



The Model Building Act



**INTERNATIONAL
BUILDING
QUALITY CENTRE**

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About the International Building Quality Centre

The IBQC is a collaboration of international public and private sector professionals with expertise relating to the regulation of the building and construction industry.

The IBQC intends to be a sounding board or point of reference for law reformers, policymakers and stakeholders intent on designing building regulation that provides the greatest opportunity for the realization of codes and laws that maximize:

- Public safety;
- Cost-effective and efficient construction systems; and
- Sustainability within the context of the built environment.

The IBQC provides a medium through which comparative analyses can be applied to reforming jurisdictions to enable the peer review of proposed concepts.

The paramount vision of the organization is that, through its research and its members, the IBQC will have a positive and material impact on building regulation and practices in jurisdictions across the world.

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FORWARD TO THE MODEL BUILDING ACT

This Model Building Act (the Model Act) has been developed by the International Building Quality Centre as an international reference statute for the regulation and control of building work, as a key feature of a jurisdiction's building regulatory ecosystem.

It has been prepared in response to sustained evidence across jurisdictions that building safety and quality outcomes depend on the clarity, coherence and enforceability of legislative frameworks. Comparative experience demonstrates that systemic building failures are commonly associated with fragmented regulatory arrangements, unclear allocation of responsibility, inconsistent enforcement mechanisms and legislative settings that have not kept pace with contemporary construction practices.

The Model Act is written in plain English to support clarity and accessibility, is designed to be adapted and implemented through local legislative processes, under the stewardship of agencies responsible for legislative development and amendment, having regard to constitutional arrangements, legal frameworks and public-interest considerations. This legislative model also allows for flexibility at the appropriate jurisdictional level, allowing adaptation to local conditions while maintaining the core principles.

The Model Act establishes a coherent legislative framework addressing building work, including design, approval, construction, product safety, occupation, maintenance, enforcement and dispute resolution. It brings together contemporary regulatory principles relating to accountability, compliance, inspection, practitioner regulation, liability and insurance within an integrated statutory structure.

The Model Act is intended to function as a guiding instrument for jurisdictions seeking to modernize or establish robust building control regimes and draws on international good-practice, including the IBQC guidelines for product performance, risk-based classifications and inspections, and existing buildings, to ensure that regulatory systems remain globally relevant and enduring.

Purpose

The Model Act's purpose is to provide a clear, adaptable structure that supports quality assurance, accountability and safety across the lifecycle of building work—from design and permitting to construction and compliance. It is intended to serve as a comparative reference for policy makers and legislative authorities, supporting the review of existing building regulatory arrangements and the consideration of legislative structure, accountability mechanisms and enforcement powers within both developed and emerging economies.

THE MODEL BUILDING ACT

1. Part 1 — Introduction

1.1 Title

This Act is called the Model Building Act.

1.2 Commencement

This Act commences on (insert date).

1.3 Objectives

The objectives of this Act are to:

- a. establish a good-practice framework for the control and regulation of building work having regard to international good-practice and modern methods of construction and contemporary building technology; and
- b. ensure the safety, durability and sustainability of buildings and building products; and
- c. promote compliance through independent oversight and rigorous enforcement by the Building Authority; and
- d. provide clear and efficient dispute resolution processes for building disputes; and
- e. provide for a registration scheme and liability and accountability frameworks for building practitioners.

1.4 Dictionary and interpretation

1. Terms used in this Act and the are defined in the Dictionary in Part 1 of Schedule 1.
2. The rules of interpretation in Part 2 of Schedule 1 apply to the interpretation of this Act.

1.5 Building regulatory framework

In this Act, the building regulatory framework is:

- a. this Act; and
- b. the Model Building Regulations (not the subject of this project); and¹
- c. the Jurisdiction Building Code (not the subject of this project)².

¹ The Model Building Act provides for a number of matters to be dealt with by subordinate legislation. These matters will be included in the Model Building Regulations.

² The Model Building Regulations will also apply and give effect to a Building Code, which is beyond the scope of the IBQC.

2. Part 2 — Administration

Division 1 — Building Authority

2.1 Building Authority

1. The Building Authority³ is established.
2. The Building Authority:
 - a. is a body corporate with perpetual succession; and
 - b. has an official seal; and
 - c. may do and suffer all acts and things that a body corporate may by law do and suffer.
3. The Building Commissioner is to constitute the Building Authority.
4. The functions of the Building Authority are to:
 - a. oversee and implement the building regulatory framework to ensure best practice building control; and
 - b. enforce compliance with the Model Building Act and the Model Building Regulations; and
 - c. oversee the practice of building officials; and
 - d. oversee the safety of building products; and
 - e. report to the Minister on any matters that the Minister refers to it for report.
5. The Building Authority has all the powers necessary to carry out its functions.
6. The Building Authority is subject to the general direction of the Minister.

2.2 Building Commissioner

1. The Building Commissioner is to be appointed by the Minister.
2. The Building Commissioner is to be appointed for 5 years and may be re-appointed.
3. The Building Commissioner is to be appointed on the conditions set out in the Model Building Regulations.
4. The Minister may remove the Building Commissioner from office.
5. The Building Commissioner may resign from office by written notice to the Minister.
6. The Building Commissioner may carry out the functions and exercise the powers of the Building Authority.

2.3 Staff of Building Authority

The Building Authority may employ staff and engage any other assistance it considers necessary to carry out its functions.

³ The Building Authority is to be an independent regulator responsible for administering and enforcing the Model Building Act, the building regulations and the Jurisdiction's Building Code.

2.4 Independent expertise

1. The Building Authority must appoint independent experts to provide peer review of complex building projects as required by the Model Building Regulations.⁴
2. An independent expert is to be engaged by and reimbursed by the Building Authority for a specified project.
3. In accordance with scope of authority given by the Model Building Regulations, an independent expert may give directions to the owner of the building work or the builder for a specified project.
4. The owner of the building work or the builder for a specified project must comply with a direction of an independent expert under subregulation (3).
5. An independent expert appointed for a specified project must report to the Building Authority on the results of the peer review of the project.
6. The Building Authority may recover the costs of the engagement and work of an independent expert for a specified project from the owner of the building work or the builder as a debt due to the Building Authority.

Division 2 — Building officials

2.5 Building officials

1. The Building Authority may employ a registered building surveyor to be a building official.
2. A local authority may employ a registered building surveyor to be a building official for its local government area.
3. The appointment of a person under subsection (1) or (2) as a building official must set out the functions and powers the building official is authorized to carry out or exercise under this Act and the Model Building Regulations.
4. The authority appointing the building official must give the building official an identity card that:
 - a. includes a photograph of the building official; and
 - b. sets out the functions and powers the building official is authorized to carry out or exercise.
5. A building official must produce an identity card in the circumstances set out in the Model Building Regulations.

2.6 Functions of building official

A building official has the following functions under this Act and the Model Building Regulations:

- a. to issue building permits;
- b. to carry out mandatory building inspections;
- c. to issue occupancy permits;
- d. to issue final inspection reports and certificates of final joint inspection;
- e. to issue building orders and emergency orders under this Act and enforce this Act;
- f. any other function conferred on a building official by this Act or the Model Building Regulations.

⁴ This can be modeled to align with the IBQC risk-based classification and inspection guide.

Division 3 — Building Practitioners Board

2.7 Building Practitioners Board

1. The Building Practitioners Board is established.
2. The Building Practitioners Board is to consist of [X] members.
3. The Minister is to appoint the members of the Building Practitioners Board.
4. One of the members of the Building Practitioners Board is to be appointed as the Chairperson of the Board.
5. A member of the Building Practitioners Board is to be appointed for 5 years and may be re-appointed.
6. A member of the Building Practitioners Board is to be appointed on the conditions set out in the Model Building Regulations.
7. The Minister may remove a member of the Building Practitioners Board from office.
8. A member of the Building Practitioners Board may resign from office by written notice to the Minister.

2.8 Functions and powers

1. The Building Practitioners Board has the following functions under this Act and the Model Building Regulations:
 - a. to register building practitioners;
 - b. to regulate the professional conduct of registered building practitioners;
 - c. to take disciplinary action in relation to registered building practitioners;
 - d. any other function conferred on the Board by this Act or the Model Building Regulations.
2. The Building Practitioners Board has the powers necessary to carry out its functions.
3. Subject to this Act and the Model Building Regulations, the procedure of the Building Practitioners Board is in its discretion.

3. Part 3 — Safety of building products

Division 1 — Building product to be safe and fit for purpose

3.1 Building product to be safe and fit for use

A building product designed for use, or used, in a building must:

- a. be safe and fit for its intended purpose, in compliance with the requirements of the Jurisdiction Building Code; and
- b. comply with the Model Building Regulations.

3.2 Chain of responsibility

1. A person is taken to be in the chain of responsibility for a building product if—
 - a. the person:
 - i. designs, manufactures, imports or supplies the building product; and
 - ii. knows, or is reasonably expected to know, the product will or is likely to be associated with a building; or
 - b. the person installs the product in a building in connection with building work; or
 - c. the person is an architect, building designer, engineer or builder who, in designing a building, specifies that the product be associated with the building.
2. A person who imports or supplies a building product manufactured in another jurisdiction is taken to be the manufacturer of the building product under this Act.

3.3 Primary duty of the person in the chain or responsibility

Each person in the chain of responsibility for a building product must, so far as reasonably practicable, ensure that the product:

- a. is safe and fit for its intended purpose; and
- b. complies with the Model Building Regulations.

3.4 Duty to provide information

1. A person in the chain of responsibility for a building product who designs the product must ensure, so far as reasonably practicable, that, if the person gives the design to another person who is to give effect to the design, the design is accompanied by the information about the product required by the Model Building Regulations.
2. A person in the chain of responsibility for a building product who manufactures, imports or supplies the product must ensure, so far as reasonably practicable, that when the person gives the product to another person the product is accompanied by the information about the product required by the Model Building Regulations.
3. A person who installs a building product in a building must ensure, so far as reasonably practicable, that the owner of the building is given the information about the product required by the Model Building Regulations.
4. An architect, building designer, engineer or builder who, in designing a building, specifies that a building product be associated with the building must ensure, so far as reasonably practicable, that when the architect, building designer, engineer or builder gives the design to another person

the design is accompanied by the information prescribed by the Model Building Regulations.

