



BUILDING ADVISORY SERVICES BRANCH

BUILDING NOTE

Contact Officer: Peter Zagorski

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BUILDER'S DECLARATION

There are a number of property owners in the Northern Territory who have been affected by their builder ceasing to operate for one reason or another. These owners may have a building that is partly built or has incomplete certification.

It has become evident that there is a deficiency in the *Building Act* in that, where a builder is no longer able to sign the declaration required for the issuing of an occupancy permit after completion of building works, an impasse is reached.

Government is committed to resolving this impasse by amending the *Building Act*. Pending amendments to the *Building Act*, affected property owners and building certifiers may proceed as follows in the confidence that the building certification process will be able to be completed.

1. Incomplete building works:

- The current state of the building must be fully documented prior to another builder commencing work, including notations on plans, photographs, and a detailed inspection report from the building certifier.
- The building certifier must have a copy of any required policy under the Home Builders Certification Fund.
- The building permit must be amended to note any changes and reference the new builder and the new contract.
- Written agreement must be obtained between the owner, building certifier and the new builder that the above documentation accurately describes the existing building works.
- All the above documentation must be lodged by the building certifier with the Director of Building Control within seven days of the issue of the amended building permit.
- When the building is complete, the new builder must issue a builder's declaration for the works carried out under the new contract.
- Written advice from the building certifier must then be obtained that an occupancy permit will be issued when the impasse, relating to the lack of a builder's declaration from the original builder, has been resolved by an amendment to the *Building Act*.

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- Under these circumstances the building may be occupied and, from a regulatory point of view, the property will be included within the moratorium that is current for buildings with incomplete certification (that is, there will be no prosecution action for not having an occupancy permit pending the amendments to the *Building Act*).
- On commencement of the proposed amendment to the *Building Act*, an occupancy permit must be issued by your building certifier in accordance with the amendment.

The plumber and electrician used by the original builder should be used to complete the works. However, if this is not possible the plumber and electrician should sign for the work they have done and that work must be documented in a similar way to that required for the building works.

2. **Buildings that are complete but the builder has not provided a builder's declaration** (which means that an occupancy permit cannot issue):

- Written advice from the building certifier must be obtained that an occupancy permit will be issued when the impasse, relating to the lack of a builder's declaration from the builder, has been resolved by an amendment to the *Building Act*.
- Under these circumstances the building may be occupied and, from a regulatory point of view, the property will be included within the moratorium that is current for buildings with incomplete certification (that is, there will be no prosecution action for not having an occupancy permit pending the amendments to the *Building Act*).
- On commencement of the proposed amendment of the *Building Act* an occupancy permit must be issued by the building certifier in accordance with the amendment.

For buildings works that have commenced but have a **building permit that has expired** due to the builder defaulting, section 51 of the *Building Act* may be applied in the issuing of a new building permit to allow the building and certification process to continue generally in accordance with the original building permit.

A letter along the lines of this Building Note has been sent to known affected property owners. It is important that all registered practitioners and other parties involved in building works act in good faith to achieve the desired outcome for these owners who are experiencing the difficulties of builders defaulting.



Fabio Finocchiaro
 Director Building Control
 15 April 2010

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