



residential building reform

Question and Answer Guide for Residential Building Reform

Updated September 2007

Amendments to the NT *Building Act* have and will commence in stages during 2005 to 2008 to introduce various reforms including registration of residential builders and home warranty insurance.

This guide has been prepared in consultation with the Construction Industry Reference Group (CIRG) that was established in 2004 to assist Government in the implementation of reform in the construction industry.

The guide covers the following matters:

	Page No.
Legislation and Administration	2
Prescribed Building Works	3
Registered Building Contractors	3
Applications for registration as a Building Contractor	6
Registration Renewal	6
Owner-builders	7
Audits and Inquiries	8
Contracts	8
Mandatory Inspections	9
Home warranty insurance	9
Geographic Application of the <i>Building Act</i>	10
Existing Practitioners	12
Pre-93 Building Works	12

Legislation and Administration

1. *What is the relevant legislation?*

The *Building Amendment Act 2004* (for builders' registration, home warranty insurance and other related matters) and the *Building Amendment Act 2005* (for powers of the Building Practitioners Board, validation of building areas and pre-1993 building certificates) are the relevant Acts. Regulations, determinations and approved forms have been and will be made as provided for in these Acts. They are and will be available on www.nt.gov.au/lands/building/regulations/legislation.

2. *What are the administrative arrangements?*

The Hon Delia Lawrie, Minister for Planning and Lands, is the responsible Minister.

The Director of Building Control, Mr Fabio Finocchiaro, and the Building Advisory Services Branch within the Department of Planning and Infrastructure administer the *Building Act*. For further information see www.nt.gov.au/lands/building.

The Building Practitioners Board is the statutory body established under the *Building Act* to register building practitioners, including the new category of building contractor. Its membership includes nominees from the industry bodies representing each category of building practitioner. For further information see www.nt.gov.au/lands/building/boards/bpb.

The Construction Industry Reference Group with representatives from the Australian Institute of Building Surveyors (AIBS), Territory Construction Association (TCA), Housing Industry Association (HIA) and Contractor Accreditation Ltd (CAL) has assisted Government in the implementation of the reform and the industry bodies are available to provide support to the industry.

3. *When is the legislation commencing?*

The legislation is commencing in stages. There are likely to be five commencement dates for the two Acts.

The first was **17 March 2005** (the date the *Building Amendment Act 2005* was given assent by the Administrator) for the validation of building areas.

The second was **14 December 2005** for the provisions relating to the Building Practitioners Board and the registration of building practitioners, including building contractors.

The third was **3 July 2006** for the provisions that require prescribed building works to be done by registered building contractors along with the provisions for contracts and mandatory inspections.

The fourth commencement is proposed to be **late 2007** for the provisions for substantial compliance certificates for pre-1993 building works.

The last commencement is expected to be **early – mid 2008**, for the provisions for home warranty insurance, subject to competitive insurance products being available in the Territory.

Prescribed Building Works for Part 4A

4. *What are prescribed building works?*

Prescribed building works for Part 4A of the Act are those works described in the regulations that can only be carried out by a registered building contractor or, in some cases, an owner-builder.

They are:

- new single houses and new residential units in residential buildings to any height;
- verandahs, garages and carports built as part of new single dwellings and residential units;
- extensions such as living areas, bedrooms and enclosed attached garages to existing single houses and residential units; and
- retaining walls associated with the actual structure of a single house or residential unit; AND
- where the cost is above \$12,000.

Prescribed building works are NOT:

- renovations or alterations to existing buildings, including renovations to bathrooms and kitchens where there is no increase in the floor area;
- free standing sheds or fences;
- retaining walls not associated with the actual single house or residential unit;
- verandahs or open carports being added to existing single houses or residential units;
- commercial or industrial buildings; and
- mixed use commercial and residential buildings.

(NOTE: these exclusions do NOT alter the requirements for building permits)

Registered Building Contractors

5. *What is a registered building contractor?*

A registered building contractor is a new category of building practitioner registered by the Building Practitioners Board.