5. Information provided under this section must clearly identify the source of the information and the person providing it.⁵

3.5 Principles applying to duties

1. This section applies to a person who has a duty under section 3.3 or 3.4.
2. A person may have more than 1 duty because of the functions the person performs or is required to perform.
3. More than 1 person can concurrently have the same duty.
4. Each person must comply with the duty to the standard required under section 3.3 and 3.4 even if another person has the same duty.
5. If more than 1 person has a duty for the same matter, each person:
 - a. is responsible for the person's duty in relation to the matter; and
 - b. must discharge the person's duty to the extent to which the person:
 - i. has the capacity to influence and control the matter; or
 - ii. would have the capacity but for an agreement or arrangement purporting to limit or remove that capacity.
6. A person's duty cannot be transferred to another person.

3.6 Offence to fail to comply with duty

A person commits an offence if:

- a. the person has a duty under section 3.3 or 3.4; and
- b. the person fails to comply with the duty.

The maximum penalty for the offence is:

3.7 Duty to notify of building product that does not comply

1. A person in the chain of responsibility for a building product who becomes aware or reasonably suspects that the building product does not comply with section 3.1 for its intended use must notify the Building Authority as soon as practicable of that matter.
2. A person commits an offence if the person fails to comply with subsection (1).

The maximum penalty for the offence is:

Division 2 — Building product use bans

3.8 Building Authority may ban use of building products

1. The Building Authority may, by written notice published on the internet, ban the use of a specified building product in a building if the Building Authority is satisfied on reasonable grounds that the product does not comply with the requirements of the Jurisdiction Building Code and that its use is unsafe.

⁵ It is important that the information provided is traceable for authentication.

2. A building product use ban may do any of the following:
 - a. apply to a specified use or uses or all uses of a building product in a building;
 - b. apply to any building or only a specified class of building;
 - c. apply to use by specified persons or classes of persons;
 - d. apply subject to specified exceptions (for example, an exception that permits use of the building product only by a specified class of persons);
 - e. be subject to conditions or unconditional;
 - f. apply in any other way authorized by the Model Building Regulations.
3. A building product use ban that prohibits the use of an unsafe building product is not invalid merely because it also prohibits another use of the building product that is not an unsafe use if the application of the ban to that other use could not reasonably be avoided and the ban operates reasonably and appropriately in prohibiting its use.

3.9 Reasons to be given

The building product use ban must set out the reasons and evidence for the decision to impose the ban.

3.10 Duration of ban

1. A building product use ban comes into force on the day specified by the Building Authority in the notice imposing the ban (being a date not earlier than the date that the notice is first published on the internet).
2. A building product use ban remains in force until it is revoked by the Building Authority.

3.11 Amendment or revocation of ban

1. The Building Authority may, by written notice published on the internet:
 - a. amend a building product use ban; or
 - b. revoke a building product use ban.
2. An amendment or revocation takes effect on the date specified by the Building Authority in the notice amending or revoking the ban (being a date not earlier than the date that the notice is first published on the internet).
3. Sections 3.9 and 3.12 apply to an amendment of a building product use ban in the same way that they apply to a building product use ban

3.12 Notice of imposition of building product use ban

1. The Building Authority must, if practicable, give notice of a building product use ban to the manufacturer of the building product concerned.
2. If the building product is imported, notice may instead be given to an importer or supplier of the building product.
3. If practicable, notice is to be given at least 48 hours before the building product use ban is published on the internet.
4. However, the Building Authority is not required to give prior notice of a building product use ban

if the Building Authority believes on reasonable grounds that the nature of the safety risk posed by the use of the building product is so serious that, in the public interest, the publication of the building product use ban should not be delayed.

5. The Building Authority is not required to give notice to a person under this section if the Building Authority is unable, after making reasonable inquiries, to ascertain the identity of, or to locate, the person to whom notice would otherwise be required to be given.
6. The Building Authority may also comply with a requirement to give prior notice of a building product use ban under this section by publishing notice of the Building Authority's intention to impose a building product use ban on the internet.

3.13 Offence to contravene building product use ban

1. A person commits an offence if the person causes a building product to be used in a building in contravention of a building product use ban.

The maximum penalty for the offence is:

2. For subsection (1), a person causes a building product to be used in a building:
 - a. the person carries out the building work by which the building product is used in the building, or
 - b. in any other circumstance prescribed by the Model Building Regulations.
3. A person commits an offence if the person, in trade or commerce, represents that a building product is suitable for a use in a building if that use would contravene a building product use ban.

The maximum penalty for the offence is:

4. In proceedings in which a person is charged with an offence under this section, it is a defense to the prosecution of the offence if the person charged proves that the person had a reasonable excuse for the act or omission concerned.

Division 3 — Building product regulations

3.14 Building product regulations

1. The Model Building Regulations may:⁶
 - a. prescribe risk criteria for building products and their intended use; and
 - b. prescribe a list of high-risk building products; and
 - c. require a listed high-risk building product to be inspected and certified by a registered accredited conformity assessment body with testing conducted by a test laboratory accredited to ISO 17025; and
 - d. for building products other than listed high-risk building products, require an evaluation of the product by a registered accredited conformity assessment body or another prescribed class of person or body; and
 - e. require a risk assessment for a new building product of a prescribed class to be carried out by a registered accredited conformity assessment body; and
 - f. require the results of a risk assessment of a building product to be reported to the Building Authority.

⁶ This can be modeled on the IBQC Product Performance Framework.

2. In this section, **registered accredited conformity assessment body** means a conformity assessment body:
 - a. accredited to ISO 17065; and
 - b. registered with the Building Authority in accordance with the Model Building Regulations.

4. Part 4 — Control of building work

Division 1 — Compliance with Act and Model Building Regulations

4.1 Building work must comply with Act and Model Building Regulations

A person commits an offence if the person carries out building work and the building work is not carried out in accordance with this Act and the Model Building Regulations.

The maximum penalty for the offence is:

4.2 Model Building Regulations will apply the Building Code of the jurisdiction

The Model Building Regulations will apply the Building Code of the jurisdiction as part of the Regulations:

- a. with any changes set out in the Model Building Regulations; and
- b. as that Code is in force from time to time.

Division 2 — Building Permits

4.3 Building work for which building permit is required⁷

A person commits an offence if the person carries out building work for which a building permit is required and a building permit has not been issued for the building work.

The maximum penalty for the offence is:

4.4 Building work to comply with building permit⁸

A person commits an offence if a building permit has been issued for building work and the person does not carry out the building work in accordance with the building permit.

The maximum penalty for the offence is:

4.5 Application for building permit

1. An application for building permit must be made to the relevant building official.
2. An application must:
 - a. be made in accordance with the Model Building Regulations; and
 - b. be accompanied by the design documentation required by the Model Building Regulations and prepared and certified by a suitably qualified registered building practitioner in accordance with those Regulations; and⁹

⁷ The maximum penalty for each offence should be designed to deter the most serious breaches of the offence. The Court will in sentencing an offender take into account the severity of the breach and any mitigating factors in determining the level of the penalty.

⁸ *ibid*

⁹ The design documentation is to include as a minimum:

- c. in the case of a high-risk building, be accompanied by a fire risk strategy/safety case in accordance with the Model Building Regulations¹⁰ ; and
- d. be accompanied by any certifications of building products required by the Model Building Regulations; and
- e. be accompanied by the relevant fee prescribed in the Model Building Regulations.

4.6 Matters to be considered by relevant building officials

1. The relevant building official must not issue a building permit for building work unless the building official:
 - a. has received all documents and information required to be provided under section 4.5; and
 - b. is satisfied that the building work and the building permit will comply with this Act and the Model Building Regulations.¹¹
2. If an application for a building permit is for a stage of proposed building work, the relevant building official must consider the stage of the work as part of the design for the whole of the proposed work.

4.7 Decision on building permit

1. After considering an application, the relevant building official may:
 - a. issue the building permit; or
 - b. issue the building permit with conditions; or
 - c. refuse to issue the building permit.
2. The relevant building official must decide an application for a building permit within the required time after the application is made.
3. The relevant building official is taken to have refused an application for building permit if the application is not decided within the required time.
4. The required time is the time set out in the Model Building Regulations for this section.

4.8 Form of building permit

A building permit must be in the form required by the Model Building Regulations and set out:

- a. the building work approved by the building permit; and
- b. whether the building permit relates to:
 - i. the whole of the proposed building work; or

• Design drawings;
• Structural analysis;
• Fire protection requirements;
• Geotechnical report
• Supplementary expertise statements.

¹⁰ The Regulations will include a requirement for a Fire Safety Strategy, Safety Case to be submitted as part of the application for a building permit associated with buildings that are taken to be high-risk buildings under the Jurisdiction's Building Code. A fire safety strategy and safety case is created and used to ensure owners and their experts, and in turn the responsible authorities, have a thorough understanding of the building and can be satisfied of its compliance at time of construction and throughout its service life.

¹¹ The Model Building Regulations will include the Jurisdiction's Building Code.

- ii. a stage of the proposed building work; and
- c. whether an occupancy permit is required for the whole or part of the building in relation to the building work.

4.9 Notice of decision on application for building permit

1. The relevant building official must give the applicant for a building permit written notice of the decision (including a decision under section 4.7(3)) on the application.
2. The notice must state:
 - a. the decision; and
 - b. the reasons for the decision if it is to:
 - i. issue the building permit subject to conditions; or
 - ii. refuse to issue the building permit; and
3. that the applicant may apply to the Building Appeals Tribunal under Part 7 within the prescribed time for review of the decision to impose conditions or to refuse to issue the building permit.

4.10 Amendment of building permit

1. The holder of a building permit may apply to the relevant building official to amend the building permit:
 - a. to vary the building work authorized by the permit; or
 - b. to vary the conditions of the permit.
2. An application for an amendment to a building permit must:
 - a. be made in accordance with the Model Building Regulations; and
 - b. be accompanied by the relevant fee prescribed in the Model Building Regulations.
3. After considering an application, the relevant building official may:
 - a. amend the building permit; or
 - b. refuse to amend the building permit.
4. The relevant building official must give the applicant for the amendment written notice of the decision on the application.
5. The notice must state:
 - a. the decision; and
 - b. the reasons for the decision if it is to refuse to amend the building permit; and
 - c. that the applicant may apply to the Building Appeals Tribunal under Part 7 within the prescribed time for review of the decision to refuse to amend the building permit.
6. If the decision is to amend the building permit, a copy of the amended building permit must be given with the notice.

4.11 Building permit ceases to be in force

1. A building permit ceases to be in force at the end of 3 years after it is issued if no building work has been carried out under the permit and the permit has not been extended under this section.

