit;

(iv) a certificate of final inspection;

(v) a certificate of completion (building work); or

(c) if the building work is already completed, to obtain the following:

(i) a certificate of substantial compliance;

(ii) a permit of substantial compliance;

(iii) an occupancy permit, if required;

(iv) a certificate of final inspection;

(v) a certificate of completion (building work).

(3) A building order under this section may be –

- (a) a separate building order; or
- (b) combined with a building order under section 170.

### **172. Plumbing orders**

(1) If a general manager or permit authority does not revoke a plumbing notice, they are to serve a plumbing order on –

- (a) the owner; or
- (b) a person apparently in charge of a site on which the plumbing work is being carried out.

(2) A plumbing order may require the owner to carry out plumbing work or other specified work.

(3) A plumbing order requiring plumbing work or other work to be carried out may be served without first issuing a plumbing notice if a permit authority is of the opinion that the plumbing work or other work is of a minor nature.

(4) A plumbing order is to be in an approved form.

(5) A person must not fail to comply with a plumbing order.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

### **173. Building order relating to fire hazards**

(1) In addition to a building order under section 170, a general manager is to serve a building order relating to a fire hazard on the owner if the general manager does not revoke a fire upgrading notice.

(2) A building order relating to a fire hazard –

- (a) is to direct an owner of the building or temporary structure to carry out a program of work; and
- (b) may contain any other specified matter.

(3) A building order under this section may be –

- (a) a separate building order; or
- (b) combined with a building order under section 170.

#### **174. Notifying permit authority**

A person who serves a building order or plumbing order must provide a copy of the order to the relevant permit authority within the specified period.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 10 penalty units; or
- (b) a body corporate, a fine not exceeding 50 penalty units.

#### **175. Application for certificate to proceed**

(1) An owner, before applying for a permit to proceed, is to obtain a certificate to proceed from a building surveyor.

(2) An application for a certificate to proceed is to be accompanied by any documents or certificates required by the building surveyor.

(3) On receiving an application for a certificate to proceed, a building surveyor is to proceed as if it were an application for a certificate of likely compliance.

(4) In considering the application, the building surveyor is to take into account the matters referred to in section 66.

(5) The provisions of sections 63, 64, 65 and 66 apply to an application for a certificate to proceed as if it were an application for a certificate of likely compliance.

#### **176. Granting certificate to proceed**

(1) A building surveyor is to grant an application for a certificate to proceed within the specified period if –

- (a) the application is in accordance with section 175; and
- (b) satisfied that the building work already completed –

- (i) substantially complies, or may be made to comply, with this Act; or
- (ii) does not comply with this Act but that the non-compliance is not detrimental to the safety and health of any occupants or future occupants of the building; and
- (c) satisfied that building work not yet completed is likely to comply with this Act.

(2) A certificate to proceed is subject to –

- (a) any relevant and reasonable condition; and
- (b) any condition specified in a document or certificate referred to in section 175.

(3) If a building surveyor grants the application, he or she is to issue a certificate to proceed in the approved form.

### **177. Refusing certificate to proceed**

(1) A building surveyor is to refuse an application for a certificate to proceed if not satisfied as to the matters specified in section 176(1).

(2) A building surveyor is not to refuse an application for a certificate to proceed on the grounds that any building product or building system is unsatisfactory if a certificate of conformity is in force in respect of that building product or building system.

(3) A building surveyor, by notice in writing, is to notify an applicant of –

- (a) the refusal to grant the application for a certificate to proceed; and
- (b) the reasons for the refusal; and
- (c) the right of an appeal under this Act.

(4) The building surveyor is to provide a copy of the notice of refusal to the permit authority and the general manager.

### **178. Application for permit to proceed**

(1) An owner is to apply to a permit authority for a permit to proceed with building work in respect of which a building order under section 171 relates.

(2) An application for a permit to proceed is to be –

- (a) in an approved form; and

- (b) accompanied by any specified documents; and
- (c) accompanied by a certificate to proceed; and
- (d) accompanied by any fees required by the permit authority.

(3) A permit authority may require the applicant, within a specified period, to –

- (a) provide the specified documents and certificate to proceed; or
- (b) amend the application.

(4) If an applicant fails to comply with a requirement under subsection (3), the permit authority may treat the application as having lapsed.

### **179. Consideration of application for permit to proceed**

In considering an application for a permit to proceed, a permit authority is to take into account the following matters:

- (a) the stability of the site;
- (b) the provision of water to the site;
- (c) the means of road access to the site;
- (d) any relevant requirements of any permit or consent in force under any other Act;
- (e) any relevant provisions of this Act or the Building Regulations.

### **180. Granting permit to proceed**

(1) A permit authority is to grant an application for a permit to proceed within the specified period if –

- (a) the application is in accordance with section 178; and
- (b) satisfied as to the matters referred to in section 179.

(2) A permit to proceed is subject to –

- (a) any relevant and reasonable condition; and
- (b) any condition specified in a document or certificate referred to in section 178(2).

(3) If a permit authority grants the application, it is to issue a permit to proceed to the applicant in the approved form.

### **181. Refusing permit to proceed**

(1) A permit authority is to refuse an application for a permit to proceed in respect of any building work if –

(a) it is not in accordance with section 178; or

(b) a certificate to proceed is not in force in respect of that building work.

(2) A permit authority, by notice in writing, is to notify an applicant of –

(a) the refusal to grant the application for a permit to proceed; and

(b) the reasons for the refusal; and

(c) the right of an appeal under this Act.

### **182. Conditions of permit to proceed binding**

(1) An owner must comply with any condition of a permit to proceed.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person's successors in title are bound by any conditions relating to a permit to proceed.

(3) A permit to proceed is cancelled if a person or his or her successor in title fails to comply with any condition.

### **183. Application for certificate of substantial compliance**

(1) An owner, within the specified period, may apply to a building surveyor for a certificate of substantial compliance in respect of completed or substantially completed building work to which a building order under section 171 relates.

(2) An application for a certificate of substantial compliance is to be –

- (a) in an approved form; and
- (b) accompanied by any specified documents.

(3) A building surveyor may require the applicant, within a specified period, to –

- (a) provide the specified documents; or
- (b) amend the application.

(4) The provisions of sections 63, 64, 65 and 66 apply to an application for a certificate of substantial compliance as if it were an application for a certificate of likely compliance.

#### **184. Granting certificate of substantial compliance**

(1) A building surveyor is to grant an application for a certificate of substantial compliance within the specified period if –

- (a) the application is in accordance with section 183; and
- (b) satisfied that the completed building work to which it applies –
  - (i) substantially complies, or may be made to comply, with this Act; or
  - (ii) does not comply with this Act but that the non-compliance is not detrimental to the safety and health of any occupant or future occupant of the building.

(2) A certificate of substantial compliance may be subject to –

- (a) any relevant and reasonable condition; and
- (b) any condition specified in a document referred to in section 183.

