[AS REPORTED FROM THE INTERNAL AFFAIRS AND LOCAL GOVERNMENT COMMITTEE]


Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. Graeme Lee

BUILDING

ANALYSIS

Title
1. Short Title and commencement

PART I
PRELIMINARY
2. Interpretation
3. Act to bind the Crown

PART II
PURPOSES AND PRINCIPLES
4. Purposes
5. Principles
6. Avoiding unreasonable delay

PART III
FUNCTIONS OF MINISTER
7. Functions of Minister

PART IV
FUNCTIONS, POWERS, AND DUTIES OF BUILDING INDUSTRY AUTHORITY
Establishment and Functions of Authority
8. Building Industry Authority
9. Membership of Authority
10. Functions of Authority
11. Powers of Authority
12. Reviews by Authority

Matters of Doubt or Dispute for Determination by Authority
13. Definition of party
14. Matters of doubt or dispute relating to building control or occupancy control
15. Processing applications for determination
16. Determinations by Authority
17. Hearings by hearing adjudicators

Miscellaneous Provisions
18. Delegation by Authority
19. Authority may fix charges

PART V
FUNCTIONS, POWERS, AND DUTIES OF TERRITORIAL AUTHORITIES
20. Functions and duties of territorial authorities
21. Duty to gather information and monitor
22. Records
23. Charges by territorial authorities
24. Non-performance by territorial authority

PART VI
BUILDING AND OCCUPANCY CONSENTS
Need for Building and Occupancy Consents
25. Buildings not to be constructed, used, or demolished without consent

Building Consents
26. Applications for building consents
27. Processing applications for building consents
28. Grant or refusal of building consent

Price
incl. GST $6.80

No. 54—2
29. Failure to process application for building consent
30. Expiry, lapse, and cancellation of building consent

Additional Requirements for Existing Buildings
31. Alterations to existing buildings
32. Buildings having limited intended lives

Occupancy Consents
33. Applications for occupancy consents
34. Processing applications for occupancy consent
35. Compliance schedule
36. Inspection and maintenance
37. Statements of compliance
38. Cancellation of occupancy consents
39. Changes of use of buildings
40. Matters for consideration by territorial authorities in relation to consents

Notices of Rectification
41. Notices to rectify

PART VII
NATIONAL BUILDING CODE
42. Regulations
43. Documents for use in establishing compliance with building code

PART VIII
BUILDING CERTIFIERS
Applications to Authority
44. Applications for approval as building certifiers
45. Processing applications for approval as building certifiers and appeals
46. Register of building certifiers

Complaints Concerning Building Certifiers
47. Complaints to Authority
48. Inquiry by Authority

Certification by Building Certifiers
49. Issue of building certificates
50. Terms of engagement of building certifiers

PART IX
ACCREDITATION OF BUILDING PRODUCTS AND PROCESSES
51. Processing applications for accreditation
52. Granting of accreditation
53. Renewal, extension, or amendment of accreditation
54. Revocation of accreditation
55. Certain information to be confidential

PART X
LEGAL PROCEEDINGS AND MISCELLANEOUS PROVISIONS

Dangerous and Insanitary Buildings
56. Buildings which are deemed to be dangerous or insanitary
57. Powers of territorial authorities in respect of dangerous or insanitary buildings
58. Measures to avert immediate danger or rectify insanitary conditions
59. Notices in respect of dangerous or insanitary buildings and occupancy consents

Territorial Authority May Carry Out Work
60. Work may be done by territorial authority
61. Recovery of costs when territorial authority does work on default

Inspections by Territorial Authority
62. Inspection by territorial authority
63. Authorisation and responsibilities of enforcement officers

Further Powers of Building Authority
64. Special powers of Authority for monitoring performance of functions under this Act

Offences and Proceedings
65. Offences
66. Injunctions may be granted by High Court for certain continuing breaches
67. Liability of principal for acts of agents, etc.
68. Fines to be paid to territorial authority instituting prosecution
69. Prosecution of offences
70. Appeals on questions of law
71. Service of documents
72. Notices and consents in relation to Maori land

Actions in Relation to Authority or Territorial Authority
73. Proceedings against Authority or territorial authority

Land Information Memorandum
74. Land information memorandum

Amendments to Other Acts, Repeals, Transitional Provisions, and Savings
75. Amendments to Other Acts and consequential repeals
76. Transitional provisions and savings Schedules
Building

A BILL INTITULED

An Act to consolidate and reform the law relating to
building and to provide for better regulation and
control of building

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be
cited as the Building Act 1990.