2. The holder of a building permit may apply to the relevant building official for an extension of the period for which the building permit is in force.
3. The application for an extension must:
 - a. be made before the building permit ceases to have effect; and
 - b. be made in accordance with the Model Building Regulations; and
 - c. be accompanied by the relevant fee prescribed in the Model Building Regulations.
4. After considering an application, the relevant building official may:
 - a. extend the period the building permit is in force; or
 - b. refuse to extend that period.
5. The relevant building official must give the applicant for the extension written notice of the decision on the application.
6. The notice must state:
 - a. the decision; and
 - b. the reasons for the decision if it is to refuse the extension; and
 - c. that the applicant may apply to the Building Appeals Tribunal under Part 7 for review of the decision to refuse the extension.

Division 3 — Protection of adjoining property

4.12 Notice of building and protection work

1. An owner of land (the building site owner) who is required under the Model Building Regulations to carry out protection work in respect of an adjoining property must, before commencing the building work, serve notice of the proposed building work on:
 - a. the adjoining owner; and
 - b. the relevant building official.
2. The notice must include:
 - a. the prescribed details of the proposed building work as at the date of the notice; and
 - b. the prescribed details of the proposed protection work, including the nature, location, timing and duration of the work; and
 - c. any other information prescribed by the Model Building Regulations.

4.13 Response of adjoining owner

1. The adjoining owner must, not later than 14 days after receiving the notice under section 4.12—
 - a. give to the building site owner a notice agreeing to the proposed protection work; or
 - b. give to the building site owner and the relevant building official a notice—
 - i. disagreeing with the proposed protection work; or
 - ii. requesting further information to assess the proposal.
3. A notice given under subsection (1) must contain the information prescribed by the Model Building Regulations.

4. If the adjoining owner does not respond within the period specified in subsection (1), the adjoining owner is taken to have agreed to the proposed protection work.

4.14 Effect of agreement

1. This section applies if the adjoining owner:
 - a. agrees to the proposed protection work; or
 - b. is taken to have agreed to the proposed protection work under section 4.13(3).
2. The building site owner may carry out the protection work after obtaining any required building permits or approvals under this Act, or the Model Building Regulations.

4.15 Disagreement or request for further information

1. If the relevant building official receives a notice under section 4.13(1)(b), the building official must:
 - a. examine the proposed protection work; and
 - b. determine whether the work is appropriate.
2. If the notice received under section 4.13(1)(b)(ii) requests further information, the relevant building official:
 - a. may request that the building site owner provide additional information; and
 - b. must provide a copy of any that additional information to the adjoining owner.
3. In determining whether the proposed protection work is appropriate, the relevant building official:
 - a. may make any inquiries the building official considers appropriate; and
 - b. is not required to provide a hearing to any party.
4. The relevant building official must give the building site owner and the adjoining owner written notice of a determination under this section.

4.16 Building work not to be carried out without protection work

1. The building site owner must not carry out any building work for which protection work for adjoining land is required unless:
 - a. the adjoining owner has agreed to the protection work; or
 - b. the relevant building official has determined under section 4.15 that the protection work is required; or
 - c. the Building Appeals Tribunal has determined under Part 7 that the protection work is required.
2. It is an offence to fail to comply with subsection (1).
The maximum penalty for the offence is:
3. The building site owner must carry out any protection work required by the Model Building Regulations:
 - a. if the adjoining owner has agreed to the protection work, in accordance with the agreement; or
 - b. if the relevant building official has determined, in accordance with the Model Building Regulations, that the protection work is required, in accordance with that determination; or



- c. in the case of an application to the Building Appeals Tribunal, the Tribunal has determined under Part 7 that the protection work is required, in accordance with that determination.
4. It is an offence to fail to comply with subsection (3).

The maximum penalty for the offence is:

4.17 Emergency protection work declaration

1. The Building Authority or the local authority, on the application of the building site owner or an adjoining owner, may declare that emergency protection work is required in respect of particular adjoining land.
2. The building site owner must carry out emergency protection work in accordance with:
 - a. the declaration under subsection (1): or
 - b. in the case of an application to the Building Appeals Tribunal, in accordance with any Building Appeals Tribunal determination in relation to the emergency protection work.
3. It is an offence to fail to comply with subsection (2).¹²

The maximum penalty for the offence is:

4.18 Survey of adjoining property

1. Before commencing protection work, the building site owner or the owner's agent, in company with the adjoining owner or their agent, must:
 - a. conduct a survey of the adjoining land; and
 - b. record in writing or by any other means any of the parties wishes all existing cracks and defects in the adjoining property.
 - c. ensure the record is signed or otherwise acknowledged by both parties before work begins.
2. The record is admissible in evidence in any proceedings relating to the adjoining property and is evidence of the condition of the adjoining property at the time the record was made.

4.19 Entry into adjoining land

1. The building site owner or an agent of that owner may enter adjoining land to:
 - a. carry out a survey for protection work under this Division; or
 - b. carry out protection work under this Division.
2. The entry must be at the times set out in the Model Building Regulations for an entry under this section.
3. The building site owner must give notice in accordance with the Model Building Regulations before entering the adjoining land under subsection (1).
4. It is an offence to fail to comply with subsection (3).

The maximum penalty for the offence is:

¹² A failure to comply with an emergency order is to be a criminal offence because of the risks to safety if an order is not complied with.

4.20 Offence to obstruct

1. An adjoining owner or adjoining occupier must not obstruct the building site owner of the owner's agent from entering and carrying out any survey or protection work under section 4.19(1).
2. It is an offence to fail to comply with subsection (1).

The maximum penalty for the offence is:

4.21 Notice of completion of protection work

1. The building site owner must give notice to the adjoining owner and the relevant building official of the completion of protection works under this Division.
2. The notice must be given at the time and in the form and contain the information required by the Model Building Regulations.

4.22 Insurance and compensation

The Model Building Regulations may provide for:

- a. insurance to be held by a building site owner in relation to protection work to indemnify adjoining owners from any costs relating to or arising from the protection works; and
- b. compensation payable by a building site owner to an adjoining owner or adjoining occupier for loss or damage caused in carrying out protection work; and
- c. recovery by an adjoining owner from the building site owner of costs and expenses for assessing proposed protection work or supervising the carrying out of protection work.

Division 4 — Mandatory building inspections

4.23 Mandatory building inspections

1. A relevant building official must carry out the inspections of building work set out in the Model Building Regulations for the relevant class of building.
2. The Model Building Regulations will set out the number and type of inspections of building work required on the basis of the risk classification for buildings set out in the Jurisdiction Building Code.¹³
3. A relevant building official may carry out any additional inspections of building work that the relevant building official considers necessary in the circumstances.
4. A relevant building official must issue a final inspection report and a certificate of final inspection work for building work as set out in the Model Building Regulations.

4.24 Joint final inspection

1. This section applies to medium-risk buildings or high-risk buildings.
2. Unless exempted by the Model Building Regulations, a relevant building official must not issue an occupancy permit for a building unless a final joint inspection of the completed building work has been made.
3. The following persons must participate in a joint final inspection:

¹³ See the IBQC Guideline for risk-based classification and inspections



- a. the building owner;
 - b. the builder who carried out the building work
 - c. the building engineer who provided advice and engineering plans for the building work;
 - d. the architect who designed the building;
 - e. the relevant building official.
4. The relevant building official must convene the joint final inspection after being notified in writing by the building owner that the work is completed.
 5. The joint final inspection must be an on-site in person inspection.
 6. If the joint final inspection identifies any fault the relevant building practitioner must rectify the fault.
 7. A further joint final inspection must be convened following the rectification of the fault.
 8. Subsections (3) to (6) apply to a further joint final inspection.
 9. If a final joint inspection shows no faults, the relevant building official must issue a certificate of final joint inspection for the building work.

Division 5 — Occupancy permits

4.25 Occupancy permit must be obtained

A person commits an offence if:

- a. a building permit states that an occupancy permit is required for the whole of a building, or a part of a building; and
- b. an occupancy permit has not been issued for the building or part of a building; and
- c. the person occupies or uses the building or part of a building.

The maximum penalty for the offence is:

4.26 Occupancy permit must be complied with

A person commits an offence if:

- a. an occupancy permit has been issued for the building or part of a building; and
- b. the person occupies or uses the building or part of a building in contravention of the occupancy permit.

The maximum penalty for the offence is:

4.27 Application for an occupancy permit

1. An application for an occupancy permit must be made to the relevant building official.
2. An application for an occupancy permit must be made by or on behalf of the owner of the building or the land on which the building is constructed.
3. An application must:
 - a. be made in accordance with the Model Building Regulations and the building permit; and
 - b. be accompanied by a fire safety strategy/safety case where prescribed in the Model Building Regulations; and

- c. in the case of a high-risk building, be accompanied by a comprehensive building manual for the building in the form and containing the information required by the Model Building Regulations¹⁴ ; and
- d. be accompanied by:
 - i. for a high-risk building or medium-risk building, a final inspection report and the final joint inspection certificate issued by the relevant building official; and
 - ii. for any other building if required by the Model Building Regulations, a final inspection report and certificate of final inspection.
- e. be accompanied by a compliance certificate issued in accordance with the Model Building Regulations by each of the following stating that their work on or for the building complies with the building permit:
 - i. an architect or designer;
 - ii. a building engineer;
 - iii. the builder; and
- f. be accompanied by the relevant fee or levy prescribed in the Model Building Regulations.

4.28 Matters to be considered by relevant building officials

The relevant building official must not issue an occupancy permit for a building unless the building official has received all documents and information required to be provided under section 4.27 and is satisfied that the building work is fit for occupation.

4.29 Decision on occupancy and use permit

1. After considering an application, the relevant building official may:
 - a. issue the occupancy permit; or
 - b. issue the occupancy permit with conditions; or
 - c. refuse to issue the occupancy permit.
2. The relevant building official must decide an application for an occupancy permit within the required time after the application is made.
3. The relevant building official is taken to have refused an application for an occupancy permit if the application is not decided within the required time.
4. The required time is the time set out in the Model Building Regulations for this section.

¹⁴ This will be digital document which will be given to the building owner with the occupancy permit at the completion of building works, and made available to successive purchasers of the building and is to be accessible to the Building Authority and the relevant local authority that at a minimum includes:

- as-built construction documentation;
- fire safety system details and maintenance requirements;
- assumptions made in any performance solution (for example, occupant characteristics);
- building product information, including certificates and details of maintenance or safety requirements; and
- all statutory documents, including final inspection reports, certificates of occupancy and building permits that include conditions of use—such as occupant numbers, loads, replacement of products after certain periods.

4.30 Form of occupancy permit

An occupancy permit must be issued in accordance with the Model Building Regulations and must set out:

- a. the classification of the building to which it applies; and
- b. the permitted use of the building or part of a building; and
- c. the maximum number of people permitted to occupy the building or part of a building; and
- d. any conditions to which the occupancy permit is subject; and
- e. any other information required by the Model Building Regulations.

