

Serial
Building Amendment (Occupancy Certification) Bill 2015
Mr Tollner

A Bill for an Act to amend the *Building Act*, and for related purposes

DRAFT ONLY
Prepared by the Office of the Parliamentary Counsel
Date: 29 June 2015 09:28

Ref: 6bIIIB002 v7

NORTHERN TERRITORY OF AUSTRALIA

BUILDING AMENDMENT (OCCUPANCY CERTIFICATION) ACT 2015

Act No. [] of 2015

Table of provisions

Part 1 Preliminary matters

1	Short title	1
2	Commencement	1

Part 2 Amendment of Building Act

3	Act amended	1
4	Section 4 amended	1
5	Section 38 amended	2
6	Section 42 amended	3
7	Section 47 amended	4
8	Part 8 heading amended	4
9	Section 65 amended	4
10	Part 8, Division 2 heading amended	5
11	Section 68 repealed	5
12	Part 8, Division 3 heading omitted	5
13	Section 69A repealed	5
14	Section 70 amended	5
15	Section 70A inserted	6
	70A Granting occupancy permit if building permit no longer in force	
16	Section 71 repealed	6
17	Section 72 amended	7
18	Part 8, Divisions 2A and 3 inserted	7
	Division 2A Certificates of substantial compliance	
	72A Who may make application	
	72B Granting certificate of substantial compliance	
	72C Effect of certificate of substantial compliance	
	Division 3 Certificates of existence	
	72D Application for certificate of existence	
	72E Building certifier's recommendation to Director	
	72F Granting certificate of existence	
	72G Effect of certificate of existence	
19	Section 73 repealed	11
20	Section 75 repealed	11
21	Part 8, Division 5 inserted	11

	Division 5	General matters	
	76A	Further information may be required	
	76B	Application of and information in occupancy certification	
	76C	Application of Schedule 3	
22	Part 20 inserted		12
	Part 20	Transitional matters for Building Amendment (Occupancy Certification) Act 2015	
	195	Definitions	
	196	Repealed Act – building work and occupancy	
	197	Application for occupancy permit if not decided before commencement	
	198	Period of cover under approved insurance policy	
23	Schedule 3 amended		15
24	Act further amended		20
Part 3		Amendment of other laws	
25	Other laws amended		20
Part 4		Repeal	
26	Act repealed		20
Part 5		Expiry of Act	
27	Expiry of Act		20
Schedule 1		Act further amended	
Schedule 2		Other laws amended	



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2015

An Act to amend the *Building Act*, and for related purposes

[Assented to [] 2015]
[Second reading [] 2015]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Building Amendment (Occupancy Certification) Act 2015*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Building Act

3 Act amended

This Part amends the *Building Act*.

4 Section 4 amended

- (1) Section 4, definitions ***occupancy permit***, ***related building application*** and ***substantial compliance certificate***

omit

(2) Section 4

insert (in alphabetical order)

approval to occupy a building on a temporary basis means an approval granted under Part 8, Division 4.

builder's declaration, see section 69(1).

certificate of existence means a certificate granted under Part 8, Division 3.

certificate of substantial compliance means a certificate granted under Part 8, Division 2A.

classification, of a building, means the classification of the building by the Regulations.

existing building work, in relation to a certificate of existence, see section 72D(2).

occupancy certification, means one of the following:

- (a) an occupancy permit;
- (b) a certificate of substantial compliance;
- (c) a certificate of existence;
- (d) an approval to occupy a building on a temporary basis.

occupancy permit means a permit granted under Part 8, Division 2.

relevant technical standards, for Part 8, in relation to building work for which a building permit has been granted, means any standards or codes, in force in the Territory during the period the building permit is in force, that regulate the building work.