(3) A building surveyor is not to make any condition that imposes a greater standard or requirement than that specified in this Act.

(4) If a building surveyor grants the application, he or she is to issue a certificate of substantial compliance in the approved form.

(5) An owner must comply with any condition of a certificate of substantial compliance.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 100 penalty units; or
- (b) a body corporate, a fine not exceeding 500 penalty units.

### **185. Refusing certificate of substantial compliance**

(1) A building surveyor is to refuse an application for a certificate of substantial compliance if the building work is not likely to comply with this Act.

(2) A building surveyor is not to refuse an application for a certificate of substantial compliance on the grounds that any building product or building system is unsatisfactory if a certificate of conformity is in force in respect of that building product or building system.

(3) A building surveyor, by notice in writing, is to notify an applicant of –

- (a) the refusal to grant the application for a certificate of substantial compliance; and
- (b) the reasons for the refusal; and
- (c) the right of an appeal under this Act.

(4) The building surveyor is to provide a copy of the notice of refusal to the permit authority and the general manager.

### **186. Application for permit of substantial compliance**

(1) An owner, within the specified period, may apply to a permit authority for a permit in respect of completed or substantially completed building work to which a building order under [section 171](#) relates.

(2) An application for a permit of substantial compliance is to be –

- (a) in an approved form; and
- (b) accompanied by any specified documents; and
- (c) accompanied by a certificate of substantial compliance; and
- (d) accompanied by any fees required by the permit authority.

(3) A permit authority may require the applicant, within a specified period, to –

- (a) provide the specified documents and certificate of substantial compliance; or
- (b) amend the application.

(4) If an applicant fails to comply with a requirement under subsection (3), the permit authority may treat the application as having lapsed.

### **187. Consideration of application for permit of substantial compliance**

In considering an application for a permit of substantial compliance, a permit authority is to take into account the following matters:

- (a) the stability of the site;
- (b) the provision of water to the site;
- (c) the means of road access to the site;
- (d) any relevant requirements of any permit or consent in force under any other Act;
- (e) any relevant provisions of this Act or the Building Regulations.

### **188. Granting permit of substantial compliance**

(1) A permit authority is to grant an application for a permit of substantial compliance within the specified period if –

- (a) the application is in accordance with section 186; and
- (b) satisfied as to the matters referred to in section 187.

(2) A permit of substantial compliance is subject to –

- (a) any relevant and reasonable condition; and
- (b) any condition specified in a document or certificate referred to in section 186(2).

(3) If a permit authority grants the application, it is to issue a permit of substantial compliance to the applicant in the approved form.

### **189. Refusing permit of substantial compliance**

(1) A permit authority is to refuse an application for a permit of substantial compliance in respect of any building work if –

(a) it is not in accordance with section 186; or

(b) a certificate of substantial compliance is not in force in respect of the completed or substantially completed building work.

(2) A permit authority, by notice in writing, is to notify an applicant of –

(a) the refusal to grant the application for a permit of substantial compliance; and

(b) the reasons for the refusal; and

(c) the right of an appeal under this Act.

### **190. Conditions of permit of substantial compliance binding**

(1) An owner must comply with any condition of a permit of substantial compliance.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(2) A person's successors in title are bound by any conditions relating to a permit of substantial compliance.

### **191. Demolition order**

(1) A council may serve an order to demolish building work to which a building order under section 171 relates on the owner if –

(a) the owner fails to comply with –

(i) the building order; or

(ii) any condition of a permit to proceed; or

(iii) any condition of a permit of substantial compliance; or

(b) a building surveyor refuses to issue a –

(i) certificate to proceed; or

(ii) certificate of substantial compliance; or

(c) a permit authority refuses to issue a –

(i) permit to proceed; or

(ii) permit of substantial compliance.

(2) A council is to serve an order to demolish building work to which a building order under section 171 relates on the owner if satisfied that the building work –

(a) does not comply with this Act; and

(b) is detrimental to the safety and health of any occupant or future occupant of the building or the public.

(3) The council or a person doing the work on its behalf may enter onto land and demolish any building work in respect of which an order to demolish is served if –

(a) at least 21 days have expired since the day of service of the order; and

(b) the building work is not demolished; and

(c) an appeal has not been instituted in respect of the order.

(4) An order to demolish may require the owner to clean up the site to the satisfaction of the building surveyor within the specified period.

(5) An order to demolish is to be in an approved form.

## **192. Failure to comply with building or plumbing order**

(1) If an owner fails to comply with a building order made by a building surveyor, the building surveyor is to refer the matter to the permit authority and the general manager.

(2) If an owner fails to carry out any work required by a building order or plumbing order, the work may be carried out by the council.

(3) In carrying out any work under subsection (2), the council may –

(a) enter on the land where the work is to be done with the appropriate equipment; and

(b) exclude other persons from the place where the work is being done; and

(c) if anything is to be altered, determine the form of the alteration so far as it was not previously specified; and

(d) if anything is to be taken down, demolished or removed, determine in what condition the remainder is to be left; and

(e) carry away to some convenient place any materials removed; and

(f) sell any materials so carried away and deduct the proceeds from the cost of the work.

### **193. Possession of building**

(1) If any occupier of a building or temporary structure fails to allow any person to do work under section 192, a council may take proceedings under the Justices Act 1959 to obtain possession of the building or temporary structure.

(2) On the hearing of a complaint, the justices may order the occupier to give the council possession of the building or temporary structure within a specified period.

(3) If a person fails to comply with an order under subsection (2), the justices or one of them who made the order may issue a warrant authorising police officers to –

(a) enter into the building or temporary structure by force if necessary and with any assistance they consider necessary; and

(b) eject any person from the building or temporary structure; and

(c) deliver possession of the building or temporary structure to the council.

(4) A council may remain in possession of a building or temporary structure pursuant to a warrant until the work is completed.

### **194. Purchasing buildings and materials**

(1) A council which demolishes a building pursuant to section 192(2) may –

(a) sell the building for removal; or

(b) after demolishing the building, sell the materials on the site for removal.

(2) A council may grant the purchaser of a building under subsection (1)(a) all the powers it has under section 192.

- (3) The rights of the purchaser of a building may be –
- (a) protected by caveat under the *Land Titles Act 1980*, if the land is subject to that Act; or
  - (b) registered under the *Registration of Deeds Act 1935* as if the deed by which they were granted were a judgment.
- (4) The rights of the purchaser of materials are to be created by a bill of sale registrable under the *Bills of Sale Act 1900*.
- (5) A purchaser who fails to remove a building or materials within a reasonable period is liable to the occupier of the building in damages for the use and occupation of the land.
- (6) A council is to pay the owner of the building or materials sold under subsection (1) the balance of any proceeds of the sale after deducting any reasonable expenses incurred by it.
- (7) Any money not claimed within one year after a sale of a building vests in the council.