4.31 Effect of occupancy permit

An occupancy permit is evidence that the building or part of a building to which it applies is suitable for occupation and use in accordance with the permit.

Division 6 — Building maintenance

4.32 Duty to maintain building and essential services

1. An owner of a building must:
 - a. maintain the building in accordance with the Model Building Regulations; and
 - b. maintain the safety of the building and any essential services in the building in accordance with:
 - i. the Model Building Regulations; and
 - ii. in the case of a high-risk building, the prescribed requirements of any fire safety strategy/safety case and the comprehensive building manual; and
 - c. meet the requirements of the Model Building Regulations for regular inspection of essential services in the building; and
 - d. maintain the records of maintenance and inspection required to be kept under the Model Building Regulations.
2. A failure to comply with subsection (1) is an offence.
The maximum penalty for the offence is:
3. In this section, owner includes a building manager or an owner's corporation manager responsible for the management of a building.

Division 7 — Duty of local authority to keep digital building records

4.33 Duty to keep digital building records

1. The relevant local authority must keep a digital building record of the following in relation to a building in its local area:
 - a. all building permits, including approved design plans, inspection reports and as built plans issued for the building;
 - b. all certificates of final inspection and final joint inspection and compliance certificates issued in relation to the building;

- c. all occupancy permits issued for the building;
 - d. the comprehensive building manual for the building (if applicable);
 - e. in the case of a high-risk building, the fire risk strategy/safety case for the building;
 - f. any other information required by the Model Building Regulations to be kept in the digital building record.
2. The Building Authority must provide to a local authority any information held by the Building Authority that the local authority requires for the purposes of the digital building record.
3. The relevant local authority must make the digital building record available for access and inspection in accordance with the Model Building Regulations.

5. Part 5 — Registration of building practitioners

Division 1 — Offences

5.1 Building practitioner must be registered

1. A person commits an offence if:
 - a. the person holds out to be a registered building practitioner; and
 - b. the person is not registered as a building practitioner.The maximum penalty for the offence is:
2. A person commits an offence if:
 - a. the person holds out to be registered as a building practitioner in a prescribed class; and
 - b. the person is not registered as a building practitioner in that class.The maximum penalty for the offence is:
3. A person commits an offence if:
 - a. the person carries out work as a building practitioner in a prescribed class; and
 - b. the person is not registered as a building practitioner in that class.The maximum penalty for the offence is:
4. The Model Building Regulations may exempt a person from compliance with subsection (3) in the prescribed circumstances.

Division 2—Registration

5.2 Application for registration

1. An individual may apply to the Building Practitioners Board to be registered as a building practitioner.
2. An application for registration must:
 - a. be made in accordance with the Model Building Regulations; and
 - b. be accompanied by the prescribed fee.
3. The Building Practitioners Board must consider the application and may ask the applicant for further information.

5.3 Decision on application

1. The Building Practitioners Board may register the applicant in a class of building practitioner if the Building Practitioners Board is satisfied the applicant:
 - a. has the prescribed qualifications and experience for registration or qualifications and experience the Board considers to be equivalent to the prescribed qualifications and experience; and¹⁵
 - b. holds the required insurance; and
 - c. is a fit and proper person to be registered.
2. If the Building Practitioners Board is not satisfied about any of the matters referred to in subsection (1)(a), (b) and (c), the Building Practitioners Board must refuse the application.

5.4 Conditions on registration

A building practitioner registration may be issued subject to the conditions:

- a. specified by the Building Practitioners Board; or
- b. prescribed by the Model Building Regulations.

5.5 Issue of registration

1. If a registration is issued, the Building Practitioners Board must provide the applicant with a copy of the certificate of registration.
2. The certificate of registration must specify:
 - a. the class of registration; and
 - b. the conditions of registration; and
 - c. the duration of registration.

5.6 Duration of registration

A registration is in force for [X] years unless it is canceled or suspended.

5.7 Renewal of registration

The regulations may set out the process and requirements for the renewal of a registration, including any requirements for continuing professional development to be met by the building practitioner for the registration to be renewed.

5.8 Register of building practitioners

1. The registrar of the Building Practitioners Board must keep a register of building practitioners.
2. The register of building practitioners must record the information about each registered building practitioner that is required by the Model Building Regulations.

¹⁵ There will be minimum competencies for different classes of building practitioner registration and this will align with the nature of the work a building practitioner can engage in. Competency will be identified as a combination of both qualifications and experience.

Division 3 — Disciplinary action

5.9 Grounds for disciplinary action

It is a ground for taking disciplinary action in relation to a registered building practitioner if:

- a. the building practitioner has contravened a provision of this Act or the Model Building Regulations; or
- b. the building practitioner has contravened a building notice, building order, emergency order or rectification order given to the practitioner; or
- c. the building practitioner has obtained the registration on the basis of information or a document that was false or misleading; or
- d. the building practitioner has engaged in conduct in relation to the practitioner's practice as a building practitioner that:
 - i. shows a pattern of incompetence; or
 - ii. is negligent in a particular matter; or
- e. the Building Practitioners Board believes on reasonable grounds that the practitioner is not a fit and proper person to practise as a building practitioner; or
- f. the building practitioner has failed to comply with a condition of the registration; or
- g. the building practitioner has not completed any relevant continuing professional development required by the Model Building Regulations; or
- h. the building practitioner has not paid a fee or other amount required to be paid under this Act or the Model Building Regulations.

5.10 Inquiries

The Building Practitioners Board may inquire as to whether a ground exists to take disciplinary action against a registered building practitioner.

5.11 Referral to police

The Building Practitioners Board must refer the conduct of a building practitioner to police for investigation if the conduct constitutes a criminal offence involving fraud, threats or harm or assault to a person or damage to property.

5.12 Show cause process

1. This section applies if the Building Practitioners Board:
 - a. reasonably believes a ground for taking disciplinary action against a registered building practitioner exists; and
 - b. proposes to take that action.
2. The Building Practitioners Board must give the registered building practitioner a notice (a ***show cause notice***).
3. The show cause notice must state the following:
 - a. that the Building Practitioners Board proposes to take disciplinary action;
 - b. the disciplinary action proposed to be taken;

- c. the registration in relation to which the proposed action is to be taken;
 - d. the ground for the proposed action;
 - e. an outline of the facts and circumstances that form the ground for the proposed action;
 - f. an invitation to the practitioner to show within a stated period (the ***show cause period***) why the proposed action should not be taken.
4. The show cause period must be a period ending at least 14 days after the show cause notice is given to the registered building practitioner.
 5. The Building Practitioners Board, at the request of the registered building practitioner, may extend the show cause period stated in the show cause notice and in that case the extended period becomes the show cause period.

5.13 Response to show cause process

1. The registered building practitioner may:
 - a. give a written response about the show cause notice to the Building Practitioners Board within the show cause period; or
 - b. make an oral response about the show cause notice to the Building Practitioners Board at the time within the show cause period, and at the place, agreed by the Board and the practitioner.
2. The Building Practitioners Board must keep a record of oral responses made to it under subsection (1)(b).

5.14 Disciplinary action

1. Within 28 days after the show cause period ends, the Building Practitioners Board must decide whether a ground exists to take disciplinary action against the registered building practitioner.
2. If the Building Practitioners Board decides a ground exists to take disciplinary action against a registered building practitioner, the Board may, after considering the circumstances and seriousness of the conduct of the practitioner, decide:
 - a. to take no disciplinary action; or
 - b. to take one or more of the following actions:
 - i. reprimand the practitioner;
 - ii. direct the practitioner to do a specified thing, including to rectify or complete specified building work, or not to do a specified thing;
 - iii. impose a penalty on the practitioner of not more than \$X;
 - iv. require the practitioner to complete further training;
 - v. vary a condition of the practitioner's registration;
 - vi. suspend the practitioner's registration;
 - vii. cancel the practitioner's registration;
 - viii. disqualify the practitioner from being registered as a building practitioner for a period of up to 3 years.
3. An amount of penalty imposed under subsection (2) may be recovered as a debt due to the State.

5.15 Notice and taking effect of disciplinary action

1. The Building Practitioners Board must, as soon as practicable after making its decision, give a written notice about the decision to the registered building practitioner.
2. The notice must state:
 - a. the decision; and
 - b. the reasons for the decision;
 - c. that the practitioner may apply under Part 7 for review of the decision within the prescribed time for review.
3. The decision takes effect on the later of:
 - a. the day the notice is given to the registered building practitioner; or
 - b. the day stated in the notice.

6. Part 6 — Liability

Note: Some jurisdictions may provide for joint and several liability in relation to damages in building actions. The following Division sets out an alternative approach providing for proportionate liability.

Division 1 — Proportionate liability

6.1 Definitions

In this Division:

apportionable claim means a claim to which this Division applies.

concurrent wrongdoer, in relation to a claim:

- a. means a person who is one of 2 or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the loss or damage that is the subject of the claim; but
- b. does not include a person in a class of persons excluded by the Model Building Regulations.

court includes tribunal, and in relation to a claim for damages means any court or tribunal by or before which the claim falls to be determined.

damages includes any form of monetary compensation but does not include payments of a class excluded by the Model Building Regulations.

6.2 Application of Division

1. This Division applies to a claim for loss or damage in an action for damages (whether in contract, tort or otherwise) arising out of or relating to defective, incomplete or non-compliant building work.
2. This Division does not apply to:
 - a. a claim arising out of personal injury; or
 - b. a claim in an arbitration proceeding; or
 - c. a claim of a kind excluded by the regulations.
3. For this Division, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action

(whether or not of the same or a different kind).

4. For this Division, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.
5. Any term of a contract that is inconsistent with this Division is of no effect.

6.3 Proportionate liability for apportionable claims

1. In any proceedings involving an apportionable claim:
 - b. the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the loss or damage claimed that the court considers just having regard to the extent of the defendant's responsibility for the loss or damage; and
 - c. the court may give judgment against the defendant for not more than that amount.
2. If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim:
 - a. liability for the apportionable claim is to be determined in accordance with this Division; and
 - b. liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Division) are relevant.
3. In apportioning responsibility between defendants in the proceedings:
 - a. the court must exclude that proportion of the loss or damage in relation to which the plaintiff is contributorily negligent under any relevant law; and
 - b. the court must not have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings unless the concurrent wrongdoer is not a party to the proceedings because the concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or has died.
4. This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.
5. A reference in this Division to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Division, under rules of court or otherwise.