The regulations provide for two sub-categories - *building contractor residential (restricted)* and *building contractor residential (unrestricted)*.

The *building contractor residential (restricted)* can only do prescribed building works for single dwellings, townhouses and residential units NOT more than two storeys. The *building contractor residential (unrestricted)* can do all prescribed works, i.e. single dwellings, townhouses and residential units of any height.

A person or a company can be a registered building contractor. To be registered as a company, the company must have a director or a nominee registered as a building contractor who is a resident of the NT.

Firms and partnerships are not required to be registered. They can trade provided a partner is a registered building contractor and that partner is a signatory to the building contract.

The registered building contractor is responsible for the supervision and completion of the building works.

6. What does this mean for a builder?

The legislation only applies to residential builders and does not affect builders of mixed use buildings (including residential/commercial etc), offices, shops, industrial buildings and the like.

Since introduction of the amendments on 3 July 2006, only a person registered as a Building Contractor Residential is able to commence prescribed building works. Existing projects with a building permit issued or design documentation substantially completed and certified as such prior to 3 July 2006 by a building certifier may be constructed without registration.

Following commencement of the legislative provisions covering home warranty insurance in 2008, a registered building contractor will need to arrange with an insurance provider for home warranty insurance. This may require a restructuring of a company to meet the management and financial criteria of the insurance provider if a builder wishes to maintain or increase the number of projects being built at any one time.

Applicants who wish to be registered as a building contractor residential will need to show evidence of the following requirements to the Building Practitioners Board-

QUALIFICATION REQUIREMENTS

FOR BUILDING CONTRACTOR (RESTRICTED and UNRESTRICTED)

Applicants will require one of the following –

- (a) Successful completion of the following units for a Certificate IV in Building –
- | | |
|--------|---------------------------------------|
| ABC001 | Construction 1 |
| ABC002 | Construction 2 |
| ABC005 | Materials 1 |
| ABC061 | Builders Working Drawings 1 |
| ABC064 | Building Computer Applications |
| ABC069 | Cost Control and Planning 1 |
| ABC076 | Building Quantities and Estimating 1 |
| ABC077 | Building Quantities and Estimating 2 |
| ABC082 | Building Site Supervision |
| ABC083 | Building Site Surveying and Set Out 1 |
| ABC086 | Structures 1 |
| ABC091 | Business Management for Building 1A |
| ABC092 | Business Management for Building 1B |
| ABC102 | Residential Site Safety |
| ABC105 | Timber Framing Code |

OR

- (b) successful completion of a course, or units of a course that, in the opinion of the Building Practitioners Board, is at least equivalent to the requirements referred to in paragraph (a);

OR

- (c) a statement of attainment of competency equivalent to the Certificate IV in Building units specified in paragraph (a) issued by a registered training organisation.

Further information on available Certificate IV in Building courses or the process on how to obtain a statement of attainment through competency assessment and/or recognition of prior learning, applicants may call the Housing Industry Association or School of Trades, Faculty of Technology, Charles Darwin University for assistance.

EXPERIENCE REQUIREMENTS

FOR BUILDING CONTRACTOR RESIDENTIAL (RESTRICTED)

Applicants for registration as a Building Contractor Residential (Restricted) are required to show evidence of at least 3 years' practical experience in carrying out building work associated with the following Building Code of Australia classes -

Class 1a houses and townhouses;
Class 2 units up to 2 storeys; and
Class 10 structures.

Applicants must submit a RESUME with their application detailing their work experience in the above category. All aspects of experience, i.e. design, on-site construction supervision etc are to be indicated. A specific description of projects must also be provided, detailing level of involvement in these projects and the dates of commencement and completion.

FOR BUILDING CONTRACTOR RESIDENTIAL (UNRESTRICTED)

Applicants for registration as a Building Contractor Residential (Unrestricted) are required to show evidence of at least 3 years' practical experience in carrying out building work associated with the following Building Code of Australia classes -

Class 1a houses and townhouses;
Class 2 units up to any height; and
Class 10 structures.