(2) This Act shall come into force on a date to be appointed
by the Governor-General by Order in Council; and different
dates may be so appointed for the purpose of different
provisions of this Act.

(2) Sections 2, 4, 6 to 11, 18, 19, 42, 43, and 76 of, and the First Schedule
to, this Act shall come into force on the 1st day of January

(3) Part XI of this Act shall come into force on the 1st day of

(4) Except as provided in subsections (2) and (3) of this section,
this Act shall come into force on the 1st day of July 1992.

PART I
PRELIMINARY

2. Interpretation—In this Act, unless the context otherwise
requires,—

“Accreditation certificate” means an accreditation
certificate issued under Part IX of this Act:

“Alter”, in relation to a building, includes to rebuild, re-
erect, repair, enlarge and extend; and “alteration”
has a corresponding meaning:

“Amenity” means an attribute of a building which
{enhances the health} contributes to the health, physical
independence, and well being of the building’s users
Building

but which is not associated with disease or a specific illness:

“Authority” means the Building Industry Authority established under Part IV of this Act:

“Automatic sprinkler system” means any automatic sprinkler system which uses water as a medium for extinguishing fires and which—

(a) is designed, constructed, and maintained in accordance with any code of practice approved in terms of section 21 of the Fire Service Act 1975; or

(b) in the absence of any such code, is otherwise designed, constructed, and maintained in accordance with internationally recognised design, construction, and maintenance practices:

“Building” includes any temporary or permanent movable or immovable structure similar to a building; and also includes any part of a building or structure:

“Building certifier” means a natural person approved by the Authority under Part VIII of this Act in respect of specified provisions of the building code or a natural person or organisation approved by the Authority under the said Part VIII in respect of all of the provisions of the building code:

“Building code” means the building code made under Part VII of this Act:

“Building consent” means a consent to carry out building work granted by a territorial authority under Part VI of this Act; and includes all conditions to which the consent is subject:
“Building work” means work for or in connection with the construction, demolition, or removal of a building; and includes sitework:

“Compliance schedule” means a schedule to the occupancy consent for a building issued under section 35 of this Act:

“Construct”, in relation to a building, includes to build, (rebuild, erect, re-erect, repair, alter, enlarge, extend,) erect, alter, prefabricate, and relocate; and “construction” has a corresponding meaning:

“Fire hazard” means the relative danger in terms of potential harm and degree of exposure arising from the start and spread of fire and the smoke and gases that are thereby generated:

“Functional requirements”, in relation to a building, means those functions which a building is to perform for the purposes of this Act:

“Household unit” means any building or group of buildings, or part of any building or group of buildings, used or intended to be used solely or principally for residential purposes and occupied or intended to be occupied exclusively as the home or residence of not more than one household:

“Intended use” of a building includes—
(a) Any reasonably foreseeable occasional other use that is not incompatible with the intended use; and
(b) Normal maintenance; and
(c) Activities taken in response to fire or any other reasonably foreseeable emergency—
but does not include any other maintenance and repairs or rebuilding:

“Land held under the same title” includes a piece of land, or a building or part of a building, or both, that is—
(a) A unit under the Unit Titles Act 1972; or
(b) Leased under a cross-lease registered under the Land Transfer Act 1952; or
Building

(c) Leased under a company lease registered under the Land Transfer Act 1952:

“Land information memorandum” means a land information memorandum issued by a territorial authority under section 74 of this Act:

New

“Means of escape from fire”, in relation to a building which has a floor area, means continuous unobstructed routes of travel from any part of a floor area of that building to a place of safety; and includes all active and passive protection features required to assist in protecting people from the effects of the fire in the course of their escape:

“Minister” means the Minister of Internal Affairs:

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“Moderate earthquake” means an earthquake that would subject a building to seismic forces one-half as great as those specified in New Zealand Standard Model Building Bylaw NZS 1900, Chapter 8: 1965 (notwithstanding its revocation) for the zone (as described in that New Zealand Standard) in which the building is situated:

“Neighbouring property”, in relation to any building, means neighbouring land not held under the same title; and includes any buildings or other property on that neighbouring land:

“Occupancy consent” means a consent to use a building granted by a territorial authority under Part VI of this Act:

“Owner” has the meaning ascribed to it by section 270 (1) of the Local Government Act 1974:
“Network utility operator” means a person who—
(a) Undertakes the distribution or transmission by pipeline of natural or manufactured gas, petroleum, or geothermal energy; or
(b) Is an electricity operator or electrical supply authority as defined by the Electricity Act 1968 for the purpose of an electric line as defined by that Act; or
(c) Undertakes the piped distribution of potable water for supply; or
(d) Is the operator of a sewerage system or a stormwater drainage system:

“Other property” means any land or buildings or part thereof which are—
(a) Not held under the same allotment; or
(b) Not held under the same ownership—
and includes any road:

“Other system of fire protection” means an alternative fire-protection system which—
(a) Is designed, constructed, and maintained in accordance with any code of practice approved in terms of section 21 of the Fire Service Act 1975; or
(b) In the absence of any such code, is otherwise designed, constructed, and maintained in accordance with internationally recognised design, construction, and maintenance practices:

“Owner”, in relation to any property, means the person who is for the time being entitled to the rack rent of the land or who would be so entitled if the land were let to a tenant at a rack rent; and includes (other than in sections 38 and 39 and sections 56 to 59s of this Act)—
(a) The owner of the fee simple of the land; and
(b) Any person who has agreed in writing, whether conditionally or unconditionally,—
(i) To purchase the land; or
(ii) To purchase any leasehold estate or interest in the land, or to take a lease of the land for any term (including the term or terms of any renewals to which the lessee is entitled) of not less than 2 years—
Building

while the agreement remains in force—
and “ownership” has a corresponding meaning:

“Performance criteria”, in relation to a building, means those qualitative or quantitative criteria which the building is to satisfy in performing its functional requirements:

“Person” includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate:

“Plans and specifications” means the drawings, specifications, and other documents according to which a building is proposed to be constructed, including proposed procedures for inspection during construction, and also including—
(a) The intended use of the building; and
(b) The design features or systems which the applicant considers will be required to be included in any compliance schedule issued in terms of section 38 of this Act; and
(c) The proposed procedures for inspection and routine maintenance for the purposes of that compliance schedule in respect of those design features or systems:

“Producer statement” means any statement supplied by or on behalf of an applicant for a building consent or by a person who has been granted a building consent that certain work will be or has been carried out in accordance with certain technical specifications:

“Property” includes land, buildings, and goods; but does not include incorporeal forms of property:

“Regulations” means regulations in force under Part VII of this Act:
Building

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“Statement of compliance” means a statement of compliance made under section 37 of this Act:

“Sitework” means work on a building site, including earthworks, preparatory to or associated with the construction, demolition, or removal of a building:

“Territorial authority” has the meaning ascribed to it by section 2 of the Local Government Act 1974.

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“Unreinforced masonry” means masonry classified as unreinforced by New Zealand Standard Model Building Bylaw NZS 1900, Chapter 9.2:1964 (notwithstanding its revocation):

New

2A. Meaning of “building”—(1) In this Act, unless the context otherwise requires, the term “building” means any temporary or permanent movable or immovable structure (including any structure intended for occupation by people, animals, machinery, or chattels); and includes any mechanical, electrical, or other systems, and any utility systems, attached to or forming part of the structure whose proper operation is necessary for compliance with the building code.

(2) For the purposes of a building consent, a code compliance certificate, and a compliance schedule the term “building” also includes—

(a) Any part of a building; and

(b) Any 2 or more buildings which, on completion of any building work, are intended to be managed as 1 building with a common use and a common set of ownership arrangements.