6.4 Joining concurrent wrongdoers in the proceedings

1. The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.
2. The court must not give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

6.5 Duty of defendant to inform plaintiff about concurrent wrongdoers

1. This section applies if:
 - a. a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the other person) may be a concurrent wrongdoer in relation to the claim, and
 - b. the defendant fails to give the plaintiff, as soon as practicable, written notice of the

information that the defendant has about:

- i. the identity of the other person, and
 - ii. the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and
 - c. the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim
2. The court hearing the proceedings may order that the defendant pay all or any of those costs of the plaintiff.
 3. The court hearing the proceedings may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

6.6 Contribution not recoverable from defendant

A defendant against whom judgment is given under this Division as a concurrent wrongdoer in relation to an apportionable claim:

- a. cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant), and
- b. cannot be required to indemnify that other concurrent wrongdoer.

6.7 Subsequent actions

1. In relation to an apportionable claim, nothing in this Division or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any loss or damage from bringing another action against any other concurrent wrongdoer for that loss or damage.
2. However, in any proceedings in respect of that subsequent action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the loss or damage, would result in the plaintiff receiving compensation for loss or damage that is greater than the loss or damage actually sustained by the plaintiff.

6.8 Division not to affect other liability

Nothing in this Division:

- a. prevents a person from being held vicariously liable for a proportion of any apportionable claim for which another person is liable, or
- b. prevents a partner from being held jointly and severally liable with another partner for an apportionable claim for which the other partner is liable, or
- c. affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

Division 2 — Limitation of actions

6.9 Limitation on time in when a building action may be brought

1. Despite any other law, a building action cannot be brought more than 10 years after:

- a. the date of issue of the occupancy permit in respect of the building on completion of the building work (whether or not the occupancy permit is subsequently canceled or varied); or
 - b. if an occupancy permit is not issued, the date of issue of the certificate of final inspection or certificate of final joint inspection of the building work.
2. A court may grant leave to bring a building action after the end of the limitation period in subsection (1) if the court is satisfied that exceptional circumstances exist.

Division 3 — Required insurance

6.10 Required insurance

1. The Minister may, by order:
 - a. require registered building practitioners to be covered by insurance; and
 - b. specify different kinds and amounts of insurance cover for different classes of registered building practitioners.
2. An insurance order must be published.
3. An insurance order takes effect on the day set out in the order. This must be a day on or after the day the order is published.
4. For this Act, 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 the insurance as a person to whom the insurance cover extends.

6.11 Offence to work without required insurance

A person commits an offence if the person carries out work as a building practitioner and the person is not covered by the required insurance.

Maximum penalty for this offence:

7. Part 7 — Building Appeals Tribunal and dispute resolution

Division 1 — Building Appeals Tribunal

7.1 Building Appeals Tribunal

1. The Building Appeals Tribunal is established.
2. The Minister is to appoint the members of the Building Appeals Tribunal.
3. The Building Appeals Tribunal is to consist of:
 - a. at least one member who is a lawyer who is qualified in the Jurisdiction and of at least 5 years standing; and
 - b. at least one member who has experience in the building industry; and
 - c. at least one member who, in the Minister's opinion, is able to represent the interests of users of the services of building practitioners; and

- d. as many other persons as the Minister considers necessary for the purposes of this Act, and who, in the Minister's opinion, have experience in the building industry or in matters related to that industry.
- 4. One of the members of the Building Appeals Tribunal is to be appointed as the Chairperson of the Tribunal.
- 5. The Building Commissioner cannot be appointed as a member of the Building Appeals Tribunal.
- 6. A member of the Building Appeals Tribunal is to be appointed for 5 years and may be re-appointed.
- 7. A member of the Building Appeals Tribunal is to be appointed on the conditions set out in the Model Building Regulations.
- 8. The Minister may remove a member of the Building Appeals Tribunal from office if the member is unable to perform the duties of that office.
- 9. A member of the Building Practitioners Board may resign from office by written notice to the Minister.

7.2 Jurisdiction of Building Appeals Tribunal

The Building Appeals Tribunal has jurisdiction in relation to the following matters under this Act or the Model Building Regulations:

- a. an application for review of any of the following:
 - i. a failure or refusal to issue a building permit or amend or extend a building permit;
 - ii. a failure or refusal to issue or amend an occupancy permit;
 - iii. the conditions of a building permit or occupancy permit;
 - iv. a requirement for an inspection of a building or building work;
 - v. the issue of a building notice, building order or emergency order ;
 - vi. any other determination of a building official under this Act or the Model Building Regulations;
- b. an application for review of any rectification order issued by the Building Authority;
- c. an application for review of any disciplinary action taken in relation to a building practitioner;
- d. an application to resolve a dispute concerning the protection of adjoining property;
- e. an application to resolve a dispute between a building practitioner and a building owner in relation to the design or carrying out of building work;
- f. an application to modify the Model Building Regulations or the Jurisdiction Building Code or any other document incorporated by the regulations in relation to a building or land;
- g. any other matter prescribed by this Act or the Model Building Regulations to be dealt with by the Building Appeals Tribunal.

7.3 General procedure of Building Appeals Tribunal

- 1. The Chairperson of the Building Appeals Tribunal is to preside at all hearings of the Tribunal at which the Chairperson is present.
- 2. In the absence of the Chairperson, a member of the Building Appeals Tribunal nominated by the

Chairperson is to preside.

3. Subject to subsection (4), the Building Appeals Tribunal is to be constituted by at least 3 members determined by the Chairperson for a hearing of the Tribunal.
4. The Building Appeals Tribunal may be constituted by a single member (who may be the Chairperson or another member) if the Chairperson consider it appropriate for a matter.
5. Subject to this Act and the Model Building Regulations, the procedure of the Building Appeals Tribunal is in its discretion.

7.4 Decisions not affected by certain matters

An act or decision of the Building Appeals Tribunal is not invalid only because of:

- a. a defect or irregularity in the appointment of a member ; or
- b. a vacancy in its membership.

Division 2—Conduct of proceedings before Building Appeals Tribunal

7.5 How to commence a proceeding

1. A person may commence a proceeding before the Building Appeals Tribunal by making an application to the Tribunal.
2. An application for review of a decision referred to in section 7.2(1)(a) must be made within the prescribed time.
3. An application to the Building Appeals Tribunal to commence a proceeding must:
 - a. specify the nature of the proceedings; and
 - b. specify the grounds for commencing the proceedings and the relief sought; and
 - c. be in accordance with the Model Building Regulations.
4. A person who applies to the Building Appeals Tribunal to commence a proceeding must without delay give a copy of that application to:
 - a. the decision-maker, if the proceeding is an application to review a decision; and
 - b. any other party concerned in the proceeding.

7.6 Expedited hearings

1. Any party to a proceeding may ask the Building Appeals Tribunal to begin to hear or otherwise deal with the proceeding within 2 business days after the request is made.
2. A request under subsection (1):
 - a. must be made in writing; and
 - b. must be accompanied by the appropriate prescribed fee.
3. The Building Appeals Tribunal may grant or refuse the request and, if it grants the request, may require the person making the request to pay:
 - a. the reasonable costs of all the parties to the proceeding after the request is granted; and
 - b. if the Tribunal hears the appeal, an additional prescribed fee for the time taken for the hearing (including any adjourned hearing).



7.7 Conducting a proceeding

The Building Appeals Tribunal:

- a. may proceed by accepting written submissions or by conducting a hearing; and
- b. may inform itself in any manner it thinks fit; and
- c. is bound by the rules of natural justice; and
- d. is not bound by any rule or practice as to evidence; and
- e. must proceed with as little formality and technicality and with as much expedition as the requirements of this Act and the Model Building Regulations and the proper consideration of the matter before it permit.

7.8 Right of party to be heard

1. The Building Appeals Tribunal must give the parties to a proceeding reasonable opportunity to make:
 - a. oral submissions at a hearing; or
 - b. written submissions in the case of a proceeding that is not a hearing.
2. A party to a proceeding may appear at a hearing before the Building Appeals Tribunal or do anything else in relation to a proceeding before the Tribunal either personally or through an agent.
3. The Building Appeals Tribunal may proceed with a hearing in the absence of a party to the proceeding if it is satisfied that the party has been given reasonable notice of the date, time and place of the hearing.

7.9 Closed and open hearings

The Building Appeals Tribunal may conduct a proceeding in private if it considers it in the public interest or the interest of justice to do so, but must otherwise hold a hearing in public.

7.10 Proceedings may be dealt with together

The Building Appeals Tribunal may deal with proceedings or classes of proceedings together if it is satisfied that they relate to the same parties, the same building, land or building work or the same or related subject-matter.

7.11 Power to adjourn or refer for conciliation or mediation

The Building Appeals Tribunal:

- a. may at any time adjourn the proceeding; and
- b. in the case of a proceeding dealing with a dispute, may refer the dispute to conciliation or mediation if the Tribunal considers it appropriate to do so.

7.12 Power to seek independent advice¹⁶

The Building Appeals Tribunal:

- a. may seek the independent advice of a person to assist it in dealing with the proceeding or for a conciliation or mediation; and

¹⁶ This could include advice from an expert assessor in the case of a dispute proceeding relating to building work or protection work.

- b. must disclose that advice to each party to a proceeding and give each party a reasonable opportunity to make submissions about that advice before determining the proceeding.

7.13 Power to compel production of documents and things or attendance of witnesses

1. For the purposes of a proceeding, the Building Appeals Tribunal may serve notice on a person requiring the person:
 - a. to produce a specified document or thing to the Tribunal; or
 - b. to attend a hearing of the Tribunal to produce any specified document or thing or to give evidence.
2. A person commits an offence if the person is served with a notice under subsection (1) and, without reasonable excuse, refuses or fails to comply with the notice.

The maximum penalty for the offence is:

7.14 Power to take evidence on oath or affirmation

1. The Building Appeals Tribunal may require a person attending a proceeding to give evidence or answer questions on oath or affirmation.
2. A member of the Building Appeals Tribunal, or the Registrar or a member of staff of the Tribunal who is authorized to do so by the Chairperson, may administer an oath or affirmation for the purpose of subsection (1),

7.15 Determinations and reasons

1. The Building Appeals Tribunal must consider an application made to it under this Act and may make any determination that it considers appropriate in the circumstances.
2. A determination of the Building Appeals Tribunal must be in writing.
3. The determination may include any order as to costs that the Building Appeals Tribunal, on the application of a party to the proceeding, considers just.
4. The determination may include any other incidental order or direction that the Building Appeals Tribunal considers is necessary.
5. The Building Appeals Tribunal may make public any of its determinations in any manner it thinks fit.
6. The Building Appeals Tribunal is not bound by its earlier determinations.

