



**BUILDING ADVISORY SERVICES BRANCH**

# BUILDING NOTE

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## CERTIFICATES OF EXEMPTION

This Building Note expands upon Building Note 77 which provides a general overview of the amendments that commenced on 25 August 2010 and is designed to provide more comprehensive information concerning the part of the amendments to the *Building Act* relating to applications for certificates of exemption.

***\*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\****

### Applications for Certificates of exemption

An owner of land that is affected by a prescribed event can apply for a certificate of exemption from the Director of Building Control, in the approved form, for certification that can not be obtained as a result of a prescribed event. Where there is more than one owner, one owner may apply, however details of all registered owners must be provided. The application is available on Building Advisory Services' website: [www.nt.gov.au/lands/building](http://www.nt.gov.au/lands/building).

### Entitlement to apply

For an owner to apply for a certificate of exemption, all of the following criteria must be satisfied;

- There must be a current building permit (or the reason for the lapse in the permit must be solely due to a prescribed event), and
- A prescribed event must have occurred, and
- Building work must have physically commenced on the land, and
- The owner must have taken **reasonable steps** within a **reasonable time** after the prescribed event to obtain the prescribed certification.

These amendments are ***not designed to overcome outstanding certification issues for old building work***. When a prescribed event occurs, the certifier should advise the owner that they may apply and emphasise that reasonable steps must be taken by the owner, within a reasonable time after the prescribed event or the Director may refuse the application.

### Making the application

The owner must apply to the Director of Building Control on the approved form and specify the following matters:

- Their details (name, contact details etc);
- The property details

- The building work to which the application relates;
- The required certification;
- The prescribed event that occurred;
- What steps they have taken to obtain the prescribed certification;
- The stage the building work has reached to date, including documentation and other evidence to support that description;
- Documentation and or other evidence that supports the information contained in the application and that the building work has been carried out materially in accordance with the building permit, such as inspection certificates and or permits, photographs, correspondence etc.

It is the applicant's responsibility to provide all the information the Director requires. It is not the Director's responsibility to gather that information. The Director may request further information or action to be undertaken by the applicant, or may refuse an application if insufficient information is provided. There is no fee for making the application, however the applicant is responsible for all costs associated with obtaining the information and complying with any requirements of the Director (such as a site inspections, obtaining a detailed report, having remedial work carried out).

### Prescribed events

Applications for certificates of exemption may only be made by a property owner where one of the following "prescribed events" occurs;

- the person required to provide the certification has:

• Died	• Ceased to be registered (only applicable to registered building practitioners)
• Cannot be found	• Withheld certification (due to the bankruptcy or insolvency of a building practitioner)
• Become incapacitated	• The building contract has been terminated
• Become bankrupt or insolvent (excludes owner-builders)	• Certification has been destroyed or cannot be found

### Prescribed certification

Certificates of exemption that can be issued by the Director of Building Control are for the following "prescribed certification":

• Builder's declarations	• Plumbing certification
• Inspection certificates	• Glazing certification
• Section 40 certificates	• Fire certification
• Roof truss certification	• Wet area certification
• Termite certification	• Other certification prescribed by regulation

### Certifiers

The certificates of exemption take the place of the prescribed certification that cannot be obtained, due to a prescribed event. The amendments provide that certifiers can rely on certificates of exemption when performing a function under the *Act* (see s 40(d)).

**What action should be taken immediately after a prescribed event?**

If a prescribed event occurs, the certifier should advise the owner that, until work carried out to date is fully documented and inspected for compliance with the building permit, work should not proceed. If further work is carried out prior to an inspection and/or detailed report and investigation into that building work, it will be more difficult to assess whether the work was carried out in accordance with the building permit. This may mean that the Director would require further information, possibly by undertaking intrusive investigations, to be able to make a decision about whether a certificate of exemption should issue.

**Occupancy permits in reliance of a Certificate of Exemption**

The amendments are designed to ensure that there is no distinction made between an occupancy permit issued on reliance of a certificate of exemption and any other. Where a prescribed event occurs, the owner will have a certificate of exemption in relation to one (or possibly more) document(s) that would usually accompany an application for an occupancy permit. No notation is to be made on the occupancy permit to state whether or not a certificate of exemption has been relied on, because the process of applying for a certificate of exemption involves the investigation and assessment of the actual building work to confirm that the work has been carried out materially in accordance with the building permit.

Certain documents relating to the application process for a certificate of exemption, such as the application form and the grant and or refusal (including reasons) of the occupancy permit, will be maintained on the building file.

**Detailed report**

A building certifier may undertake an inspection of the property and fully document the stage of work that has been completed up to the point in time when the prescribed event occurred. This includes photographs (as appropriate), notations on plans and a detailed report which the owner will be able to use when applying for a certificate of exemption.

The report must detail exactly what stage the building work has reached *and* what further work is required. The report must include all certification obtained to date and a description of what certification is outstanding. Where photographs are used, the photographs must be referenced to the text in the report.

If the preparation of the detailed report is outside the scope of the original fee agreement, prior to commencing the work, certifiers should advise the owner whether they intend to charge additional costs.

**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](http://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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