### **195. Endorsements on certificates**

Any building certificate, occupancy permit or certificate of completion (building work), or a certificate issued under section 337 of the *Local Government Act 1993*, in respect of building work to which a building order relates is to be endorsed to the effect that it was not the subject of the normal application, permit and inspection procedures under this Act.

### ***Division 3 - General matters***

### **196. Orders to be made within certain period**

A council, general manager, permit authority or building surveyor is not to serve an order under this Part requiring a person to demolish or alter any work done in contravention of this Act 12 months or more after becoming aware of the contravention.

### **197. Recovery of costs**

The cost of carrying out any work not done as required by an owner under this Part is a debt payable by the owner and recoverable in a court of competent jurisdiction.

### **198. Police assistance**

A general manager may request the assistance of a police officer –

- (a) in evacuating a building or temporary structure in accordance with an emergency order; or
- (b) in removing any person from a building or temporary structure in respect of which an emergency order or a building order is being carried out.

### **199. Notification of completion of work**

(1) An owner, by notice in writing, must notify the completion of any work carried out under an emergency order, a building order or a plumbing order to the general manager, building surveyor or permit authority, as appropriate.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 10 penalty units; or
- (b) a body corporate, a fine not exceeding 50 penalty units.

(2) After inspecting the completed work, the general manager, building surveyor or permit authority, as appropriate, is to –

- (a) notify the owner that the order has been complied with; or
- (b) require the order to be complied with.

### **200. Amendment or revocation of building order**

(1) An owner who is required to comply with a building order served after the issue of a fire upgrading notice, if there is a change in circumstances after the original fire upgrading notice, may request the general manager to amend or revoke the building order.

(2) A general manager may –

- (a) refuse to amend or revoke the building order; or
- (b) issue an amended fire upgrading notice; or
- (c) revoke the fire upgrading notice.

(3) A general manager is taken to have refused a request under this section if action was not taken under subsection (2) within the specified period.

## **201. Compliance with regulations**

(1) A person who carries out work in accordance with an emergency order is not required to obtain a building permit or comply with the Building Regulations unless the general manager or building surveyor otherwise directs.

(2) A person who carries out work in accordance with a building order must comply with the Building Regulations unless the general manager or building surveyor otherwise directs.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

(3) A person who carries out work in accordance with a plumbing order must comply with the Plumbing Regulations unless the permit authority otherwise directs.

Penalty:

In the case of –

(a) a natural person, a fine not exceeding 100 penalty units; or

(b) a body corporate, a fine not exceeding 500 penalty units.

## **202. Duration of order**

An emergency order, a building order or a plumbing order remains in force until –

(a) it is complied with; or

(b) it is revoked or amended.

## **PART 12 - Appeals**

### ***Division 1 - Building Appeal Board***

## **203. Appeal Board**

(1) The Building Appeal Board is established.

(2) The Appeal Board consists of at least 7 persons appointed by the Minister from nominations made under subsection (3) who between them have knowledge and expertise in all of the following areas:

- (a) building surveying;
- (b) architecture;
- (c) engineering;
- (d) building;
- (e) plumbing;
- (f) local government;
- (g) environmental and public health.

(3) The Minister, by public notice, is to call for nominations for membership of the Appeal Board.

(4) The Minister is to appoint –

- (a) a person who has knowledge and expertise in the building industry as chairperson; and
- (b) one of the members of the Appeal Board as deputy chairperson to act as chairperson in the absence of the chairperson.

(5) The Minister may appoint any other persons as may be required.

(6) Schedule 2 has effect with respect to membership and meetings of the Appeal Board.

#### **204. Functions of Appeal Board**

The functions of the Appeal Board are to hear and determine –

- (a) appeals and applications under this Act; and
- (b) disputes relating to any matter in the Building Regulations or the Plumbing Regulations.

#### **205. Constitution of Appeal Board**

(1) In hearing and determining any appeal, dispute or application, the Appeal Board is to be constituted by at least one member as determined by the chairperson.

(2) If a member becomes unavailable after the Appeal Board has commenced to hear and determine any appeal, application or dispute, the chairperson may –

(a) cause the hearing to be adjourned until another member is available; or

(b) require the hearing to continue if at least one of the members originally hearing the matter is able to continue.

## **206. Disqualification from acting as member**

A member of the Appeal Board is disqualified from acting as a member in hearing any matter in which the member has any direct or indirect interest.

## **207. Powers of Appeal Board**

In hearing any appeal, application or dispute, the Appeal Board may –

(a) cause parties to be added; and

(b) require one of its members to make any inquiry or survey that appears to it necessary or expedient for the purpose of the hearing; and

(c) use the knowledge of its own members, however gained; and

(d) rely on, and adjourn proceedings to obtain, reports from competent persons; and

(e) if a party given notice of the time and place of the hearing does not appear, proceed with the hearing as if that party were present; and

(f) if a party's expenses have, in its opinion, been caused or increased by unreasonable or improper conduct of another party, order the latter to pay the former any amount it considers appropriate; and

(g) if its determination depends on any decision, determination or order under any other Act, extend the scope of the appeal, application or dispute to determine the whole matter.

## **208. Assistance to Appeal Board**

(1) The Appeal Board may make arrangements with the Head of an Agency, within the meaning of the *Tasmanian State Service Act 1984*, for employees

employed in that Agency to be made available to the Appeal Board to enable it to perform its functions and exercise its powers under this Act.

(2) A person may be made available to the Appeal Board in conjunction with a position in the State Service.

### ***Division 2 - Matters for Appeal Board***

#### **209. Appeal relating to building and plumbing permits**

An applicant for a building permit, plumbing permit, special plumbing permit, permit to proceed or permit of substantial compliance may appeal to the Appeal Board against –

- (a) the refusal or failure of a permit authority to grant the application; or
- (b) any condition of the permit.

#### **210. Appeal relating to occupancy permit**

(1) An applicant for an occupancy permit may appeal to the Appeal Board against –

- (a) the refusal or failure of a building surveyor to grant the application; or
- (b) any condition of the occupancy permit.

(2) A reporting authority, in relation to any matter relevant to its report in respect of an occupancy permit, may appeal to the Appeal Board against –

- (a) the decision of the building surveyor to grant the occupancy permit; or
- (b) any condition of the permit.

#### **211. Appeal relating to orders**

An owner of a building, temporary structure or land affected by an emergency order, a building order or plumbing order may appeal to the Appeal Board against –

- (a) the order; or
- (b) a failure to notify under section 199(2)(a).

#### **212. Appeal relating to temporary occupancy permit**

An applicant for a temporary occupancy permit may appeal to the Appeal Board against –

- (a) the refusal or failure of a general manager to grant the application; or
- (b) any condition of the temporary occupancy permit.

### **213. Appeal relating to protection work**

An owner or the adjoining owner may appeal to the Appeal Board against the determination of a building surveyor in relation to any protection work not carried out under an emergency order.

### **214. Appeal relating to building surveyor**

(1) An owner of a building or land or a building practitioner may appeal to the Appeal Board against the exercise of, or failure to exercise, any power by a building surveyor under this Act.