7.16 Party to be given copy of determination and may ask for reasons

1. The Building Appeals Tribunal must, without delay, cause a copy of its determination in any proceeding to be given to each party to the proceeding.
2. Within one month after being given a copy of the Building Appeals Tribunal's determination, or within any further time allowed by the Tribunal, a party to a proceeding may ask the Tribunal to give to the party written reasons for its determination.
3. The Building Appeals Tribunal must comply with a request received under subsection (1) without delay after receiving it.

7.17 Determination of non-compliance with Act or Model Building Regulations

1. In a proceeding the Building Appeals Tribunal may make a determination that this Act or the

Model Building Regulations have not been complied with.

2. The Building Appeals Tribunal must give a copy of a determination under subsection (1) to the Building Authority.

7.18 Costs

Unless the Building Appeals Tribunal otherwise determines, a party to a proceeding before the Tribunal must bear the party's own costs.

7.19 Enforcement of determination

A determination of the Building Appeals Tribunal may be enforced as if it were a judgment or order of a court.

7.20 Appeal

A party to a proceeding before the Building Appeals Tribunal may bring an appeal against the determination in the superior court of the Jurisdiction.

Division 3—Conciliation and mediation of disputes

Subdivision 1—Application of Division

7.21 Application

This Division applies to a proceeding that relates to:

- a. an application to resolve a dispute concerning the protection of adjoining property; or
- b. an application to resolve a dispute between a building practitioner and a building owner in relation to the design or carrying out of building work.

Subdivision 2—Conciliation

7.22 Conciliation

1. The Building Appeals Tribunal may refer the dispute proceeding or any part of it for conciliation by a person nominated by the Tribunal.
2. A referral may only be made under subsection (1) with the consent of the parties.
3. The Registrar must give written notice of the conciliation to each party in accordance with the rules.
4. Subject to this Act and the rules, the procedure for conciliation is at the discretion of the conciliator.

7.23 Conciliation conference

1. The conciliator may conduct a conciliation conference.
2. The conciliator must give notice of the conciliation conference to each party in accordance with the rules.
3. The conciliation conference may be held by any means, including in person or by electronic communication, permitted by the rules.
4. For the purposes of a conciliation conference, the conciliator may:
 - a. make any inquiries or obtain any information the conciliator considers necessary; and

- b. ask a party to the dispute to provide further information or documents relating to the dispute.

7.24 Statements made during conciliation

Evidence of anything said or done by the parties or the conciliation officer during conciliation under this Subdivision is not admissible in any proceeding before the Building Appeals Tribunal or in any other legal proceeding unless all the parties to the dispute agree in writing to the giving of the evidence.

7.25 Report to Building Appeal Tribunal of result of conciliation

1. The conciliator must report to the Building Appeals Tribunal on the outcome of the conciliation.
2. If the dispute was resolved by conciliation, the report must include the record of the agreement between the parties.
3. If the dispute was not resolved by conciliation, the report must include a statement of the reasons why the dispute was not resolved which may include a statement that in the conciliator's opinion an identified party did not participate in the conciliation or did not participate in good faith.

7.26 Record of conciliated agreement

1. This section applies if a dispute is resolved by conciliation under this Subdivision.
2. The conciliator must prepare a written record of agreement setting out the terms of the agreement for the resolution of the dispute, including:
 - a. the action, if any, to be taken by each party to the dispute, which may include the making of a payment; and
 - b. the time within which the action is to be taken.
3. The conciliator must give a copy of the record of agreement to each party to the dispute,
4. The Registrar must keep the record of agreement given to the Building Appeals Tribunal.
5. A party to the dispute may give written notice to the Registrar of any error or omission at any time before the end of the time specified in the record of agreement for taking action.
6. The Registrar:
 - a. may make any corrections to the record of agreement the Registrar considers appropriate to rectify an error or omission; and
 - b. must give written notice to each party to the dispute of each correction made under paragraph (a).
7. A record of agreement is evidence of the terms of the agreement for the resolution of the dispute to which it relates.

7.27 Notice of failure to comply with conciliated agreement

1. A party to a dispute may give written notice to the Registrar if an action recorded in a record of agreement for the dispute has not been taken within the time specified in the record of agreement.
2. The notice must state the extent of any partial compliance with the required action.

7.28 Notice of non-compliance with conciliated agreement

1. If, on receiving a notice under section 7.27, the Registrar determines that the action was not

taken within the specified time:

- a. the record of agreement ceases to have effect; and
 - b. the Registrar must give written notice of the non-compliance to each party to the dispute.
2. The notice must state the extent of any partial compliance with the required action.

Subdivision 3 — Mediation

7.29 Mediation

1. The Building Appeals Tribunal may refer the dispute proceeding or any part of it for mediation by a person nominated by the Tribunal.
2. A referral may be made under subsection (1) with or without the consent of the parties.
3. The Registrar must give written notice of the mediation to each party in accordance with the rules.
4. Subject to this Act and the rules, the procedure for mediation is at the discretion of the mediator.

7.30 Tribunal or mediator may require personal attendance at mediation

The Building Appeals Tribunal or the mediator may require a party to attend the mediation, either personally or by a representative who has authority to settle the proceeding or part on behalf of the party.

7.31 What happens if mediation is successful?

If the parties agree to settle a proceeding or any part of it as a result of mediation, the mediator must notify the Registrar that the parties have agreed to settle.

7.32 What happens if mediation is unsuccessful?

If the mediator has attempted unsuccessfully to settle the proceeding or any part of it by mediation, the mediator must notify the Registrar that mediation has been unsuccessful.

7.33 Evidence inadmissible

Evidence of anything said or done in the course of mediation is not admissible in any hearing before the Building Appeals Tribunal or in any other legal proceeding, unless all parties agree to the giving of the evidence.

7.34 Settlement of proceeding

If the parties agree to settle a proceeding or any part of it at any time, the Building Appeals Tribunal may make any orders necessary to give effect to the settlement.

7.35 Correction of errors

1. On its own initiative or at the request of a party to a proceeding, the Building Appeals Tribunal may make a determination correcting an earlier determination in which there is:
 - a. a clerical error or accidental slip or omission; or
 - b. an evident material miscalculation of figures; or
 - c. an evident material mistake in the description of a person, property or thing.
2. The powers of the Building Appeals Tribunal under subsection (1) may be exercised by the Chairperson on behalf of the Tribunal.

7.36 Mediator must not constitute Tribunal for proceeding

1. This section applies to a proceeding that has been the subject of unsuccessful mediation by a mediator who is a member of the Tribunal.
2. The mediator must take no part, or no further part, in the proceeding.

Division 4 — Modification of Model Building Regulations

7.37 Modification of Model Building Regulations

1. The owner of a building or land, or a building official, may apply to the Building Appeals Tribunal for a determination that a provision of the Model Building Regulations or of the Jurisdiction Building Code or any other document that forms part of the Regulations:
 - a. does not apply to a building or land; or
 - b. applies to a building or land with the modifications specified in the application.
2. Before determining an application under subsection (1), the Building Appeals Tribunal must consult with the prescribed persons or bodies.
3. The Building Appeals Tribunal must not determine that a provision of the Model Building Regulations, Jurisdiction Building Code or other document does not apply to a building or land unless satisfied that, in the particular circumstances, the provision is inappropriate.
4. The Building Appeals Tribunal must not determine that a provision of the Model Building Regulations, Jurisdiction Building Code or other document applies to a building or land in a modified form unless satisfied that to do so is reasonable and not detrimental to the public interest.

Division 5 — Registrar, staff and register of proceedings

7.38 Registrar and other staff of Building Appeals Tribunal

There is to be a Registrar of the Building Appeals Tribunal and any other staff necessary for the operation of the Tribunal.

7.39 Register of proceedings

1. The Building Appeals Tribunal must cause to be kept a register of proceedings containing details of each proceeding and the determination of each proceeding.
2. The Building Appeals Tribunal must ensure that the register is available for inspection at any time that the registry is open for business.

Division 6 — Protections

7.40 Protection of Tribunal members, persons and witnesses

1. A member of the Building Appeals Tribunal, in the performance of the member's duties as a Tribunal member, has the same protection and immunity as a Judge of a superior court of the Jurisdiction.
2. A conciliator or mediator, in the performance of the functions of conciliator or mediator, has the same protection and immunity as a member of the Building Appeals Tribunal.
3. A legal practitioner or other person appearing before the Building Appeals Tribunal or in a conciliation or mediation on behalf of another person has the same protection and immunity

as a legal practitioner has in appearing for a party in a proceeding in a superior court of the Jurisdiction.

4. A person required to attend or appearing before the Building Appeals Tribunal as a witness:
 - a. has the same protection as a witness in a proceeding in a superior court of the Jurisdiction; and
 - b. in addition to the penalties provided by this Act, is subject to the same liabilities as a witness in a proceeding in a superior court of the Jurisdiction.

Division 7—Rules

7.41 Rules of Building Appeals Tribunal

The Building Appeals Tribunal may make and publish rules for the conduct of:

- a. proceedings in the Tribunal; or
- b. conciliations; or
- c. mediations.

8. Part 8 — Compliance and enforcement

Division 1 — Notices and orders

Subdivision 1 — Building notices and building orders

8.1 Power of building official to issue building notice

1. A building official may issue a building notice to the owner of a building or building site or the builder at a building site if the building official considers that:
 - a. building work has been carried out on the building or building site without a building permit required by this Act, or in contravention of a building permit or this Act or the Model Building Regulations; or
 - b. the use of the building contravenes this Act or the Model Building Regulations; or
 - c. the building site or the use or proposed use of the building is a danger to the life, safety or health of any member of the public or of any person using the building or building site.
2. The building official must give the owner or builder to whom the building notice is given a reasonable opportunity to make submissions as to why a building order should not be issued for the building or building site.
3. A building notice must:
 - a. be in writing in a form approved by the Building Authority; and
 - b. be given to the owner or builder to whom it is addressed;
 - c. include any matter required by the Model Building Regulations.
4. A building official may cancel a building notice after considering any submissions made by the owner or builder.

8.2 Power of building official to issue building order

1. A building official may issue a building order to the owner of a building or building site or the

builder or another person at a building or building site after the period for making submissions on the building notice relating to the building or building site ends.