(3) For the purposes of subsection (2) of this section, where any utility system or any part of any utility system—

(a) Is external to the building; and

(b) Is also connected to or is intended to be connected to—

(i) A network under the control of a network utility operator; or
Building

(ii) Some other facility which is able to provide for the successful functioning of the utility system in accordance with its intended design—that utility system or that part of the utility system shall be deemed to be part of a building.

(4) Notwithstanding the provisions of subsection (3) of this section, where a septic tank is connected to a building utility system the septic tank shall be deemed to form part of that building utility system.

2b. Meaning of allotment—(1) In this Act, the term “allotment” means any parcel of land that is a continuous area of land and whose boundaries are shown on a survey plan that is—

(a) Subject to the Land Transfer Act 1952 and is comprised in one certificate of title or for which one certificate of title could be issued under that Act; or

(b) Not subject to that Act and was acquired by its owner under one instrument of conveyance.

(2) For the purposes of subsection (1) of this section, the subdivision shown on the survey plan referred to in that subsection is—

(a) The subdivision approved by way of a subdivision consent granted under the Resource Management Act 1991; or

(b) The subdivision allowed or granted under any other Act.

(3) For the purpose of subsection (1) of this section, an allotment shall be deemed to be a continuous area of land notwithstanding that part of it is physically separated from any other part by a road or in any other manner whatsoever, unless the division of the allotment into such parts has been allowed by a subdivision consent granted under the Resource Management Act 1991 or a subdivision approval under any former enactment relating to the subdivision of land.

3. Act to bind the Crown—(1) Except as provided in subsections (2) and (3) of this section, this Act shall bind the Crown.

(2) This Act does not apply to any Crown building or any Crown building work where the Minister of Defence certifies in writing that the building or the building work is necessary for reasons of national security.
(3) No order or information shall be issued against the Crown.

5

(3) The Crown shall not be liable to be prosecuted for an offence against this Act, but in any case where it is alleged that the Crown has contravened any provision of this Act or of the building code and that contravention constitutes an offence, the territorial authority within whose district the alleged contravention occurred may apply to the High Court for a declaration that the Crown has contravened that provision; and, if that Court is satisfied, beyond a reasonable doubt, that the Crown has contravened that provision, it may make a declaration accordingly.

PART II
PURPOSES AND PRINCIPLES

4. Purposes—The purposes of this Act are to provide for—
(a) Such controls relating to building work and the occupation of buildings as are necessary for the effective and efficient provision of safety and health for building users; and
(b) The co-ordination of those controls with other controls relating to building use and the management of natural and physical resources.

5. Principles—To achieve the purposes of this Act, the following matters shall be regarded as being of importance:
(a) Safeguarding people from possible injury, illness, or loss of amenity; and
(b) Protecting neighbouring property from physical damage (including fire); and
(c) Protecting household units (whether or not on land held under the same title) from physical damage (including fire); and
(d) Providing access to and facilities for use by people with disabilities within buildings to which section 25 of the Disabled Persons Community Welfare Act 1975 applies; and
(e) Assessing, in relation to the application of controls relating to building work and the occupation of buildings, the potential costs and benefits of those controls.

4. Purposes and principles—(1) The purposes of this Act are to provide for—
(a) Necessary controls relating to building work and the use of buildings, and for ensuring that buildings are safe and sanitary and have means of escape from fire; and
(b) The co-ordination of those controls with other controls relating to building use and the management of natural and physical resources.
(2) To achieve the purposes of this Act, particular regard shall be had to the need to—
(a) Safeguard people from possible injury, illness, or loss of amenity in the course of the use of any building, including the reasonable expectations of any person who is authorised by law to enter the building for the purpose of rescue operations in response to fire:
(b) Provide protection against the extent and effects of the spread of fire, particularly with regard to—
   (i) Household units (whether on the same land or on other property); and
   (ii) Other property:
(c) Make provision in a building used for the storage or processing of significant quantities of hazardous substances to prevent significant adverse effects on the environment (whether within the immediate locality or otherwise) arising from an emergency involving fire within that building:
(d) Provide for the protection of other property from physical damage resulting from the construction, use, and demolition of any building:
(e) Provide access and facilities to and within buildings, to which section 25 of the Disabled Persons Community Welfare Act 1975 applies; and
(f) Assessing, in relation to the application of controls relating to building work and the occupation of buildings, the potential costs and benefits of those controls.
Building

New

Welfare Act 1975 applies, for people with disabilities:

(f) Facilitate the efficient use of energy, in the case of new
buildings, during the intended life of those buildings.