(2) A reporting authority, in relation to any matter relevant to its report in respect to the issue of a certificate of likely compliance by a building surveyor, may appeal to the Appeal Board against –

- (a) the decision of the building surveyor to issue a certificate of likely compliance; or
- (b) any condition of the certificate.

### **215. Appeal relating to permit authority**

An owner of a building or land or a plumber may appeal to the Appeal Board against the exercise of, or failure to exercise, any power by a permit authority under this Act.

### **216. Appeal against change of building surveyor**

An owner of a building or land or a building surveyor may appeal to the Appeal Board against a decision made under section 54.

### **217. Appeal relating to Fire Regulations**

An owner of a building or land may appeal to the Appeal Board against the exercise of any power under the General Fire Regulations 1975.

### **218. Application of regulations**

(1) A person may apply to the Appeal Board to determine whether any provision of the Building Code of Australia or the Tasmanian Plumbing Code applies or may be modified in respect of any building work or plumbing work that is proposed to be undertaken by the person.

(2) Before determining a matter under this section relating to building work or a building, the Appeal Board is to –

(a) notify the Director, any reporting authority affected and the relevant building surveyor; and

(b) seek any submission from the Director, reporting authority and building surveyor.

(3) In determining a matter under this section relating to plumbing work or plumbing installation, the Appeal Board is to –

(a) notify the Director and any relevant permit authority; and

(b) seek any submission from the Director and the permit authority.

(4) In determining a matter under this section, the Appeal Board is to take into account –

(a) any relevant provisions of this Act, regulations, codes or standards; and

(b) any submission made under subsection (2) or (3).

(5) The Appeal Board may –

(a) determine that a provision be modified as directed if satisfied that the modification is reasonable and not detrimental to the public interest; or

(b) determine that a provision does not apply if satisfied that the provision –

(i) is inappropriate in the circumstances; and

(ii) is not detrimental to the public interest; or

(c) impose any relevant condition.

### *Division 3 - Procedures*

#### **219. Form of appeals and applications**

(1) An appeal or application to the Appeal Board is to be –

- (a) in the approved form; and
- (b) made within the specified period; and
- (c) accompanied by the prescribed fee.

(2) The Appeal Board may extend the specified period referred to in subsection (1) if it considers it appropriate.

## **220. Fresh hearing**

(1) An appeal is to be dealt with by the Appeal Board as a fresh hearing.

(2) The Appeal Board may receive fresh evidence or fresh information in hearing an appeal.

## **221. General procedure**

(1) The Appeal Board –

(a) is to conduct a hearing with as little formality and technicality and as much expedition as it considers appropriate to properly consider the matters before it; and

(b) is not bound by the rules of evidence; and

(c) may inform itself of any matter in any manner it considers appropriate to properly consider the matters before it; and

(d) may determine its own procedure except where otherwise provided by this Act.

(2) A hearing of the Appeal Board is not open to the public unless the Appeal Board otherwise determines.

(3) The Appeal Board may adjourn a hearing to a time, date and place it considers appropriate.

## **222. Attendance at hearings**

(1) The Appeal Board may require a person to –

(a) attend a hearing to give evidence; or

(b) produce to the Appeal Board any document it requires by any means or in any format.

(2) The Appeal Board may keep a document produced to it under this section for as long as it considers necessary for the purpose of completing the hearing.

(3) A person, without reasonable excuse, must not fail to comply with a requirement to attend a hearing or to produce a document.

Penalty:

Fine not exceeding 20 penalty units.

(4) The Appeal Board may require a person who attends a hearing to answer a question that is reasonably related to the hearing.

(5) A person must not refuse to answer a question except on the ground that the answer might tend to incriminate the person.

Penalty:

Fine not exceeding 10 penalty units.

### **223. Right of representation**

A party to a hearing may be represented by –

(a) a legal practitioner with the consent of the Appeal Board and all other parties to the hearing; or

(b) another person with the consent of the Appeal Board.

### **224. Onus of proof in certain case**

In any appeal relating to a building order in respect of a fire upgrading notice, a general manager or building surveyor is to prove that –

(a) the order ought to be confirmed; or

(b) the order has not been complied with.

### **225. Oaths and affirmations**

(1) The Appeal Board may require a person who attends a hearing to be sworn or give an affirmation for the purpose of giving evidence.

(2) The Appeal Board may administer an oath to a person who attends a hearing for the purpose of giving evidence.

## **226. Costs**

The Appeal Board may make any orders it considers appropriate in relation to the costs of any appeal, application or dispute.

## **227. Decisions of Appeal Board**

(1) In determining any matter in any appeal, application or dispute, the Appeal Board may do any one or more of the following:

- (a) make any decision or take any action another person or body may or should have made or taken in respect of the matter;
- (b) vary any decision made in relation to the matter;
- (c) direct a person or body to –
  - (i) vary its decision in relation to the matter; or
  - (ii) revoke its decision in relation to the matter and substitute another; or
  - (iii) take a specified action in relation to the matter;
- (d) reject the appeal or application.

(2) The Appeal Board is not bound by any of its previous determinations.

(3) A determination of the Appeal Board is final and binding on all the parties.

(4) The Appeal Board may publish any determination made by it.

## **228. Form of determination**

(1) A determination of the Appeal Board is to be –

- (a) in writing; and
- (b) signed by at least one member of the Appeal Board involved in making the determination.

(2) The Appeal Board, if requested to do so by a party to an appeal or application, is to give a written statement of the reasons for its determination.

## **229. Supreme Court opinion**

(1) The Appeal Board, during the hearing of an appeal or application, may at its own discretion or must, if ordered by a judge in chambers on an application made during the hearing by a party to an appeal or application, state a case for the opinion of the Supreme Court on any question of law arising in the hearing of the appeal or application.

(2) The Supreme Court is to hear and determine the question of law and remit its opinion to the Appeal Board.

(3) The Appeal Board –

(a) is bound by an opinion of the Supreme Court; and

(b) is to take that into account in determining the appeal or application.

(4) The Supreme Court may make any order as to costs as it considers appropriate.

(5) A party to an appeal or application is to notify the Appeal Board of an application by that person to the Supreme Court under this section.

## **PART 13 - Regulations**

### ***Division 1 - Building Regulations***

#### **230. Building Regulations**

(1) The Governor may make regulations establishing standards and requirements relating to buildings and the carrying out of building work.

(2) Standards established by the Building Regulations may be expressed –

(a) in terms of performance; or

(b) in terms of types of materials or methods of construction; or

(c) in any other terms.

(3) The Building Regulations may make provision in relation to the following matters:

(a) the design, documentation, assessment, construction and inspection relating to building work;

(b) the use, inspection and maintenance of buildings;

- (c) the limitations and restrictions applicable to building work and buildings;
- (d) the safety measures and precautions in relation to building work and buildings;
- (e) protection work;
- (f) the environmental efficiency of buildings;
- (g) access to, and egress from, buildings;
- (h) heating appliances;
- (i) matters relating to a permit under this Act relating to a building or building work.