Applicants must submit a RESUME with their application detailing their work experience in the above category. All aspects of experience, i.e. design, on-site construction supervision etc are to be indicated. A specific description of projects must also be provided, detailing level of involvement in these projects and the dates of commencement and completion.

FINANCIAL REQUIREMENTS

All applicants for registration will also be required to show evidence certified by a registered accountant that the applicant has net tangible assets to the value of \$50,000 or other evidence that satisfies the Practitioners Board that the applicant has equivalent financial capacity to operate.

Applications for registration as a Building Contractor

7. How do I apply to be a registered building contractor?

You can make an application to the Building Practitioners Board on the approved form. Applications can be downloaded from

www.nt.gov.au/lands/building/boards/bpb/applications

and should be addressed to the registrar of the Board and either posted to GPO Box 1680 Darwin NT 0801 or delivered to the Building Advisory Services Branch of the Department of Planning and Infrastructure:

Alice Springs
First Floor, Alice Springs Plaza
Cnr Todd Mall and Parsons St
Alice Springs NT 0870
Ph: 8951 9253

Darwin
Ground Floor
Cavenagh House
Cnr Cavenagh and Knuckey Sts
Darwin NT 0800
Ph: 8999 8964 or 8999 8966

The application fee is \$800 for TWO years. A \$200 non refundable application fee is payable on lodgement and the balance of \$600 is payable on approval by the Building Practitioners Board.

Registration renewal

8. What happens after two years when my registration expires?

Two months before the expiration of your registration you must make an application for renewal to the Building Practitioners Board on the approved form. A Renewal Application Form is available from the Registrar of the Building Practitioners Board or can be downloaded from www.nt.gov.au/lands/building/boards/bpb/applications

Applications should be addressed to the registrar of the Board and either posted to GPO Box 1680 Darwin NT 0801 or delivered to the Building Advisory Services Branch of the Department of Planning and Infrastructure.

The renewal application fee is \$800 for TWO years. A \$200 non-refundable application fee is payable on lodgement and the balance of \$600 is payable on approval by the Building Practitioners Board.

No registered building contractor will be required to have more or higher qualifications than those required for the original registration. However, the Board will have regard to past performance when considering an application for renewal.

There is a requirement that the applicant has met any continuing development requirements that may be in place. At this stage no continuing development requirements have been determined by the Minister however, practitioners should be aware that continuing development requirements will be introduced in the future.

Owner-builders

9. Who is an owner-builder?

An owner-builder is a person who is not a registered building contractor and who owns the land and wants to manage the building of prescribed building works, i.e. a Class 1 detached single dwelling and Class 10 structure.

This means that an owner-builder certificate only allows the holder to undertake works that relate to a single home and associated Class 10 structures such as verandas, carports, retaining walls. An owner-builder is restricted to building on one property in any six year period.

From 3 July 2006, an owner-builder will need to apply for an owner-builder certificate in order to carry out prescribed building works.

An application for an owner-builder certificate can be made to the Building Practitioners Board on the approved form. Owner-Builder Certificate Application Forms are available from the Registrar of the Board or can be downloaded from www.nt.gov.au/lands/building/boards/bpb/applications. Applications should be addressed to the registrar of the Board and either posted to GPO Box 1680 Darwin

NT 0801 or delivered to the Building Advisory Services Branch of the Department of Planning and Infrastructure.

An application fee of \$200 is payable on lodgement and is to be accompanied by a declaration that the applicant has read and understood the contents of the NT Owner-Builder Manual 2007. A copy of the NT Owner-Builder Manual is also available from www.nt.gov.au/lands/building/boards/bpb/applications.

The owner-builder is responsible for the supervision and completion of the building works.

Audits and Inquiries

10. What are the audit and inquiry provisions of the legislation?

The legislation is very specific in the powers given to the Building Practitioners Board and the Director Building Control to monitor performance and compliance and take appropriate action.

