

BUILDING ADVISORY SERVICES BRANCH

BUILDING NOTE

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BUILDING LEGISLATION AMENDMENT ACT 2010

Amendments to the *Building Act* commenced on 25 August 2010 by notice in the *Gazette*, No 34. The amendments were designed to overcome a deficiency in the regarding the continuation of certification when an unforeseen event has occurred during the construction process. Building Notes 78 and 79 also refer to the amendments and should be read together with this note.

The amendments clarify and extend obligations on building practitioners (including corporations) and create a mechanism for owners to apply to the Director of Building Control for a certificate of exemption when a "prescribed event" occurs. A prescribed event is an unforeseen event specified in Schedule 4, Clause 1 of the *Act*.

****Please note that this Building Note is for general information only and should not be used as a substitute for reading the Act in detail****

Obligations that have been clarified or added

1. Builder's Declarations

The amendments clarify the following matters with respect to builder's declarations:

- A building contractor must sign a builder's declaration for all work that they carry out (or cause to be carried out). For instance if a nominee or registered director leaves a corporation, they must still sign a declaration for all work they have carried out. This ensures that each builder makes a statement about the work that was carried out by them and provides details of the extent of the work.
- The *Act* now clearly states that it must be the *natural person* who carries out the building work who makes the declaration. The legislation also clarifies that completion can also mean where a builder has completely ceased working on a building project despite not all work being completed under the contract. An example to illustrate this point is below:

Example:

[Builder's declarations for partial completion](#)

Michelle and Jim engage the services of XYZ Homes Pty Ltd for the construction of their new home. The company has one registered director, Paul. Michelle and Jim have a disagreement with Paul which finally results in termination of the contract. Not all the work detailed in the contract has been "completed", however Paul's involvement on the project has. Paul *must sign* a builder's declaration for the portion of work that he carried out. He must fill out Section 3 of the builder's declaration form* and include a detailed description of the work completed by him.

***Note: the builder's declaration form has been amended as a result of the amendments**

See Sections 48C(4), 48C(5), 69(2) & Regulations 20A(2), 20B(5), 20C(4) & 20D(2)

2. Corporations

The amendments also place additional obligations on corporations as follows:

- A *registered corporation* must not prevent a nominee (or registered director) from undertaking their duties as registered building practitioners. It is also an offence for a *person who is involved in the management* of such a corporation to interfere with a building practitioner in the performance of their duties.

See Section 37A

- When a prescribed event occurs during construction of building work and a corporation is responsible for carrying out that work, the corporation must do certain things to ensure the certification process can continue. If the prescribed event is preventing a builder's declaration from being made (for instance their nominee dies), the corporation must ensure that a declaration is signed by a new builder after it has undertaken inquiries about the building work carried out by the previous builder. The corporation must be satisfied the building work was carried out in accordance with the building permit.

The declaration is a separate form from a builder's declaration as it is only completed when a prescribed event has occurred. The form is titled "Declaration by Corporation After Prescribed Event".

See Schedule 4 Clause 1, Section 48CA & Regulation 20E

Transitional matters for Declarations Made by Corporations

If, before the commencement of these amendments, a nominee has left a corporation without providing a builder's declaration to the certifier for work carried out, a corporation must proceed as if a prescribed event has occurred.

See sections 182 & 48CA & Regulations 52 & 20E

3. Owner-builders

Owner-builders' obligations have also been clarified. If an owner-builder sells their property prior to finishing the building project, they must sign for all work carried out and detail the extent of that work. They would therefore need to complete Section 3 of the builder's declaration.

See Section 48G & Regulation 20C

Transitional matters for owner-builders

If an owner-builder sold his or her property before the commencement of these amendments and did not provide a builder's declaration for the work carried out, and the new owner **wishes to** finish the work as an owner-builder, the following applies:

- The *new owner-builder must undertake inquiries* to be satisfied that the building work carried out by the previous owner-builder was in accordance with the building permit and make the declaration. They must state on the builder's declaration how they satisfied themselves, which could include engaging suitably qualified persons to inspect and give reports about the building work.

If the new owner **does not wish** to finish the work as an owner-builder, the following applies:

- *He or she must apply to the Director of Building Control* for a certificate of exemption as if the reason why they could not obtain the declaration was because of a prescribed event.

See Sections 183 & 48G

4. Certifiers

- When considering an application for an occupancy permit, certifiers must now ensure that there are no gaps in work on builder's declarations where more than one builder carries out work. If there is a change in builder, or several changes during a project, the building work carried out by each builder must be clearly distinguishable.