(4) The Building Regulations may adopt by reference the Building Code of Australia, any standards, rules, codes and specifications of bodies specified in that Code and any other standards, rules, codes and specifications.

### **231. Application of Building Regulations**

The Building Regulations may provide that any or all of the regulations apply to any existing building, whether or not building work is being, or is proposed to be, carried out on that building.

### **232. Non-application of Building Regulations**

(1) A provision of the Building Regulations does not apply to any building work –

- (a) for which a building permit is granted before the provision commences; or
- (b) if the building surveyor certifies in writing that substantial progress was made on the design of the building before the provision commences.

(2) Subsection (1) does not apply if the building surveyor and the owner of land in respect of which building work is to be carried out agree that a provision of the Building Regulations applies to the building work.

## ***Division 2 - Plumbing Regulations***

### **233. Plumbing Regulations**

(1) The Governor may make regulations establishing standards and requirements relating to plumbing work and plumbing installations.

- (2) Standards established by the Plumbing Regulations may be expressed –
- (a) in terms of performance; or
  - (b) in terms of types of materials or methods of construction; or
  - (c) in any other terms.

(3) The Plumbing Regulations may provide for the following matters:

- (a) the design, documentation, assessment, construction, inspection and testing relating to plumbing work and plumbing installation;
- (b) the use of materials, products and systems;
- (c) the use, maintenance, management and rectification of plumbing work and plumbing installation;
- (d) the limitations and restrictions applicable to plumbing work and plumbing installation;
- (e) matters relating to plumbing permits and special plumbing permits.

(4) The Plumbing Regulations may adopt by reference the Tasmanian Plumbing Code and any of the standards, rules, codes and specifications of bodies specified in that Code.

### ***Division 3 - General provisions***

#### **234. General provisions**

- (1) Regulations made under this Act may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
  - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (2) Regulations made under this Act may –
- (a) authorise any matter to be determined, applied or regulated by a person or body specified in the regulations; and

(b) be made subject to conditions or so as to apply differently according to matters, limitations or restrictions specified in the regulations.

(3) If a regulation requires anything to have certain qualities, the Minister may publish the trade names of things which, according to tests by competent persons, appear to have those qualities.

(4) Any thing, the trade name of which is published under subsection (3), is to be treated as having the qualities required for the purposes of the regulation in respect of which it is published.

### **235. Fees**

(1) Regulations made under this Act may prescribe fees payable –

(a) in respect of any application, authorisation, accreditation, referral, permit or appeal; or

(b) for any other matter or service provided under this Act.

(2) Regulations made under this Act may provide for a minimum or maximum amount of fees.

### **236. Exemptions**

Regulations made under this Act may exempt –

(a) building work or class of building work from any or all provisions of the regulations; or

(b) any person or class of person from any or all provisions of the regulations; or

(c) any building or class of building from any or all provisions of the regulations; or

(d) any plumbing work or class of plumbing work from any or all provisions of the regulations.

### **237. Savings and transitional**

(1) The Governor may make regulations of a savings or transitional nature consequent on the enactment of this Act.

(2) Regulations under subsection (1) may take effect from the commencement of this Act or on a later day.

## **238. Approval of Minister**

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

(2) A regulation, rule or by-law relating to the design of buildings, building work or plumbing work that is not made in compliance with subsection (1) is of no effect.

(3) The Minister may certify that a regulation, rule or by-law relates only incidentally to the design of buildings, building work or plumbing work and does not require approval under this section.

## **PART 14 - Miscellaneous**

### ***Division 1 - Offences***

## **239. Offences by bodies corporate**

(1) If a body corporate contravenes a provision of this Act, a person who is concerned in, or takes part in, the management of the body corporate is taken to have contravened that provision.

(2) It is a defence in proceedings under subsection (1) for a person to prove that –

(a) the body corporate contravened the provision without the person's knowledge; or

(b) the person was not in a position to influence the conduct of the body corporate in relation to its contravention of the provision; or

(c) the person, if in that position, attempted to prevent the contravention by the body corporate.

(3) A person may be convicted of a contravention of a provision of this Act whether or not the body corporate has been convicted of its contravention.

(4) This section does not affect a liability imposed on a body corporate for an offence committed by it against a provision of this Act.

(5) For the purpose of this section, the following persons are persons who are concerned in, or take part in, the management of a body corporate:

(a) a director of the body corporate;

- (b) a secretary of the body corporate;
- (c) a person involved in managing the affairs of the body corporate, by whatever name called;
- (d) a receiver and manager of property of the body corporate;
- (e) an administrator of a deed of arrangement executed by the body corporate;
- (f) a liquidator of the body corporate appointed in a voluntary winding-up of the body corporate;
- (g) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

#### **240. False and misleading statements**

A person, in providing any information, statement, report or document under this Act, must not –

- (a) provide it knowing it to be false or misleading; or
- (b) omit any matter knowing that without that matter the information, statement, report or document is false or misleading.

Penalty:

In the case of –

- (a) a natural person, a fine not exceeding 50 penalty units; or
- (b) a body corporate, a fine not exceeding 100 penalty units.

#### **241. Offences relating to authorised persons**

A person must not –

- (a) assault, delay, obstruct, hinder or impede an authorised person in the exercise of any function or performance of any power under this Act; or
- (b) forge or counterfeit any written evidence of appointment of an authorised person; or
- (c) make use of any forged, counterfeited or false written evidence of such an appointment; or

- (d) impersonate an authorised person; or
- (e) falsely pretend to be an authorised person.

Penalty:

Fine not exceeding 100 penalty units.

#### **242. Offences relating to building surveyors**

(1) A building surveyor must not demand or receive any payment, gratuity or gift in consideration of doing or omitting to do anything relating to the exercise of any power under this Act, other than payment for services rendered under this Act.

Penalty:

Fine not exceeding 100 penalty units.

(2) A person must not give any payment, gratuity or gift to a building surveyor in consideration of doing or omitting to do anything relating to the exercise of any power under this Act, other than payment for services rendered under this Act.

Penalty:

Fine not exceeding 100 penalty units.

### ***Division 2 - Infringement notices***

#### **243. Service of infringement notice**

(1) An authorised person, other than a building surveyor or a permit authority, may serve an infringement notice on a person if of the opinion that the person has committed a prescribed offence.

(2) An infringement notice –

- (a) is not to relate to 4 or more offences; and
- (b) is not to be served on a person under the age of 16 years.

#### **244. Form of infringement notice**

(1) An infringement notice is to –

- (a) be in an approved form; and

(b) specify –

(i) the offence to which it relates; and

(ii) the prescribed penalty for that offence; and

(iii) the total amount payable; and

(iv) the place at which the penalty is to be paid; and

(v) any other prescribed details.

(2) An infringement notice is to state that the person on whom it is served may disregard the notice but that on doing so he or she may be prosecuted for the offence to which the notice relates.