The Director Building Control is not a member of the Building Practitioners Board.

The Director can initiate audits and investigate complaints regarding building practitioners and building works.

If a deficiency becomes evident, the Director can seek compliance by co-operation or prosecute action. For a serious breach of the legislation, the action would be prosecuted in the Magistrates Court. For professional misconduct and a breach of the code of ethics, the action would be taken to the Building Practitioners Board.

If a matter is referred to the Board it must form an inquiry panel of three with the legal member of the Board as the Chair.

The inquiry panel has all the powers of the Board and can reprimand, restrict, suspend, financially penalise or cancel registration.

Contracts

11. Is a contract required for prescribed building works?

From 3 July 2006, a registered building contractor must enter into a written contract to build prescribed building works as they relate to a single house and associated Class 10 structures. In short, a contract is required where there will be a requirement for non-completion home warranty insurance.

The contract must be limited to a single building project on one site and include:

- a declaration by the builder that he/she has secured insurance from the Home Building Certification Fund (to be replaced in time by home warranty insurance);

- identification of the registered building contractor and registration number;
- any deposit to be limited to 5% maximum;
- the full extent of works;
- the work stages and amounts for progress payments; and
- a process to address disputes.

Mandatory Inspections

12. Are there mandatory inspections?

Yes. From 3 July 2006, a building certifier will be required to state mandatory inspection stages on the building permit for prescribed building works. These are:

- pre-pour – before pouring the footings, ground floor slab, or other in situ concrete building element;
- frame – before covering the framework for floors, walls, roof or other building element;
- block wall – before pouring any reinforced masonry or block walls;
- fire separation – before covering walls, floors or ceilings, for the purpose of checking that fire resistant levels comply with the Building Code. These inspections may be carried out with one or more of the other inspections;
- wet area – before covering water-proofing in wet areas; and
- final – after completing the building work but before issuing an occupancy permit in relation to the work.

The building contractor or owner-builder must notify the building certifier at the appropriate time so that the mandatory inspections can be carried out.

Home warranty insurance

13. What is Home Warranty Insurance?

Home Warranty Insurance (HWI) is insurance that covers the single home owner against non-completion of the contract. It also covers the single home owner and the residential unit owner (where the unit is in a residential only building that is no greater than three storeys excluding a level for car parking) against non-compliance with the building code for six years after the completion of the building works.

The limitations are consistent with those in other jurisdictions and are necessary to ensure national insurance products will be competitive and offered in the NT.

The provisions for HWI are proposed to commence early to mid 2008 subject to competitive products being available. Until then the existing Home Builders Certification Fund will continue to give protection for non-compliance only.

The HWI (non-completion) will cover the additional expense associated with engaging another builder in the event of the original builder not completing the work as a consequence of his/her death, disappearance or insolvency.

Geographic Application of the *Building Act*

14. *Do all of the provisions of the Building Act apply to all of the Northern Territory?*

The short answer is no. Provisions only apply to Declared Building Areas. No changes have been made to the boundaries of these areas or the number of areas.

Generally, Declared Building Areas cover the larger urban localities and some rural localities. They generally exclude industry-owned mining towns, aboriginal communities and pastoral properties. These excluded communities are under single titles and the owners can fully control any development. A list of the Building Areas can be found at www.nt.gov.au/lands/building/regulations/areas.

Building contractors do not need to be registered when building outside Declared Building Areas. Building contractors must be registered to carry out prescribed building work in a Declared Building Area.

However, from 3 July 2006, within Declared Building Areas, the application of provisions of the *Building Act* has changed.

In the Darwin (Greater Area), Lake Bennett and Alice Springs (Greater Area) Building Areas, where building certifiers are based or are in reasonable proximity, full certification and mandatory staged inspections of building work apply.

In recognition of the difficulties and costs related to engaging building certifiers in areas distant from Darwin and Alice Springs, the requirements for mandatory inspections and occupancy permits do not apply in respect of Class 1a detached houses and, in most cases, Class 10 non-habitable buildings (sheds, carports, stand alone or retaining walls, etc).