5 (3) In determining the extent to which the matters provided
for in subsection (1) of this section shall be the subject of control,
due regard shall be had to the national costs and benefits of any
control, including (but not by way of limitation) safety, health,
and environmental costs and benefits.

5. All building work to comply with building code—
(1) All building work shall comply with the building code to the
extent required by this Act, whether or not a building consent
is required in respect of that building.

(2) Except as specifically provided to the contrary in any Act,
no person, in undertaking any building work, shall be required
to achieve performance criteria additional to or more restrictive
in relation to that building work than the performance criteria
specified in the building code.

5A. Existing buildings not required to be upgraded—
Except as specifically provided to the contrary in this Act,
nothing in this Act shall be read as requiring any building, the
construction of which was completed or commenced before the
coming into force of Part VII of this Act, to meet the
requirements of the building code.

6. Avoiding unreasonable delay—Every person who
exercises or carries out functions, powers, or duties or is
required to do anything under this Act for which no time limits
are prescribed shall do so as promptly as is reasonable in the
circumstances.

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PART III
FUNCTIONS OF MINISTER

7. Functions of Minister—The Minister shall have the
following functions under this Act:

(a) The making of national policy in relation to building:
(b) Any other functions specified in this Act.

PART IV
FUNCTIONS, POWERS, AND DUTIES OF BUILDING INDUSTRY AUTHORITY

Establishment and Functions of Authority

8. Building Industry Authority—(1) There is hereby established a body to be known as the Building Industry Authority.
   (2) The Authority shall be a body corporate with perpetual succession and a common seal.
   (3) The Authority shall be capable of—
      (a) Acquiring, holding, and disposing of real and personal property:
      (b) Entering into contracts:
      (c) Suing and being sued:
      (d) Doing and suffering all such things as bodies corporate may do and suffer.
   (4) The Authority shall be a Crown agency for the purposes of the Public Finance Act 1989, and, notwithstanding section 1 (3) (3A) of that Act, Part V of that Act shall apply to the Authority as if that Part of the Act were in force on the commencement of this section.
   (5) The provisions of the First Schedule to this Act shall have effect as to the constitution and proceedings of the Authority and other matters relating thereto.

9. Membership of Authority—(1) The Authority shall consist of not more than 8 members appointed by the Minister.
   (2) When considering whether a person is suitable to be appointed as a member of the Authority, the Minister shall have regard to the need to ensure that the Authority possesses a mix of knowledge and experience in matters coming before the Authority, including knowledge and experience in—
      (a) Architecture, engineering, and other building sciences:
      (b) Economic, commercial, and business affairs:
      (c) Consumer affairs and the provision of facilities for disabled persons:
      (d) Local government and resource management.
10. Functions of Authority—(1) The Authority shall have the following functions under this Act:

(a) Advising the Minister on the effect and implementation of this Act:

(b) After consultation with appropriate persons and organisations, advising the Minister on matters relating to building control (and occupancy control, including the building code):

(c) Approving documents for use in establishing compliance with the provisions of the building code:

(d) Determining matters of doubt or dispute in relation to building control (and occupancy control):

(e) Undertaking reviews of the operation of territorial authorities and building certifiers in relation to their functions under this Act:

(f) Approving building certifiers:

(g) Granting accreditations of building products and processes:

(h) Disseminating information (relating to building control and occupancy control) and providing educational programmes on matters relating to building control:

(i) Generally taking all such steps as may be desirable to achieve the purposes of this Act:

(j) Any other functions specified in this Act.

(2) Subject to this Act, in the exercise of its functions and powers the Authority shall establish for its use, and for the use of building referees, procedures that are appropriate and fair in the circumstances and shall comply with the principles of natural justice.