2. The building official must consider any submissions made in relation to the building notice before making a building order.
3. A building order must:
 - a. be in writing in a form approved by the Building Authority; and
 - b. be given to the owner or builder or other person to whom it is addressed;
 - c. include any matter required by the Model Building Regulations.
4. A building order may do all or any of the following:
 - a. require the person to whom it is addressed to vacate the building or building site;
 - b. prohibit entry to, or use or occupation of, the building or building site;
 - c. require building work at the building site to cease;
 - d. require the person to whom it is addressed to arrange for the inspection and testing of the building or building site and any material or building product used at the building site to be carried out;
 - e. require the person to whom it is addressed to take action:
 - i. to remove or reduce any risk referred to in section 8.1(1)(c); or
 - ii. to rectify any non-compliance with the building permit or this Act or the Model Building Regulations;
5. A building official may cancel a building order if the building official is satisfied that the building order has been complied with.

8.3 Offence to fail to comply with building order

1. A person commits an offence if the person contravenes a building order given to the person.
Maximum penalty for this offence:
2. A person commits an offence if the person enters or occupies a building in contravention of a building order.
Maximum penalty for this offence:

Subdivision 2 — Emergency orders

8.4 Power of building official to issue emergency order

1. A building official may issue an immediate emergency order to the owner of a building or building site or the builder or another person at a building or building site without first giving a building notice if the building official is satisfied that the emergency order is necessary because the building or building site is a danger to the life, safety or health of any member of the public or of any person at or using the building or building site.
2. An emergency order must:
 - a. be in writing in a form approved by the Building Authority; and
 - b. be given to the owner or builder or other person to whom it is addressed;

- c. include any matter required by the Model Building Regulations.
- 3. An emergency order may do all or any of the following:
 - a. require the person to whom it is addressed to vacate the building or building site;
 - b. prohibit entry to, or use or occupation of, the building or building site;
 - c. require building work at the building site to cease;
 - d. require the person to whom it is addressed to arrange for the inspection and testing of the building or building site and any material or building product used at the building site;
 - e. require the person to whom it is addressed to take action:
 - i. to remove or reduce any risk referred to in subsection (1); or
 - ii. to rectify any non-compliance with the building permit or this Act or the Model Building Regulations;
- 4. A building official may cancel an emergency order if the building official is satisfied that the emergency order has been complied with.

8.5 Offence to fail to comply with emergency order

- 1. A person commits an offence if the person contravenes an emergency order given to the person.
Maximum penalty for this offence:
- 2. A person commits an offence if the person enters or occupies a building or building site in contravention of an emergency order.
Maximum penalty for this offence:

Subdivision 3—Rectification orders

8.6 Power of Building Authority to issue rectification orders

- 1. The Building Authority may issue a rectification order in relation to building work if the Building Authority is satisfied that the building work is:
 - a. defective; or
 - b. non-compliant; or
 - c. incomplete; or
 - d. unsafe.
- 2. A rectification order may be issued:
 - a. during the carrying out of the building work; or
 - b. after the completion of building work if not more than 10 years have elapsed since:
 - i. the issue of the occupancy permit for the building for which the building work is carried out; or
 - ii. if an occupancy permit has not been issued, the date the certificate of final inspection or certificate of joint final inspection of the building work was issued.
- 3. A rectification order may be issued to:
 - a. the owner of a building on which the building work is carried out; or

- b. the builder who is or was carrying out the building work.
- 4. A rectification order must:
 - a. be in writing in a form approved by the Building Authority; and
 - b. be given to the owner or builder to whom it is addressed;
 - c. include any matter required by the Model Building Regulations.
- 5. A rectification order may require the person to whom it is issued to:
 - a. take any action or the action specified in the order to do any of the following:
 - i. complete the building work;
 - ii. rectify the non-compliant or defective building work;
 - iii. rectify any damage caused in carrying out the building work or by the non-compliant or defective building work;
 - b. follow any direction or meet any standard in connection with an action referred to in paragraph (a);
 - c. do any other thing in connection with an action referred to in paragraph (a).
- 6. A rectification order must specify a reasonable time for compliance with the order.

8.7 Offence to fail to comply with emergency order

A person commits an offence if the person contravenes a rectification order given to the person.

Maximum penalty for this offence:

Subdivision 4 — General provisions

8.8 Building permit not required

Despite anything to the contrary in this Act or the Model Building Regulations, a building permit is not required to carry out building work required by a building order, an emergency order or a rectification order.

8.9 Building authority or local authority may carry out works

1. If a person fails to carry out building work required under a building order, emergency order or rectification order, the Building Authority or local authority may carry out the work instead.
2. The Building Authority or local authority may recover the reasonable costs of carrying out building work from the person required to carry out the building work as a debt due to the Building Authority or local authority.

Division 2 — Monitoring and audit powers

8.10 Power of Building Authority or local authority to authorize audit of building site

1. The Building Authority or a local authority may authorize a building official to conduct an audit of a building site to ensure that building work on the building site complies with the building permit and the Model Building Regulations.
2. The builder carrying out the building work must pay the costs of the audit.
3. The Building Authority or local authority may recover the costs of the audit from the builder as a

debt due to the Building Authority or local authority.

8.11 Powers of entry of site for audit

1. A building official authorized to conduct an audit of a building site may enter the building site at any reasonable time to conduct the audit.
2. A building official must give notice to the builder before entering a building site under subsection (1),
3. On entry to a building site under subsection (1), a building official may do all or any of the following:
 - a. examine any thing found in or on the building site;
 - b. examine any building work that has or is being carried out in or on the building site;
 - c. make copies or take extracts from any document, or arrange for the making of copies or the taking of extracts;
 - d. make any still or moving image, audio recording or audiovisual recording.
4. A builder for a building site must assist a building official in the audit of the building site.

Division 3 — Investigation powers

8.12 Power of building official to enter building or land with warrant if offence suspected

1. A building official may apply to a court to issue a search warrant for a building or building site if the building official reasonably suspects that the building or building work at the building site contravenes this Act or the Model Building Regulations.
2. The court may issue the search warrant sought in accordance with the laws of the Jurisdiction relating to search warrants.
3. A building official issued with a search warrant under this section may enter the building or building site to which the search warrant applies.
4. A building official must give notice to the owner, occupier or builder before entering a building or building site under subsection (1).
5. On entry to a building or building site under a search warrant, a building official may do all or any of the following:
 - a. examine any thing found in or on the building or building site;
 - b. examine any building work that has or is being carried out in or on the building or building site;
 - c. make copies or take extracts from any document, or arrange for the making of copies or the taking of extracts;
 - d. make any still or moving image, audio recording or audiovisual recording;
 - e. seize any thing found in or on the building or building site or secure any thing found in or on the building or building site against interference, if the building official believes on reasonable grounds that the thing is connected with a contravention of this Act or the Model Building Regulations;
 - f. take and keep samples of any thing found in or on the building or building site, if the building

official believes on reasonable grounds that the thing is connected with a contravention of this Act or the Model Building Regulations.

8.13 Power of building official to enter building or building site without warrant in emergency

1. A building official may enter a building or building site without a search warrant at any time if:
 - a. the safety of the public or the occupants of the building or land is at risk; or
 - b. an emergency order applies to the building or building site.
2. On entry to a building or building site under subsection (1), a building official may do all or any of the following:
 - a. examine any thing found in or on the building or building site;
 - b. examine any building work that has or is being carried out in or on the building or building site;
 - c. make copies or take extracts from any document, or arrange for the making of copies or the taking of extracts;
 - d. make any still or moving image, audio recording or audiovisual recording;
 - e. seize any thing found in or on the building or building site or secure any thing found in or on the building or building site against interference, if the building official believes on reasonable grounds that the thing is connected with a contravention of this Act or the Model Building Regulations;
 - f. take and keep samples of any thing found in or on the building or building site, if the building official believes on reasonable grounds that the thing is connected with a contravention of this Act or the Model Building Regulations.

Division 4 — Proceedings

8.14 Power of Building Authority or local authority to bring proceedings for offence

The Building Authority or a local authority may bring proceedings for an offence against this Act or the Model Building Regulations.

Division 5 — Delegation

8.15 Building authority or local authority may delegate powers under Part to building official

The Building Authority or a local authority may by instrument delegate any of its functions under Divisions 1 to 4 to a building official.

9. Part 9 — Role of Minister

9.1 Administration

The Minister is responsible for the administration of:

- a. this Act; and
- b. the Model Building Regulations; and
- c. the Jurisdiction Building Code as applied under the Model Building Regulations.

9.2 Guidelines

1. The Minister may issue guidelines in relation to:
 - a. the functions of building officials under this Act and the Model Building Regulations; and
 - b. the interpretation of this Act and the Model Building Regulations; and
 - c. any other matter in relation to this Act and the Model Building Regulations that the Minister thinks fit.
2. The guidelines will take effect when they are published.
3. The Minister may amend and replace the guidelines at any time.
4. A building official must have regard to any relevant Ministerial guideline in carrying out a function under this Act or the Model Building Regulations.

9.3 Directions

1. Without limiting any other power of the Minister to give directions under this Act, the Minister may issue directions relating to the functions of building officials under this Act or the Model Building Regulations that are not inconsistent with this Act or the Model Building Regulations.
2. A direction takes effect when it is published.
3. A building official must comply with any relevant Ministerial direction in carrying out a function under this Act or the Model Building Regulations.

10. Part 10 — Model Building Regulations

10.1 Model Building Regulations

1. The Minister may make regulations for or with respect to prohibiting or regulating or providing for the following:
 - a. safety of buildings;
 - b. construction, use, demolition and removal of buildings;
 - c. any matter set out in Schedule 2;
 - d. maintenance of buildings;
 - e. standards and requirements for building work and buildings;
 - f. standards and requirements for the development of components of buildings;
 - g. regulating classes of building practitioners and the categories of work building practitioners may carry out;
 - h. prescribing professional standards for building practitioners;
 - i. prescribing duties and procedures for the exercise of powers under Part 8;
 - j. prescribing penalties for non-compliance with the regulations;
 - k. any other matter authorized or required to be prescribed or necessary or convenient to be prescribed for the purposes of this Act.

2. The regulations are to be called the Model Building Regulations.
3. The regulations may apply, adopt or incorporate, either wholly or in part and with or without changes, any matter contained in the Jurisdiction's Building Code or any other document as in force or as issued or published or adopted at a particular time or as in force or as issued or published or adopted from time to time.
4. The standards established by the regulations may be expressed in terms of performance, types of material, methods of construction or in other terms.
5. The regulations may provide for buildings constructed with particular materials, designs or methods of construction to be deemed to satisfy the prescribed standards.
6. The regulations may apply to existing buildings, whether or not building work is being or is proposed to be carried out on those buildings.