In the case of Class 10 buildings, only those attached to, and built at the same time as, Class 1a attached dwellings (eg. town houses, villa units), Class 1b (boarding houses, etc) and Class 2 (flats, units)] are subject to full certification and mandatory inspections.

However, where full certification and inspections are not mandatory, a property owner may still choose to pay for the inspections and certification under a contractual arrangement.

It is proposed that when the provisions of the Act relating to home warranty insurance are brought into operation, these provisions will be applied to residential buildings on the same geographic basis as full certification and mandatory inspections outlined above.

A summary table of the applications of the provisions appears below.

Darwin Greater Area), Lake Bennett and Alice Springs (Greater Area) Building Areas	All other Declared Building Areas
<p><u>All buildings other than those specified below</u></p> <p>Buildings Code of Australia (BCA) applies in full</p> <p>Full certification process</p>	<p><u>All buildings other than those specified below</u></p> <p>BCA applies in full</p> <p>Full certification process</p>
<p><u>Class 1a and Class 2 residential buildings</u></p> <p><u>Class 10 buildings that are attached to and built at the same time as a Class 1a or 2 building</u></p> <p><u>Class 10 retaining walls not attached to Class 1a or 2 buildings but on which the integrity of such a building depends</u></p> <p>BCA applies in full</p> <p>Full certification -</p> <ul style="list-style-type: none"> - building permit - mandatory inspections - certificate of occupancy <p>Builder's declaration that it is built in accordance with the building permit</p> <p>Must be built by a registered builder or an owner-builder</p> <p>Home warranty insurance will be required *</p>	<p><u>Class 1a detached houses</u></p> <p><u>Class 10 non-habitable buildings</u> except where attached to, and built at the same time as, Class 1a attached dwellings and Class 2 buildings (these latter are subject to full certification as above)</p> <p>BCA applies in full</p> <p>Part certification -</p> <ul style="list-style-type: none"> - building permit - no mandatory inspections - no certificate of occupancy <p>Builder's declaration that it is built in accordance with the building permit</p> <p>Must be built by a registered builder or an owner-builder</p> <p>Home warranty insurance will not be required *</p> <p>Note: Owner may choose to pay the cost and have mandatory inspections, full certification and home warranty insurance on a contract basis*</p>

* Home warranty insurance provisions of the Act are not yet in force.

Existing practitioners

15. What about existing building practitioners?

Existing building practitioners (building certifiers, certifying engineers and certifying plumbers) will retain their registrations after the commencement of the legislation. However, the registration will expire over a period between 6 months and 2 years after the commencement date of the relevant legislation. The actual date will depend on the date of the original registration.

Before the expiration of registration an application for renewal must be made on the approved form to the Building Practitioners Board. Applications should be addressed to the registrar of the Board and either posted to GPO Box 1680 Darwin NT 0801 or delivered to the Building Advisory Services Branch of the Department of Planning and Infrastructure.

The renewal application fee is \$800 for TWO years. A \$200 non refundable application fee is payable on lodgement and the balance of \$600 is payable on approval by the Building Practitioners Board.

A requirement is that the applicant has met any continuing professional development requirements that may be in place. At this stage no continuing development requirements have been determined by the Minister. The Board will also have regard to past performance when considering an application for renewal.

Pre-1993 building works

16. What are Substantial Compliance Certificates?

Substantial Compliance Certificates are new certificates provided for in the legislation for building works that were done prior to 1993. They apply to such works that never received a certificate of occupancy for various reasons.

To qualify for such a certificate the building works must have had a building permit in the first place and the works must have been carried out generally in accordance with the permit.

A building certifier issues this certificate. It is a statement that the building is legal and not a statement that the building complies with all the building regulations of the day. Owners and buyers are encouraged to engage a building practitioner to conduct an inspection of the building and report on its adequacy for its purpose and general state of repair.

Provisions for Substantial Compliance Certificates have yet to commence.