11. Powers of Authority—(1) The Authority shall have all powers that are reasonably necessary or expedient to enable it to perform its functions.

(2) Without limiting subsection (1) of this section, the Authority may—
(a) Purchase, take on lease, hire, or otherwise acquire any real or personal property, or any interest in any real or personal property:
(b) Improve, manage, develop, sell, lease, hire, or otherwise deal with or dispose of any real or personal property vested in the Authority:
(c) Accept, for the purposes of the Authority, money, land, or other property provided by any organisation or person by way of grant, subsidy, donation, gift, fee, subscription, or otherwise:
(d) Make grants or advances of money, on such conditions as it thinks fit, or pay any fee or subscription, to any organisation or person with similar or related functions or carrying out work related to that of the Authority:
(e) Appoint committees, whether or not comprised of members of the Authority, and engage consultants and hearing adjudicators building referees.

11A. Authority to comply with Government policy—
(1) In the performance and exercise of its functions, duties, and powers the Authority shall comply with any directions relating to the policy of the Government that are given by the Minister to the Authority by notice in writing.
(2) Where a notice is given to the Authority under subsection (1) of this section, the Minister shall, as soon as practicable after the giving of the notice,—
(a) Publish a copy of the notice in the Gazette; and
(b) Lay a copy of the notice before the House of Representatives.

12. Reviews by Authority—(1) The Authority may, of its own motion or at the request of the Minister, undertake a review of the operation by a territorial authority (or building certifier) of their functions under this Act.
(2) In undertaking a review under subsection (1) of this section, the Authority shall give the territorial authority (or building certifier, as the case may be,) the opportunity to make written submissions to it, shall establish procedures that are appropriate and
Building in the circumstances, and shall comply with the principles of natural justice).

(3) If the Authority believes that a territorial authority (or building certifier) is not fulfilling its functions under this Act it shall make a written report to the Minister.

**Matters of Doubt or Dispute for Determination by Authority**

13. **Definition of party**—In sections 14 to 17 of this Act, “party” means—

(a) The territorial authority affected; and

(b) Any building certifier affected; and

(c) The owner (of the land) affected or the owner’s agent; and

(d) The owner (of any other land) of other property (if the matter for determination relates to a provision in the building code that has the purpose of protecting that other property on it) that other property; and

(e) Any person who or organisation which (in terms of any other Act) has a right or an obligation to give notice in writing to a territorial authority in respect of matters to which this Act relates.

14. **Matters of doubt or dispute relating to building control or occupancy control**—(1) If any doubt or dispute arises in respect of—

(a) Whether particular matters comply with the provisions of the building code; or

(b) The territorial authority’s decision in relation to—

(i) The issuing of or the refusal to issue, or the cancellation of, any building consent (or amendment to a consent), notice to rectify, code compliance certificate, or compliance schedule, or any amendment thereto; or

(ii) Any condition attached to a building consent (or amendment to a consent), notice to rectify, code compliance certificate, or compliance schedule, or any amendment to any such condition; or

(iii) The granting or refusal of any waivers or modifications under section 27(4) of this Act; or
(iv) Any notice to rectify any work on the construction of a building under section 41 of this Act; or

(c) Any building certifier's issuing of or refusal to issue a certificate under section 49 of this Act; or

(d) The exercise by a territorial authority of its powers under sections 33 to 39 of this Act—

any of the parties may apply to the Authority for a determination in respect of the doubt or dispute.

(2) The authority, in considering a matter under subsection (1) of this section, shall establish procedures that are appropriate and fair in the circumstances and shall comply with the principles of natural justice.

(3) In determining an appropriate procedure for the purposes of subsection (1) of this section, the Authority shall—

(a) Avoid unnecessary delay and formality; and

(b) Recognise tikanga Maori, and receive evidence, written or spoken, in Maori (provided it is accompanied by a translation into English); and

(c) Receive any relevant evidence whether or not it would be admissible in a Court of law.

(3A) Except as provided in section 66 of this Act, if any dispute or doubt arises which can be the subject of a determination, no proceedings, other than injunctive proceedings, shall be instituted in the District Court or the High Court unless the applicant in the Court, or any other party entitled to do so, has already applied for a determination of that dispute or doubt, and the Authority has made its determination.