10.2 Additional regulation-making powers

1. The regulations under section 10.1:
 - a. may be of general or limited application; and
 - b. may differ according to differences in time, place and circumstance; and
 - c. may confer a discretionary authority or impose a duty on or leave any matter to be determined or approved by a specified person or body or class of persons or bodies; and
 - d. may provide for the exemption of persons or classes of persons, or buildings or classes of buildings, land or classes of land or building work or classes of building work, or materials or products or classes of materials or products in relation to building work , from any or all of the provisions of this Act or the regulations; and
 - e. may confer power on the Building Authority or a local authority or building official to exempt any persons or classes of person or any building or classes of buildings or building work or classes of building work or any materials or products or classes of materials or products in relation to building work from all or any of the requirements of the regulations
2. The regulations under section 10.1 may also provide for:
 - a. fees for the purposes of this Act including anything done by the Building Authority, a local authority or a building official under this Act or the regulations; and
 - b. the reduction, waiver or refund, in whole or in part, of any fee, in a circumstance specified in the regulations.

11. Part 11 — Review of Act

11.1 Review and Amendments

1. The Minister must review this Act every 5 years after its commencement.
2. The Minister must consult with the building industry, building practitioners and the public for each review.
3. The Minister must consider any amendments to this Act that are appropriate to address matters raised in the consultation and to take account of technological advancements and advancements in industry knowledge in the previous 5 years.

12. SCHEDULE 1 — DICTIONARY AND INTERPRETATION

Part 1 – Dictionary

1. Definitions

In this Act and the Model Building Regulations:

adjoining land means land (including any street, highway, lane, foot way, square, alley and right of way) which is so situated in relation to the site on which building work is to be carried out as to be at risk of significant damage from the building work.

adjoining occupier means an occupier of adjoining land.

adjoining owner means the owner of adjoining land.

allotment means a parcel of land.

Building Authority means the Building Authority referred to in section 2.1.

building action means a proceeding for damages for loss or damage arising out of or concerning defective building work but does not include a proceeding to recover damages for death or personal injury arising out of or concerning defective building work.

Building Appeals Tribunal means the Building Appeals Tribunal referred to in section 7.1.

building notice means a building notice issued under Division 1 of Part 8.

building official means a person appointed as a building official under section 2.5.

building order means a building order issued under Division 1 of Part 8.

building owner, in relation to a building (including the construction of a building) means the owner of the building.

building practitioner means:

- a. residential builder, being a builder of low-risk residential buildings;
- b. commercial builder, being a builder of buildings other than low-risk residential buildings;
- c. architect;
- d. building designer;
- e. engineer engaged in building design or building work;
- f. building surveyor;
- g. project manager engaged in building work.

Building Practitioners' Board means the Building Practitioners' Board referred to in section 2.7.

building product is any material or other thing associated with, or that could be associated with, a building, and includes an assembly that consists of multiple products or things associated with, or that could be associated with, a building.

building product use ban means a ban notice published under section 3.8.

building site means land on which building work is being carried out;

building surveyor means a person who specializes in assessing the condition of buildings and providing expert advice on construction and maintenance of buildings and the compliance of buildings and building work with the Model Building Act and Model Building Regulations.

building work means:

- a. work for or in connection with the design, construction, alteration, maintenance, demolition, or removal of a building; or
- b. the inspection of, and issuing of a permit in respect of, the work referred to in paragraph (a).

certificate of final inspection means a certificate of final inspection issued under section 4.22.

certificate of final joint inspection means a certificate of final inspection issued under section 4.23.

conciliator means a person nominated under section 7.23.

contravention, in relation to this Act or the Model Building Regulations or the Jurisdiction Building Code or a provision of this Act or the Model Building Regulations or the Jurisdiction Building Code, includes a failure to comply with this Act or the Model Building Regulations or the Jurisdiction Building Code or the provision.

damages include any form of monetary compensation.

decision includes failure to decide.

defective work means any building work that does not comply with the Jurisdiction Building Code or the Model Building Regulations.

emergency order means an emergency order issued under Division 1 of Part 8.

expert witness means a person who gives evidence in a court or tribunal in relation to a building dispute.

function includes power and duty.

high-risk building means a building that is classified as a high-risk building under the Jurisdiction Building Code.

individual means a natural person.

insurance includes the following:

- a. professional indemnity insurance;
- b. public liability insurance;
- c. a performance bond;
- d. a guarantee;
- e. an indemnity;
- f. insurance relating to a particular building work project;
- g. insurance taken out by any body or person which relates to the work of a building practitioner or an engineer engaged in the building industry;
- h. any agreement or instrument in the nature of an item set out in paragraphs (a) to (g).

Jurisdiction Building Code means the [insert name of Code] as in force from time to time.

land includes buildings and other structures permanently affixed to land and land covered by water.

low-risk building means a building other than a medium-risk building or a high-risk building.

medium risk building means a building that is classified as a medium risk building under the Jurisdiction's Building Code

Minister means the Government Minister (or other conferred title) responsible for this Act.

Model Building Regulations means the Model Building Regulations made under this Act.

occupancy permit means an occupancy permit issued under section 4.29.

person includes a body corporate as well as an individual.

prescribed means prescribed by the Model Building Regulations.

published means published in accordance with the Model Building Regulations.

rectification order means a rectification order issued under Division 1 of Part 8.

Registrar means the Registrar of the Building Appeals Tribunal,

required insurance means insurance required by order under section 6.10.

rules means rules of the Building Appeals Tribunal.

State means:

- a. for a country that is a federation, a state or territory or province of the federation (or the government of that state territory or province), or
- b. in any other case, a country or the national government of the country.

Part 2—Interpretation

2. Parts of speech and grammatical forms

If a word or phrase is given a particular meaning in this Act or the Model Building Regulations, other parts of speech and grammatical forms of that word or phrase have, unless the contrary intention appears, corresponding meanings.

3. Number

In this Act and the Model Building Regulations:

- a. words in the singular include the plural; and
- b. words in the plural include the singular.

4. Delegation

If a power is given to a person or body under this Act to delegate a power or function under this Act:

- a. the delegation does not prevent the exercise or carrying out of the power or function by the person or body; and
- b. the delegation may be made subject to such conditions or limitations as the person or body may specify; and
- c. a power or function so delegated, when exercised or carried out by the delegate, is, for the purposes of this Act, taken to have been exercised or carried out by the person or body.

13. SCHEDULE 2 — MODEL BUILDING REGULATIONS

1. Design and siting of buildings including:
 - a. matters relating to the availability of light to, and the overshadowing of, nearby buildings and allotments;
 - b. matters relating to privacy and overlooking, in relation to nearby buildings and allotments;
 - c. matters relating to the height of a building, and the distances from buildings to the boundaries of an allotment or to nearby buildings;
 - d. matters relating to how much of an allotment may be used for buildings, how much of an allotment may be covered by impermeable surfaces and the provision of open spaces on an allotment;
 - e. matters relating to the preservation of trees, and of architectural or heritage features;
 - f. matters relating to the provision of car parking in relation to an allotment;
 - g. matters relating to the use of impermeable surface materials on an allotment and their effect on drainage and runoff;
 - h. matters relating to the amenity of nearby buildings and allotments;
 - i. matters relating to the environmental, water and energy efficiency of buildings;
 - j. matters relating to associated fences and boundary walls.
2. Form and contents of plans designs and specifications for building work.
3. Preparation of land for building work.
4. The construction of buildings.
5. The use and testing (including the destructive testing) of specified building products and materials.
6. Structural strength, integrity, stability, durability and insulating properties of building work and materials.
7. Fire prevention, fire fighting equipment and precautions and other emergency installations, services and equipment.
8. The designation of areas liable to bushfires.
9. Prevention of flooding of buildings and designation of areas liable to flooding.
10. The designation of alpine areas.
11. The environmental, water and energy efficiency of buildings.
12. Moisture resistance of buildings.
13. Heating, cooling, ventilation, air conditioning and lighting of buildings.
14. Noise resistant construction of buildings.

15. The resistance of buildings to infestation and the designation of areas liable to infestation.
16. The construction and maintenance of floor, wall and roof coverings and of finishes to buildings.
17. The construction and maintenance of lifts and lift-shafts in buildings.
18. Utility, safety and hygiene services, installations and equipment located in, or related to, buildings.
19. The structural adequacy of advertising signs and hoardings.
20. Fixtures projecting from buildings and dangers arising out of projections from construction work.
21. The protection of adjoining property.
22. Use of public space for construction work.
23. Access to and egress from buildings.
24. Suitability of buildings for occupation.
25. The number of people who can be accommodated in buildings.
26. Use and maintenance of buildings including use and maintenance and replacement of services, installations and equipment.
27. Changes of use of buildings.
28. The manner of alteration and demolition of and additions to buildings, including the connecting or dividing of buildings.
29. The classification of buildings and the application of regulations to different classes of buildings.
30. The provision of certificates as to compliance with any or all of the building regulations or with respect to any other matters under the building regulations.
31. The records to be kept of—
 - a. the carrying out of building work; and
 - b. the maintenance of buildings; and
 - c. the maintenance and replacement of services, installations and equipment.

14. DRAFTING AND AUTHORSHIP

The Model Building Act was drafted by Gemma Varley, former Chief Parliamentary Counsel of Victoria and former Law Reform Commissioner of that State. The drafting instructions for and the refinement of the Model Building Act were prepared by Adjunct Professor Kim Lovegrove, Chair of the International Building Quality Centre (IBQC). In preparing those instructions, regard was had to international good practice and comparative building-control systems.

Gemma Varley and Kim Lovegrove previously worked together on the development of the Building Act 1993 (Victoria). In that capacity, Gemma Varley, as Parliamentary Counsel, drafted the 1993 legislation, and Kim Lovegrove, who at the time served as Assistant Director of the Department of Building Control, acted as an instructing officer to Parliamentary Counsel. In that capacity, regard was had to Australia's first national model building legislation a project that Kim Lovegrove was a project director.

15. ADDITIONAL CONTRIBUTIONS

Secretariat, research and drafting support for the Model Building Act was provided by Lovegrove & Cotton Construction and Planning Lawyers, including the provision of legal research, comparative materials and administrative support to the drafting process.

Key editing input was also provided by Neil Savery, who served as a Deputy Commissioner within the former Victorian Building Commission. Neil Savery is a former Chief Executive Officer of the Australian Building Codes Board and is currently Managing Director, Oceania, International Code Council. He is also a Board Member of the International Building Quality Centre. His contributions drew upon senior regulatory, code-development and building-control expertise.

Further input was provided by Professor Robert Hertle of the Technical University of Munich, contributing comparative European perspectives on building regulation and compliance systems.