If a prescribed event occurs which results in the owners obtaining a certificate of exemption, that certificate must accompany all other relevant documents for the application for an occupancy permit.

See Sections 69(1) & (7) & 69A(1)(a)

Certificates of exemption

When a prescribed event occurs which prevents an owner from obtaining an occupancy permit, the owner may apply to the Director of Building Control for a certificate of exemption for the missing certification where it can be demonstrated that the work has been carried out materially in compliance with the building permit. An example is illustrated below:

Example: **Application for Certificate of Exemption**

Tom and Sue's house is in the process of being built by XYZ Homes Pty Ltd. The company has a sole director, Richard. During construction, Richard dies. Following his death, the company is to be wound up and Tom and Sue are unable to obtain a builder's declaration. Tom and Sue will be able to apply to the Director of Building Control for a certificate of exemption. They must satisfy the Director that the building work was carried out materially in accordance with the building permit.

To be eligible to apply, a prescribed event must have occurred and the owner must comply with the requirements in Schedule 4. For the Director to be satisfied that the work has been carried out materially in accordance with the building permit, the Director may require the owner to undertake inquiries and provide reports and other information. There are nine matters that the Director must take into account in considering the application and further matters may be prescribed by regulation at a later stage. An owner has the ability to appeal to the Building Appeals Board if their application is refused by the Director.

The amendments are designed to resolve impasses in relation to current, active building work. For more detailed information about when and how an owner may apply, please see Building Note 78 titled "Certificates of Exemption".

A certifier may now rely on a certificate of exemption for the missing certification and, assuming all other matters are in order, issue an occupancy permit.

See Sections 40, Part 8 Division 3A & Schedule 4 of the Act

Transitional matters for Application for Certificate of Exemption

If before the commencement of these amendments, building work had already commenced and a prescribed event occurred, an owner may apply to the Director of Building Control for a certificate of exemption (subject to the provisions of the *Act*).

See Section 181

Changes to the Regulations - Declarations Relating to Particular Building Work

Part 3, Division 4 of the *Act* was repealed and substituted with Part 3A – Declarations relating to particular building work. This Part was designed to clarify the position with respect to the making of builder's declarations. No further obligations regarding timeframes were added.

Class of building (1a, 2, 3-9 & 10)	Provision or Regulation where power derived		Provision or Regulation governing how declaration is made		Timeframe to make and provide declaration	
Class 1a - single dwelling (detached house) & 10 – (attached to 1a at the time the house is constructed) <i>Prescribed work</i>	Tier 1	s 48C	Tier 1	s 69	Tier 1	s 48C(2) & (3) – 14 days
	Tier 2	Reg 20C	Tier 2	Reg 20D	Tier 2	Reg 20C (2) & (3) – 14 days
Class 1a & 10 – i.e. renovations where no increase in floor area <i>Non prescribed work</i>	Tier 1	Reg 20B	Tier 1	s 69	Tier 1	Reg 20B (3) & (4) – 14 days
	Tier 2	Reg 20C	Tier 2	Reg 20D	Tier 2	Reg 20C (2) & (3) – 14 days
Class 2 - two or more sole occupancy units (separate dwellings)	Tier 1 & Tier 2	Reg 20B	Tier 1 & Tier 2	s 69	Tier 1 & Tier 2	Reg 20B (3) & (4) – 14 days
Class 2 - renovations (no increase in floor area)	Tier 1 & Tier 2	Reg 20B	Tier 1 & Tier 2	s 69	Tier 1 & Tier 2	Reg 20B (3) & (4) – 14 days
Class 3-9 - Commercial buildings and hostels etc	Tier 1 & Tier 2	Reg 20B	Tier 1 & Tier 2	s 69	Tier 1 & Tier 2	No timeframe – note under Reg 20B(4)

See Sections 48C & 69 & Regulations 20A to 20F

Legislative requirements

It is the responsibility of all building practitioners and owner-builders to understand the requirements of the relevant legislation. **Contraventions of the Building Act carry penalties of up to \$10,000 for an individual and \$50,000 for a body corporate.** Copies of documents referred to in this note and a link to the legislation are available at: www.nt.gov.au/lands/building. If you would like further information regarding these changes, please contact Building Advisory Services to speak with a policy or compliance officer.



Fabio Finocchiaro
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