(3B) Any consent, notice, certificate, or schedule issued by a territorial authority that is or arises out of a matter submitted to the Authority under subsection (1) of this section shall be deemed to be suspended pending the determination of that
Building

New

matter, but any direction in a notice under section 36 of this Act to cease building work for safety reasons shall remain in force pending the determination.

14A. Matters before Authority—(1) An application to the Authority under section 14 of this Act shall be limited to whether or not, or to what extent, particular building work or proposed building work (including any actual or proposed demolition) complies with all of the provisions, or with any particular provision, of the building code.

(2) Notwithstanding the provisions of subsection (1) of this section, no decision of a territorial authority in terms of section 29(6) of this Act to grant or to refuse to grant a waiver or modification in respect of the requirements for a fence to prevent young children having access to a swimming pool shall be capable of being referred to the Authority for determination under section 14 of this Act.

15. Processing application for determination—(1) The Authority—

(a) May require the applicant for a determination to provide further documents in support of the application; and

(b) Shall require the applicant to provide each of the other parties (if any) and any other appropriate person with copies of the application and any documents accompanying the application or provided under paragraph (a) of this subsection.

(2) If the applicant is unable to comply with any requirement of the Authority under subsection (1) of this section the applicant shall notify the Authority of the reasons.

(3) Any submission in respect of any application for a determination received by the Authority before it has determined the matter shall be considered by the Authority.

(4) The applicant, and every person who has made a written submission, may speak (either personally or through a representative) and call evidence in support.

(5) The Authority shall not make a decision until the applicant has been given an opportunity to study all submissions and to respond to them.
16. Determinations by Authority—A determination by the Authority in relation to a matter referred to it under section 14 of this Act may incorporate waivers or modifications and conditions that a territorial authority is empowered to grant or impose and shall—

(a) Confirm, reverse, or modify the disputed decision to which it relates or determine the matter which is in doubt; and

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(b) Be given to the parties concerned; and
(c) Be binding on the parties concerned.

New

(b) Be given to the parties concerned and, in the case of a determination under section 59 or section 66 (1A) of this Act, be submitted to the District Court; and

(c) Be binding on the parties concerned, except as provided by section 59A of this Act.

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17. Hearings by hearing adjudicators—(1) Without limiting the Authority’s powers under section 14 of this Act, the Authority may from time to time engage suitable persons to be hearing adjudicators for the purpose of hearing applications under the said section 14.

(2) Every such hearing shall be held as expeditiously as possible and subsections (2) and (3) of section 14 and subsections (3) to (5) of section 15 of this Act shall apply in respect of every such hearing.

(3) A hearing adjudicator may receive such relevant evidence and make such other inquiries as the hearing adjudicator thinks fit; and all evidence and information so received or ascertained (otherwise than at the hearing) shall be disclosed to every party to the inquiry.

(4) A hearing adjudicator may receive any relevant evidence under this section, whether or not the evidence would be admissible in a Court of law.
In reaching a decision, the hearing adjudicator shall act independently and comply with the principles of natural justice.

On the completion of any hearing—

(a) The hearing adjudicator may, if so authorised by the Authority, give a decision on the application; or

(b) The hearing adjudicator shall, if not so authorised or for any reason declines to give a decision, forward to the Authority a written report of the hearing adjudicator’s findings together with any recommendation, and shall at the same time send a copy thereof to the applicant and all parties.

Notice of any decision shall be sent to the Authority by the hearing adjudicator, and the Authority shall give effect to the decision as if it were a determination of the Authority.

17. Hearings by building referees—(1) Without limiting the Authority’s powers under section 14 of this Act, the Authority may from time to time engage suitable persons (in this Act called “building referees”) for the purpose of holding inquiries in relation to applications under the said section 14.

(2) Every such inquiry shall be held as expeditiously as possible and subsection (3) of section 14 and subsections (3) to (5) of section 15 of this Act shall apply in respect of every such inquiry.