5 Section 38 amended

(1) Section 38(1)(a)

omit

occupancy permits

insert

occupancy certification (other than certificates of existence)

(2) Section 38(1)(b)

omit, insert

(b) to make recommendations to the Director about applications for the grant of certificates of existence;

6 Section 42 amended

(1) Section 42, heading

omit, insert

42 Maintaining register and advice to Director

(2) Section 42(1)

omit

an occupancy permit

insert

occupancy certification

(3) Section 42(1)(a)

omit

of building permits and occupancy permits in an approved form

insert

, in an approved form, of building permits and occupancy certification

(4) Section 42(1)(b)

omit

such permit

insert

building permit and occupancy certification

(5) Section 42(1)(c)

omit, insert

- (c) within 7 days after granting or amending a permit or certification, provide to the Director a copy of:
- (i) the permit or certificate; and
 - (ii) any other documents prescribed by regulation.

7 Section 47 amended

After section 47(3)

insert

- (4) In this section:

related building application, in relation to an application for an occupancy permit mentioned in subsection (1), means any application under this Act that relates to the same building work as is specified in the occupancy permit application.

8 Part 8 heading amended

Part 8, heading

omit

permits

insert

certification and exemption certificates

9 Section 65 amended

- (1) Section 65, heading

omit

permit

insert

certification

- (2) Section 65(1)

omit

all words from "unless" to "is"

insert

unless occupancy certification has been granted, or the Regulations provide that occupancy certification is

(3) Section 65(2)

omit

occupancy permit or an approval to occupy on a temporary basis

insert

occupancy certification

10 Part 8, Division 2 heading amended

Part 8, Division 2, heading

omit

Applications for occupancy

insert

Occupancy

11 Section 68 repealed

Section 68

repeal

12 Part 8, Division 3 heading omitted

Part 8, Division 3, heading

omit

13 Section 69A repealed

Section 69A

repeal

14 Section 70 amended

(1) Section 70, heading

omit, insert

70 Granting occupancy permit generally

(2) Section 70, before "A"

insert

(1)

(3) Section 70, at the end

insert

(2) A building certifier must not grant an occupancy permit unless:

- (a) the application for the permit is accompanied by the documents required by regulation to accompany the application as prescribed for Schedule 3, clause 3; and
- (b) the building work to which the permit relates is consistent with those documents.

Maximum penalty: 40 penalty units.

15 Section 70A inserted

After section 70

insert

70A Granting occupancy permit if building permit no longer in force

- (1) This section applies in relation to a building of a classification prescribed by regulation if:
 - (a) an application is made for the grant of an occupancy permit after building work has been carried out in or on the building; and
 - (b) the building permit granted for the work has ceased to be in force before the application is made.
- (2) Without limiting section 70, a building certifier may grant an occupancy permit if:
 - (a) all building work specified in the building permit that is essential to the classification of the building was carried out during the period the building permit was in force; and
 - (b) the building work complies with any further criteria prescribed by regulation.

16 Section 71 repealed

Section 71

repeal

17 Section 72 amended

(1) Section 72, before "A"

insert

(1)

(2) Section 72, at the end

insert

(2) The granting of an occupancy permit does not limit a person's liability for an offence against this Act committed by the person before the permit is granted.

18 Part 8, Divisions 2A and 3 inserted

After section 72

insert

Division 2A Certificates of substantial compliance

72A Who may make application

- (1) An application for a certificate of substantial compliance must be in writing and may be made to a building certifier by the owner of a building or by the owner's agent.
- (2) An owner or owner's agent may apply for a certificate of substantial compliance:
 - (a) after carrying out building work in or on a building of a classification prescribed by regulation; and
 - (b) if all building work specified in the building permit that is essential to the classification of the building was carried out during the period the building permit was in force.

72B Granting certificate of substantial compliance

- (1) A building certifier must not grant a certificate of substantial compliance in relation to building work unless:
 - (a) the certificate applies to a building of a classification prescribed for section 72A(2)(a); and
 - (b) the building is suitable for occupation; and

- (c) the building work meets the relevant technical standards; and
- (d) the building work complies substantially with one or both of the following:
 - (i) the building permit granted for the work;
 - (ii) the requirements of this Act and the Regulations relevant to the work; and
- (e) the building work complies with any further criteria prescribed by regulation.

Maximum penalty: 85 penalty units.

- (2) A building certifier must not grant a certificate of substantial compliance unless:
 - (a) the application for the certificate is accompanied by the documents required by regulation to accompany the application as prescribed for Schedule 3, clause 3; and
 - (b) the building work to which the permit relates is consistent with those documents.