#### **245. Acceptance of infringement notice**

A person may accept an infringement notice by –

(a) paying the total amount payable within 21 days after being served with the notice; or

(b) lodging at the place specified in the notice within 21 days after being served with the notice a written undertaking to pay the amount payable.

#### **246. Extension of acceptance period**

If an infringement notice is not accepted before the period referred to in section 245 expires, a clerk of petty sessions or general manager may allow a further period of 14 days commencing on that expiry for the acceptance of that notice.

#### **247. Payment**

(1) If a person undertakes under section 245(b) to pay any amount payable under an infringement notice, a clerk of petty sessions or general manager may determine the period, not exceeding 63 days from the day on which the notice was served, within which the amount is to be paid.

(2) A person may make representations to a clerk of petty sessions or general manager in relation to the ability to pay the amount.

(3) A clerk of petty sessions or general manager is to take the person's representations into account before determining the period within which the amount is to be paid.

(4) If a person fails to pay any amount in accordance with an undertaking, the same proceedings may be taken against the person in respect of the amount remaining outstanding as if it were a penalty imposed on the person on summary conviction.

#### **248. Payments to council or Consolidated Fund**

Any payments made in respect of an infringement notice –

(a) are payable to a council if the notice was served by the council; or

(b) in any other case, are payable into the Consolidated Fund.

#### **249. Effect of acceptance**

(1) The acceptance of an infringement notice is not an admission of liability in any civil proceedings.

(2) Proceedings against a person for an offence to which an infringement notice relates that has not been withdrawn must not be brought –

(a) if the person accepts the infringement notice; or

(b) within –

(i) 28 days after the notice was served, if the person has not been allowed an additional period under section 246; or

(ii) 42 days after the notice was served, if the person has been allowed an additional period under section 246.

#### **250. Withdrawal of infringement notice**

(1) An authorised person may withdraw an infringement notice served on a person if of the opinion that –

(a) the infringement notice should not have been served; or

(b) the person should be proceeded against for the offence to which the notice relates.

(2) An infringement notice may be withdrawn whether or not it has been accepted.

(3) An infringement notice is to be withdrawn –

(a) by serving on a person a notice stating that the infringement notice has been withdrawn; and

(b) within 108 days after service of the infringement notice.

(4) A clerk of petty sessions or general manager must repay to a person any amount paid by that person in respect of an infringement notice that is withdrawn.

### *Division 3 - Liability*

#### **251. Immunity from liability**

(1) The Minister, the Director, a member of the Appeal Board or the Advisory Committee, a councillor, an employee of a council or a person acting under the direction of the Minister, the Director, a member of the Appeal Board or the Advisory Committee or a council is not personally liable for an honest act done or omission made in the exercise or purported exercise of a power or in the performance or purported performance of a function under this Act.

(2) A permit authority or a building surveyor or a person acting on behalf of a permit authority or building surveyor, in relying on the action, advice or certificate of another person exercising a power or performing a function, is not liable for an honest act done or omission made in exercising any power or performing any function under this Act.

(3) A permit authority is not liable for an honest act done or omission made by a building surveyor under this Act.

(4) An authorised body or approved investigator is not personally liable for an honest act done or omission made in the exercise or purported exercise of a power or in the performance or purported performance of a function under this Act.

#### **252. Apportioning liability in damages action**

(1) In determining an amount for damages in a building action, the court is to apportion the amount among the persons found liable and any defendant or third or subsequent parties joined in the action, having regard to the extent of each person's responsibility for the damage incurred.

(2) The liability for damages of a person referred to in subsection (1) is limited to the amount apportioned to that person under that subsection.

(3) A person referred to in subsection (1) is not required to –

(a) contribute to the damages apportioned to any other person in the same building action; or

(b) indemnify that person.

### **253. Recovery of contribution**

(1) A person to whom a court has apportioned an amount in a building action under section 252 may recover contribution to the damages apportioned from any other person not a party to that action who is, or if sued would be, liable in respect of the same damage.

(2) A person is not entitled to recover contributions under this section from any other person entitled to be indemnified by the person in respect of the liability for which the contribution is sought.

(3) In any proceedings for the recovery of any contribution from a person under this section, the court –

(a) is to determine the amount recoverable having regard to the extent of the person's responsibility for the damage; or

(b) may exempt the person from a liability to contribute.

(4) The court may determine that any contribution recovered from a person under this section is a complete indemnity.

### **254. Liability not affected**

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

### **255. Limitation on taking building action**

A building action cannot be brought after a period of 10 years starting on the date on which the cause of the action first accrues, whether or not the cause accrues before or after the commencement of this Act.

### **256. Accrual of cause of action**

(1) A cause of a building action for any building work or associated building work in respect of a building accrues –

(a) on the date on which a certificate of occupancy in respect of that building is issued; or

(b) if that certificate is not issued –

- (i) on the date of the first occupation of the building; or
- (ii) 2 years after the issue of a building permit relating to that building, if the building is not occupied; or
- (c) if the building is occupied and there is no certificate of occupancy, on the date on which the work is completed.

(2) A cause of a building action for any plumbing work or associated plumbing work accrues –

- (a) on the date on which a certificate of completion (plumbing work) is issued; or
- (b) if that certificate is not issued –
  - (i) on the date of the first use of the plumbing installation; or
  - (ii) 2 years after the issue of a plumbing permit relating to that plumbing work, if the plumbing installation is not used.

#### **257. Relationship to other law**

The provisions of this Division do not affect the operation of any law that enables a person to take action against another person even though judgment has previously been recovered against that other person.

#### ***Division 4 - Authorised persons***

#### **258. Access to and entry into premises**

- (1) An authorised person, at all reasonable times –
  - (a) has access to any building work or building; and
  - (b) may enter any premises for the purpose of exercising any power or performing any function under this Act.
- (2) An authorised person must not enter any premises used for residential purposes without –
  - (a) the consent of the occupier; or
  - (b) a search warrant.
- (3) Subsection (2) does not apply if –

(a) the safety of the public or any occupant is at risk; or

(b) the premises are affected by an emergency order.

### **259. Powers of authorised persons**

An authorised person may –

(a) demand that the owner of any building or land produce any records relating to the building or land, or to any building work, plumbing work or plumbing installation in respect of that building or land; and

(b) search for, inspect, take extracts from and make copies of those records; and

(c) make any inquiry the person considers necessary relating to any building work or building.

### **260. Delegation of powers**

(1) An authorised person, by instrument in writing, may delegate any or all of the powers specified in this Division, other than this power of delegation, to another person.

(2) A person, before exercising any power delegated under subsection (1), must produce evidence of his or her identity and the delegation if requested to do so.

Penalty:

Fine not exceeding 10 penalty units.

## ***Division 5 - Evidence***

### **261. Evidentiary provisions**

(1) The production in any proceedings of a document purporting to be a copy of a determination made by the Appeal Board under this Act is conclusive evidence of the due making and existence of the determination.

