

BUILDING ADVISORY SERVICES BRANCH

BUILDING NOTE

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CORPORATIONS

This Building Note expands upon Building Note 77 which provides a general overview of the amendments which commenced on 25 August 2010 and is designed to provide more comprehensive information concerning the part of the amendments relating to further obligations imposed on corporations and people involved in the management of corporations.

****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****

Offences created

An offence has been created where a person involved in the management of a corporation prevents a nominee or other building practitioner (which could be a registered director) from complying with a provision of the *Building Act* or interferes with that person carrying out the building work in accordance with the *Act*. It is designed to provide protection for building practitioners who are responsible for the performance of functions on behalf of corporations that may only be carried out by registered building practitioners.

The same offence as stated above has been created in relation to a registered corporation. This means that a registered corporation can be found guilty of this offence. The penalties for an offence against this section are \$10,000 for an individual and \$50,000 for an offence by a corporation.

Corporations registered as building contractors when a prescribed event occurs

Further specific obligations are imposed on corporations which are registered as **building contractors**. The obligations apply in relation to all building work that requires a builder's declaration to be made (both prescribed work, and non prescribed building work) **when a prescribed event occurs** (see Building Note 78 in relation to what is a prescribed event).

Where building work has been carried out by a builder on behalf of a corporation and a prescribed event occurs, preventing the responsible builder (i.e. the nominee) from making a declaration, a corporation now has an obligation to ensure that a declaration is made. The corporation must be satisfied that the building work was carried out by the responsible builder, in accordance with the building permit.

The corporation has an obligation to take all necessary steps within a reasonable time to satisfy itself that the work has been carried out in accordance with the building permit. Reasonable steps may include the corporation engaging suitably qualified and experienced persons (such as structural engineers, certifiers) to provide reports about the work.

As soon as the corporation is satisfied that the work was carried out in accordance with the building permit, it must give the information that it relied on to an appropriate person (in the case of prescribed building work it must be a registered building practitioner, i.e. the new builder, and in the case of non prescribed building work it must be an appropriate person) and ensure that a declaration is made and provided to a certifier.

If a corporation fails to do this, they are liable for a penalty of up to \$50,000.

The registered building practitioner or the appropriate person who is given the information that the corporation relied on, must make the declaration on behalf of the corporation within 14 days of receiving it.

The declaration made by the registered building practitioner or appropriate person *must* include:

- details about the prescribed event that occurred, *and*
- the way that the corporation satisfied itself that the work was carried out in accordance with the building permit.

The person making the declaration on behalf of the corporation is protected from criminal liability if the declaration is made in good faith.

The declaration used is titled "Declaration by Corporation After a Prescribed Event" and can be accessed on Building Advisory Services' website (see link below).

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
Director of Building Control
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