Maximum penalty: 40 penalty units.

72C Effect of certificate of substantial compliance

- (1) A certificate of substantial compliance certifies that the building or part of the building to which the certificate applies is suitable for occupation and the building work carried out in or on the building:
 - (a) meets the relevant technical standards; and
 - (b) complies substantially with one or both of the following:
 - (i) the building permit granted for the work;
 - (ii) the requirements of this Act and the Regulations relevant to the work; and
 - (c) complies with any further criteria prescribed by regulation.
- (2) The granting of a certificate of substantial compliance does not limit a person's liability for an offence against this Act committed by the person before the certificate is granted.

Division 3 Certificates of existence**72D Application for certificate of existence**

- (1) An application for a certificate of existence must be in writing and may be made to a building certifier by the owner of a building or by the owner's agent.
- (2) An owner or owner's agent may apply for a certificate of existence in relation to building work (***existing building work***):
 - (a) carried out in or on a building of a classification prescribed by regulation; and
 - (b) completed before the commencement of this Division.
- (3) The application may be made if:
 - (a) this Act, at the time the existing building work was carried out, required a building permit to be granted for the work; and
 - (b) any of the following apply:
 - (i) no building permit was in force for the existing building work at the time it was carried out;
 - (ii) the existing building work was carried out during the period a building permit was in force for the work but it is less than substantially compliant with the permit;
 - (iii) the existing building work was carried out during the period a building permit was in force for the work but it is less than substantially compliant with the requirements of this Act and the Regulations that applied to the work at that time;
 - (iv) the existing building work was carried out during the period a building permit was in force for the work but it does not meet the relevant technical standards; and
 - (c) the existing building work complies with any further criteria prescribed by regulation.

72E Building certifier's recommendation to Director

- (1) A building certifier may, in writing to the Director, recommend that the Director grant, or refuse to grant, a certificate of existence.
- (2) The recommendation must include the information, and be accompanied by the documents, prescribed by regulation.

- (3) However, the Director may request the building certifier to obtain further information or documents relevant to the recommendation.
- (4) The building certifier must not make a recommendation for the grant of a certificate of existence unless:
 - (a) the application for the certificate of existence is accompanied by the documents required by regulation to accompany the application as prescribed for Schedule 3, clause 3; and
 - (b) the existing building work to which the recommendation relates:
 - (i) is consistent with those documents and with any additional documents requested by, and given to, the building certifier; and
 - (ii) complies with the criteria mentioned in section 72D(3)(c); and
 - (c) the documents considered by the building certifier, and the building certifier's assessment of the existing building work, establish that the building in or on which the existing building work was carried out meets a level of safety and amenity sufficient for occupancy of the building.

Maximum penalty: 85 penalty units.

72F Granting certificate of existence

- (1) This section applies if, under section 72E, a building certifier recommends the grant of a certificate of existence.
- (2) The Director may grant the certificate of existence if satisfied the recommendation includes the information, and is accompanied by the documents, prescribed for section 72E(2) or requested under section 72E(3), that are necessary to establish that:
 - (a) the building or part of the building to which the certificate applies has been assessed as meeting a level of safety and amenity sufficient for occupancy of the building; and
 - (b) the existing building work carried out in or on the building complies with the criteria mentioned in section 72D(3)(c).

72G Effect of certificate of existence

- (1) A certificate of existence certifies that:
 - (a) the building, or part of the building, to which the certificate

applies has been assessed as meeting a level of safety and amenity sufficient for occupancy of the building; and

- (b) the existing building work complies with the criteria mentioned in section 72D(3)(c).
- (2) The granting of a certificate of existence does not limit a person's liability for an offence against this Act committed by the person before the certificate is granted.

19 Section 73 repealed

Section 73

repeal

20 Section 75 repealed

Section 75

repeal

21 Part 8, Division 5 inserted

After section 76

insert

Division 5 General matters

76A Further information may be required

Before determining an application for occupancy certification, a building certifier may, in writing, require the applicant to do any of the following:

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

76B Application of and information in occupancy certification

Occupancy certification may apply to the whole or part of a building and must include the information required by regulation.