(2) A court is to take judicial notice of any notice, order or direction given under this Act.

### **262. Evidence of occupancy permit**

An occupancy permit issued in respect of a building is not evidence that –

(a) the building to which it applies complies with this Act; or

**(b)** a function control authority has given permission for the building to be used for a particular purpose.

### **263. Evidence of final inspection**

A certificate of final inspection is not evidence that the building or building work to which it applies complies with this Act.

### **264. Evidence of compliance**

In any proceedings relating to protection work, a statement of the building surveyor as to whether or not the provisions of any Building Regulations or any drawings or specifications have been complied with is conclusive.

### **265. Authentication of documents**

A document requiring authentication by the Appeal Board is sufficiently authenticated without the seal of the Appeal Board if it is signed by the chairperson of the Appeal Board.

### **266. Reliance on certificate of other person**

A permit authority, building surveyor or general manager may rely on a certificate issued by a person qualified as prescribed.

### **267. Evidence relating to infringement notice**

Evidence of the service, acceptance or withdrawal of an infringement notice is not admissible in any proceedings for the offence to which the notice relates.

## ***Division 6 - General matters***

### **268. Heating appliances**

A person must not install a stove, heater or any similar appliance which burns oil or solid fuel unless that installation is carried out in accordance with the Building Code of Australia and the Building Regulations.

Penalty:

In the case of –

**(a)** a natural person, a fine not exceeding 20 penalty units; or

**(b)** a body corporate, a fine not exceeding 100 penalty units.

## **269. Improper use of information**

A member of the Appeal Board must not make improper use of information acquired as such a member.

Penalty:

Fine not exceeding 50 penalty units.

## **270. Building permit levy**

(1) A levy in respect of building work to which an application for a building permit relates is payable to the permit authority for building work the cost of which is \$5 000 or more.

(2) A building permit levy is payable –

(a) by the applicant for the building permit; and

(b) before a building permit is issued; and

(c) at a prescribed amount.

(3) In applying for a building permit, an applicant is to supply the following:

(a) the contract price for the building work, including the cost of labour and materials;

(b) if there is no contract price, a statement by a building surveyor of the estimated cost of the building work, including the cost of labour and materials.

(4) The Director may recover money payable as a building permit levy as a debt due in a court of competent jurisdiction.

## **271. Establishment of Building Administration Fund**

(1) The Minister is to establish a Building Administration Fund.

(2) A permit authority –

(a) may retain a specified percentage of any building permit levy paid; and

(b) is to forward the balance to the Director or other specified body for payment into the Fund.

(3) The funds of the Fund are to be applied –

- (a) for the administration of this Act; and
- (b) for any other purpose relating to building and plumbing matters the Minister determines.

## **272. Records of levy payments**

A permit authority is to –

- (a) keep records of building permit levies it receives and forwards to the Director; and
- (b) make those records available for inspection by the Director.

## **273. Additional orders**

(1) The Director or a permit authority may apply to a court for an order in relation to a contravention or likely contravention of –

- (a) this Act; or
- (b) a notice, order or determination under this Act.

(2) The court, if satisfied that a contravention has been or is likely to be committed, may make any one or more of the following orders:

- (a) an order to restrain the contravention or other conduct by the person by whom the contravention is committed or is likely to be committed;
- (b) an order requiring building work or plumbing work to be carried out;
- (c) an order requiring the payment of money into court in respect of any building work or plumbing work carried out or to be carried out by the permit authority;
- (d) any necessary ancillary orders.

(3) An application for an order under this section –

- (a) may be made during proceedings for an offence under this Act; and
- (b) must not be made in relation to a matter that is subject to an appeal to the Appeal Board that has not been finally disposed of.

(4) An order may be made under this section instead of, or in addition to, any other order or penalty imposed in proceedings under this Act.

## **274. Provisions of other standards**

Any provision of any standard, code or guideline in relation to a matter that is dealt with in the Building Code of Australia applies to a building or building work only if it is expressly adopted by that Code.

## **275. Defence of compliance**

In an action for negligence relating to the construction or alteration of buildings or plumbing installations or relating to building work or plumbing work, it is a defence to prove compliance with standards in force at the time of that construction, alteration or work, unless the building, plumbing installation, building work or plumbing work was required to be upgraded under another Act and was not so upgraded.

## **276. Building compliance with Act**

(1) A building or building work complies with this Act if it complies with the performance requirements of the Building Code of Australia.

(2) Compliance with the performance requirements of the Building Code of Australia is satisfied if –

- (a) a building permit is issued; and
- (b) a certificate of completion (building work) is issued.

## **277. Plumbing compliance with Act**

(1) Plumbing work or a plumbing installation complies with this Act if it complies with the performance requirements of the Tasmanian Plumbing Code.

(2) Compliance with the performance requirements of the Tasmanian Plumbing Code is satisfied if –

- (a) a plumbing permit or special plumbing permit is issued; and
- (b) a certificate of completion (plumbing work) is issued.

## **278. Registers**

(1) A permit authority is to keep a register for each of the following:

- (a) building permits issued by it;
- (b) plumbing permits issued by it;

- (c) special plumbing permits issued by it;
- (d) certificates of final inspection received by it;
- (e) occupancy permits received by it;
- (f) temporary occupancy permits received by it;
- (g) certificates of completion issued by it;
- (h) building orders received or issued by it;
- (i) plumbing orders issued by it;
- (j) emergency orders received by it;
- (k) permits to proceed issued by it.

(2) A register kept by a permit authority is to –

- (a) contain any information the Director determines; and
- (b) be in an approved form; and
- (c) be made available for inspection at any reasonable time.

(3) The Director is to keep –

- (a) a register of accredited building practitioners; and
- (b) a register of owner builders.

## **279. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Infrastructure, Energy and Resources; and
- (b) the department responsible to the Minister for Infrastructure, Energy and Resources in relation to the administration of this Act is the Department of Infrastructure, Energy and Resources.

## **280. Transitional and savings provisions**

Schedule 3 has effect in respect of transitional and savings provisions.

## **281. Acts repealed**

(1) The Town Building Act 1962 is repealed.

(2) The Building (Action Limitation) Act 1997 is repealed.

## **282. Local Government (Building and Miscellaneous Provisions) Act 1993 amended**

Part 2 of the Local Government (Building and Miscellaneous Provisions) Act 1993 is repealed.

## **283. Statutory Rules rescinded**

The Statutory Rules specified in Schedule 4 are rescinded.

### **SCHEDULE 1 - Membership and meetings of advisory committee**

Section 9(4)

#### **1. Interpretation**

In this Schedule,

"**member**" means a member of the Advisory Committee.

#### **2. Term of office**

A member is to be appointed for a period, not exceeding 3 years, specified in the member's instrument of appointment.

#### **3. Holding other office**

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to a member.

#### **4. Conditions of appointment**

(1) A member is entitled to be paid any remuneration and allowances the Minister determines.