76C Application of Schedule 3

Schedule 3 applies in relation to an application for the grant of occupancy certification, the determination of the application and related matters.

22 Part 20 inserted

After section 194

insert

**Part 20 Transitional matters for Building Amendment
(Occupancy Certification) Act 2015**

195 Definitions

In this Part:

amending Act means the *Building Amendment (Occupancy Certification) Act 2015*.

commencement means the commencement of the amending Act.

196 Repealed Act – building work and occupancy

- (1) Section 170(1) does not apply in relation to approved building work, or to other building work commenced before 1 September 1993, that:
 - (a) immediately before the commencement, is the subject of a repealed Act occupancy application that has not been determined; or
 - (b) after the commencement, would, if not for this section, have been the subject of a repealed Act occupancy application.
- (2) Part 8 of this Act, as in force after the commencement, applies in relation to the determination of an application mentioned in subsection (1)(a):
 - (a) as if it were an application for occupancy certification; and
 - (b) as if a reference in Part 8 to a building permit granted for building work were a reference to a building approval given under Part III of the repealed Act.
- (3) Part 8 of this Act, as in force after the commencement, applies in relation to the making and determination of an application mentioned in subsection (1)(b).

- (4) This Act, as in force after the commencement, applies in relation to the performance of a function by a building certifier to whom a relevant application has been made.

Examples for subsection (4)

- 1 *Under section 39, the building certifier must consent to the engagement of another certifier to perform the function of determining the relevant application.*
 - 2 *Under section 44, the building certifier may refer the determination of the relevant application to another building certifier if that certifier agrees to the referral.*
- (5) Despite anything to the contrary in this Act, a building certifier may refer a relevant application to the Director for determination if the building certifier has:
- (a) considered the application, documents and information provided to the certifier by the applicant; and
 - (b) assessed the building work mentioned in subsection (1); and
 - (c) made a written recommendation to the Director in relation to:
 - (i) whether or not occupancy certification should be granted in relation to the building work; and
 - (ii) if the building certifier recommends the grant of occupancy certification – the type of certification to be granted.
- (6) The building certifier or Director may require the applicant to provide further documents or information to facilitate a proper consideration of the application.
- (7) In this section:

approved building work means building work approved under Part III of the repealed Act.

relevant application means an application mentioned in subsection (1)(a) or (b).

repealed Act occupancy application means an application under Part V of the repealed Act for the issue of a certificate of occupancy under section 40 of that Act.

197 Application for occupancy permit if not decided before commencement

- (1) This section applies if, immediately before the commencement, a building certifier had not determined an application for the grant of

an occupancy permit made to the certifier.

- (2) This Act, as amended by the amending Act, applies in relation to the determination of the application.

198 Period of cover under approved insurance policy

- (1) This section applies in relation to building work if:
- (a) the building work, when complete, is covered by an approved insurance policy against non-compliance with the Regulations; and
 - (b) an occupancy permit or certificate of substantial compliance is granted for the work after the commencement.
- (2) A reference in the approved insurance policy to the grant of an occupancy permit is taken to include a reference to the grant of a certificate of substantial compliance.
- (3) The entitlement to make a claim in relation to the cover provided for the building work takes effect, in accordance with the approved insurance policy, on the grant of the occupancy permit or certificate of substantial compliance.
- (4) However, despite anything to the contrary specified in the approved insurance policy, the period of cover for the building work commences on the earlier of the following:
- (a) the day on which the initial building permit granted for the work ceased to be in force or, if renewed, would have ceased to be in force if not for the renewal;
 - (b) the day on which all of the work essential to the classification of the building to which the policy relates had been completed, as determined in writing by a building certifier.
- (5) The approved insurance policy does not cover any building work specified in the initial building permit granted for the work that had not been completed before the day mentioned in subsection (4)(a) or (b), as relevant.
- (6) In this section:

approved insurance policy means an approved policy of insurance issued before 1 January 2013 under section 61 as in force before that date.

199 Offence provisions – before and after commencement

- (1) The offence provisions, as amended by the amending Act, apply only in relation to offences committed after the commencement.
- (2) The offence provisions, as in force before the commencement, continue to apply in relation to offences committed before the commencement.
- (3) For this section, if any of the conduct constituting an offence occurred before the commencement, the offence is taken to have been committed before the commencement.
- (4) In this section:

offence provisions means the provisions of this Act that create or relate to offences (including in relation to criminal responsibility, defences and penalties).

23 Schedule 3 amended

- (1) Schedule 3, heading

omit, insert

Schedule 3 Building permits and occupancy certification

- (2) Schedule 3, clause 1 sections 57, 68 and 76C

omit

occupancy permit

insert

occupancy certification

- (3) Schedule 3, clauses 2 and 3

omit

or occupancy permit

insert

permit or occupancy certification

- (4) Schedule 3, clause 4, heading

omit

permit

insert

building permit or occupancy certification

- (5) Schedule 3, clause 4

omit

or occupancy permit shall

insert

permit or occupancy certification must

- (6) Schedule 3, clause 5(1)

omit

or occupancy permit

insert

permit or occupancy certification

- (7) Schedule 3, clause 5(2)

omit

permit

insert

building permit or occupancy certification

- (8) Schedule 3, clause 6(1)

omit

or occupancy permit

insert

permit or occupancy certification

- (9) Schedule 3, clause 6(3), after "permit"

insert

or occupancy certification

- (10) Schedule 3, clause 8(1)

omit

relevant application for a permit

insert

application to which the report relates

- (11) Schedule 3, clause 9, heading

omit

applications for building permits

insert

application

- (12) Schedule 3, clause 9(1), all words from "building or" to "permit."

omit, insert

building permit or occupancy certification (other than a certificate of existence) is made to the certifier:

- (a) grant the permit or certification subject to any reasonable conditions the certifier considers appropriate; or
- (b) refuse to grant the permit or certification.

- (13) Schedule 3, clause 9(2)

omit

permit

insert

building permit or occupancy certification

- (14) Schedule 3, after clause 9(2)

insert

- (3) The Director must, within the prescribed time after a recommendation is made to the Director under section 72H:
 - (a) grant the certificate of existence subject to any reasonable conditions the Director considers appropriate; or
 - (b) refuse to grant the certificate.

- (4) The Director is taken to have refused an application for the grant of a certificate of existence if the Director has not granted the certificate within the prescribed time.
- (5) A building certifier or the Director must refuse to grant occupancy certification for building work if satisfied that the work contravenes:
 - (a) a disability access provision; or
 - (b) a requirement of a law in force in the Territory; or
 - (c) a consent or approval given under a law in force in the Territory.
- (15) Schedule 3, clause 10
omit, insert

10 Reasons to be given

- (1) A decision maker must notify an applicant for the grant of a building permit or occupancy certification, in writing, of the following:
 - (a) a refusal to grant a permit or certification;
 - (b) if the permit or certification is granted subject to conditions – the reasons for the conditions.
- (2) In this clause:
decision maker means:
 - (a) in relation to an application for the grant of a certificate of existence – the Director; or
 - (b) in relation to any other application – the building certifier to whom the application was made.
- (16) Schedule 3, clause 11
omit
Where a building certifier grants a building or occupancy permit
insert
 - (1) If a building certifier grants a building permit or occupancy certification
- (17) Schedule 3, clause 11(1)(a) and (b), after "permit"

insert

or certification

- (18) Schedule 3, clause 11, at the end

insert

- (2) If the Director grants a certificate of existence that must be reported on or consented to by a reporting authority, the Director must, within 7 days after so doing, send to the reporting authority:

- (a) a copy of the certification; and
- (b) where the grant of the certification differs from or fails to require the implementation of a recommendation of the reporting authority, a copy of the Director's decision in relation to the report of the reporting authority.

- (19) Schedule 3, clause 12(2), after "permit"

insert

or certificate of substantial compliance

- (20) Schedule 3, after clause 12(2)

insert

- (2A) The owner of a building or the owner's agent may, in accordance with Part 11, appeal to the Appeals Board against a refusal of a building certifier to grant, or against a condition imposed on, an approval to occupy the building on a temporary basis.