(2) A member holds office on any conditions specified in the instrument of appointment.

## **5. Resignation**

A member may resign by signed notice given to the Minister.

## **6. Removal from office**

(1) The Minister may remove a member from office if the member –

(a) is absent from 3 consecutive meetings of the Advisory Committee without the permission of the Advisory Committee; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or

(d) is convicted of an offence against this Act.

(2) The Minister may remove a member from office if satisfied that the member is –

(a) physically or mentally incapable of continuing as a member; or

(b) unable to perform adequately or competently the functions of the member's office.

## **7. Filling of vacancies**

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

## **8. Defect not invalidate appointment**

An appointment of a person as a member is not invalid merely because of a defect or irregularity in relation to the appointment.

## **9. Convening of meetings**

(1) The chairperson of the Advisory Committee, after giving each member reasonable notice –

(a) may convene a meeting at any time; and

(b) must convene a meeting if requested to do so by the Minister.

(2) If the chairperson is absent or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given of the meeting, by a person authorised by the Advisory Committee to do so.

(3) The Advisory Committee is to determine what is reasonable notice for the purpose of this clause.

## **10. Presiding at meetings**

(1) The chairperson presides at all meetings of the Advisory Committee at which he or she is present.

(2) If the chairperson is not present at a meeting of the Advisory Committee, a member chosen by the members present at the meeting is to preside.

## **11. Quorum and voting at meetings**

(1) A quorum at any duly convened meeting of the Advisory Committee is at least half the number of its members.

(2) At a meeting of the Advisory Committee –

(a) the member presiding has a deliberative vote only; and

(b) a question is decided –

(i) by a majority of votes of the members present and voting; or

(ii) in the negative if there is an equality of votes of the members present and voting.

## **12. Conduct of meetings**

(1) Subject to this Act, the Advisory Committee may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) The Advisory Committee may permit members to participate in a particular meeting or all meetings by –

(a) telephone; or

(b) video conference; or

(c) any other means of communication approved by the Advisory Committee.

(3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

## **SCHEDULE 2 - Membership and meetings of appeal board**

Section 203(6)

### **1. Interpretation**

In this Schedule,

"**member**" means a member of the Appeal Board.

### **2. Term of office**

A member is to be appointed for a period, not exceeding 3 years, specified in the member's instrument of appointment.

### **3. Holding other office**

The holder of an office who is required under any Act to devote the whole of his or her time to the duties of that office is not disqualified from –

(a) holding that office and also the office of a member; or

(b) accepting any remuneration payable to a member.

### **4. Conditions of appointment**

(1) A member is entitled to be paid any remuneration and allowances the Minister determines.

(2) A member holds office on any conditions specified in the instrument of appointment.

### **5. Resignation**

A member may resign by signed notice given to the Minister.

### **6. Removal from office**

(1) The Minister may remove a member from office if the member –

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(b) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or

(c) is convicted of an offence against this Act.

(2) The Minister may remove a member from office if satisfied that the member is –

(a) physically or mentally incapable of continuing as a member; or

(b) unable to perform adequately or competently the functions of the member's office.

## **7. Filling of vacancies**

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

## **8. Defect not invalidate appointment**

An appointment of a person as a member is not invalid merely because of a defect or irregularity in relation to the appointment.

## **9. Convening of meetings**

(1) The chairperson of the Appeal Board, after giving members reasonable notice, may convene a meeting at any time.

(2) The Appeal Board is to determine what is reasonable notice for the purpose of this clause.

## **10. Presiding at meetings**

The chairperson presides at all meetings of the Appeal Board at which he or she is present.

## **11. Conduct of meetings**

(1) Subject to this Act, the Appeal Board may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.

(2) The Appeal Board may permit members to participate in a particular meeting or all meetings by –

(a) telephone; or

(b) video conference; or

(c) any other means of communication approved by the Appeal Board.

(3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.

## **12. Disclosure of interests**

(1) A member must disclose to the Appeal Board any direct or indirect pecuniary interest in a matter that –

(a) is being considered, or about to be considered, by the Appeal Board; and

(b) may conflict with the proper performance of the member's duties in relation to consideration of the matter.

Penalty:

Fine not exceeding 50 penalty units or a term of imprisonment not exceeding 3 months, or both.

(2) A person does not have a pecuniary interest in a matter merely because the member is engaged in the building industry or plumbing industry.

(3) An indirect pecuniary interest includes an involvement in any aspect of the matter under consideration.

(4) A contravention of this clause does not invalidate any determination of the Appeal Board.

## **SCHEDULE 3 - Transitional and savings**

### Section 280

#### **1. Interpretation**

In this Schedule –

"**commencement day**" means the day on which section 280 commences;

**"repealed building regulations"** means regulations made under section 15 of the repealed Part;

**"repealed Part"** means Part 2 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*;

**"repealed plumbing regulations"** means regulations made under section 16 of the repealed Part.

## **2. Proceedings**

Any proceedings instituted under the repealed Part but not determined before the commencement day may, after that day, be continued under that Part until determined.

## **3. Appeals**

Any appeal made under the repealed Part but not determined before the commencement day may, after that day, be continued under that Part until determined.

## **4. References**

A reference lodged under the repealed Part and not determined before the commencement day may, after that day, be continued under that Part until determined.

## **5. Landslip areas**

Any area that is a landslip area under the repealed Part immediately before the commencement day is, on that day, an equivalent landslip area under this Act.

## **6. Permits**

(1) A plumbing permit in force under the repealed plumbing regulations immediately before the commencement day is, on that day, a plumbing permit under this Act.

(2) A building permit in force under the repealed building regulations immediately before the commencement day is, on that day, a building permit under this Act.

(3) A special connection permit in force under the repealed plumbing regulations immediately before the commencement day is, on that day, a special plumbing permit under this Act.

## **7. Certificates**

(1) A certificate of occupancy in force under the repealed building regulations immediately before the commencement day is, on that day, an occupancy permit.

(2) A certificate of completion relating to building work in force under the repealed Part immediately before the commencement day is, on that day, a certificate of completion (building work).

(3) A certificate of completion relating to plumbing work in force under the repealed plumbing regulations immediately before the commencement day is, on that day, a certificate of completion (plumbing work).

(4) An authorisation to start work relating to plumbing in force under the repealed plumbing regulations immediately before the commencement day is, on that day, an authorisation to start work under this Act.

(5) A building certificate relating to a building in force under the repealed building regulations immediately before the commencement day is, on that day, a building certificate under this Act.

(6) A certificate of material compliance relating to a building in force under the repealed building regulations immediately before the commencement day is, on that day, a certificate of substantial compliance.

## **8. Consents and approvals**

Any consent or approval in force under the repealed Part immediately before the commencement day continues, on and after that day, subject to the same terms and conditions.

## **9. Orders and notices**

Any order or notice in force under the repealed Part immediately before the commencement day continues in force on and after that day until it expires or is withdrawn, expired, revoked or quashed under that Part.