- (2B) The owner of a building or land on which existing building work has been carried out, or the owner's agent, may, in accordance with Part 11, appeal to the Appeals Board against a refusal of the Director to grant, or against a condition imposed on, a certificate of existence.

- (21) Schedule 3, clause 12(3)

omit

all words after "building"

insert

permit or occupancy certification includes a refusal mentioned in clause 9(2) or (4).

24 Act further amended

Schedule 1 has effect.

Part 3 Amendment of other laws

25 Other laws amended

Schedule 2 amends the laws mentioned in it.

Part 4 Repeal

26 Act repealed

The *Building Amendment Act 2005* (Act No. 8 of 2005) is repealed.

Part 5 Expiry of Act

27 Expiry of Act

This Act expires on the day after it commences.

Schedule 1 Act further amended

section 24

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
long title	and occupancy permits	permits and occupancy certification
section 3(f), after "permits"		and occupancy certification
section 8(3)	permits, occupancy permits and substantial compliance certificates	permits and occupancy certification
section 19(1)(ab)	relating to refusals by the Director to grant an exemption certificate under Part 8, Division 3A	against decisions of the Director or building certifiers made under Part 8
section 40(b)	practitioner	certifier
section 40(c)	whole paragraph	
section 48C, heading	Declaration	Builder's declaration
section 48C(2)	declaration mentioned in section 69(1) and in accordance with section 69(2)	builder's declaration
section 48C(3), before "declaration"		builder's
section 48C(4)	declaration under subsection (2)	builder's declaration
section 48CA, heading	Declaration	Builder's declaration
section 48CA(1)(b) and (3)(b), before "declaration"		builder's

section 48CA(4)(a)	declaration mentioned in section 69(1)	builder's declaration
section 48G, heading	Declaration	Builder's declaration
section 48G(1)	declaration mentioned in section 69(1) and in accordance with section 69(2)	builder's declaration
section 48G(2), before "declaration"		builder's
section 59(1)(b)	clause 5 of Schedule 3	Schedule 3, clause 5
Part 8, Division 1 heading	permits	certification
section 69, heading	Declaration	Builder's declaration
section 69(1), after "form"		(a <i>builder's declaration</i>)
section 69(2), before "declaration"		builder's
section 69(3), after "if the"		builder's
section 69(4)	declaration mentioned in subsection (1)	builder's declaration
section 69(5), after "makes a"		builder's
section 69(7), before "declaration"		builder's
section 73A(2)(a)	(a), (b) or (c)	(a) or (b)
section 73A(2)(c)	whole paragraph	(c) a builder's declaration;
section 73A(2)(d)	section 69A(1)(e)	this section
section 73D(1), after "this section"		(the <i>commencement</i>)
section 73D(1)(a), after "or (c)"		, as in force before the commencement

section 73D(1)(b), after "69(1)"		, as in force before the commencement
section 108(b)	permit	certification
section 160(2)	all words from "issue" to "issued"	grant of occupancy certification for the building work that is the subject of the action or, if occupancy certification is not granted
Schedule 1, after item 20		20A. The control, regulation and standards for places of public assembly, temporary structures and related building applications.
Schedule 1, items 21 to 23	permits <i>(all references)</i>	certification
Schedule 1, item 24	an occupancy permit <i>(all references)</i>	occupancy certification
Schedule 1, item 26	permits	certification
Schedule 1, item 52	whole item	

Schedule 2 Other laws amended

section 25

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
<i>Local Government (Darwin Parking Local Rates) Regulations</i>		
regulation 9(1)(c)	a certificate of occupation	occupancy certification
<i>Unit Titles Act</i>		
section 21B(4), definition <i>building certificate</i> , paragraph (b)	an occupancy permit	occupancy certification as defined in section 4 of the <i>Building Act</i>
section 21B(4), definition <i>occupancy permit</i>	whole definition	
section 21F(2), definition <i>building certificate</i> , paragraph (b)	an occupancy permit	occupancy certification as defined in section 4 of the <i>Building Act</i>
section 21F(2), definition <i>occupancy permit</i>	whole definition	