(3) A building referee may receive such relevant evidence and make such other inquiries as the building referee thinks fit, and all evidence and information so received or ascertained (otherwise than at the hearing) shall be disclosed to every party to the inquiry.

(4) A building referee may receive any relevant evidence under this section, whether or not the evidence would be admissible in a Court of law.

(5) On the completion of any inquiry—

(a) A building referee may, if so authorised by the Authority, give a decision on the application; or

(b) A building referee shall, if not so authorised or for any reason declines to give a decision, forward to the Authority a written report of the building referee’s findings together with any recommendation, and
shall at the same time send a copy thereof to the applicant and all parties.

(6) Notice of any decision shall be sent to the Authority by a building referee, and the Authority shall give effect to the decision as if it were a determination of the Authority.

**Miscellaneous Provisions**

18. **Delegation by Authority**—(1) The Authority may delegate in writing to any committee appointed by the Authority, or to any of the Authority's employees, any of the Authority's functions, powers, rights, and duties under this Act, other than—

(a) The fixing of charges under section 19 of this Act; and

(b) The power of delegation conferred by this subsection.

(2) Any delegation under this section may be made on such terms and conditions as the Authority thinks fit, and may be revoked at any time by notice to the delegate.

(3) Except as provided in the instrument of delegation, every person to whom any function, power, right, or duty has been delegated under this section may, without confirmation by the Authority, exercise or perform the function, power, right, or duty in like manner and with the same effect as the Authority could itself have exercised or performed it.

(4) Every person purporting to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.

(5) A delegation under this section does not affect the performance or exercise of any function, power, right, or duty by the Authority.

19. **Authority may fix charges**—(1) The Authority may from time to time fix charges for exercising or performing any of its functions, powers, or duties under this Act or under the regulations.

(2) Charges fixed under subsection (1) of this section may be specific amounts or may be determined by reference to scales of charges or other criteria determined or fixed by regulations made under this Act.

(3) Where a standard charge fixed in accordance with subsection (1) of this section is, in any particular case, inadequate to enable the Authority to recover its actual and reasonable
Building costs in respect of the matter concerned, the Authority may require the person who is liable to pay the standard charge to also pay an appropriate additional charge to the Authority.

(4) When fixing charges pursuant to this section, the Authority shall fix the charge so as to recover the actual and reasonable costs incurred by it in respect of the exercise or performance of the function, power, or duty to which the charge relates; and may fix different charges for different costs it incurs in the exercise or performance of its various functions, powers, and duties under this Act.

(5) The Authority may, in any particular case and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable.

(6) Where a charge of a kind referred to in this section is payable to the Authority, it need not perform the action to which the charge relates until the charge has been paid to it in full.

PART V

FUNCTIONS, POWERS, AND DUTIES OF TERRITORIAL AUTHORITIES

20. Functions and duties of territorial authorities—Every territorial authority shall have the following functions under this Act within its district:

(a) The administration of this Act and the regulations;
(b) To receive and consider applications for building consents and occupancy consents;
(c) To approve or refuse any application for a building consent or an occupancy consent within the prescribed time limits;
(d) To determine whether an application for a waiver or modification of the building code, or any document for use in establishing compliance with the provisions of the building code, should be granted or refused;
(e) To enforce the provisions of the building code and regulations:
(f) Any other function specified in this Act.
20A. Transfer of powers—(1) A territorial authority that has functions, powers, or duties under this Act may transfer any one or more of those functions, powers, or duties to another territorial authority in accordance with this section, other than this power of transfer.

(2) A territorial authority that transfers any function, power, or duty under this section shall continue to be responsible for the exercise thereof.

(3) A territorial authority shall not transfer any of its functions, powers, or duties under this section unless—

(a) It has used the special consultative procedure specified in section 716A of the Local Government Act 1974; and

(b) Before using that special consultative procedure it serves notice on the Minister of its proposal to transfer the function, power, or duty; and

(c) Both authorities agree that the transfer is desirable on the following grounds:

(i) Efficiency;

(ii) Technical or special capability or expertise.

(4) A transfer of functions, powers, or duties under this section shall be made by agreement between the authorities concerned and on such terms and conditions as are agreed.

(5) A territorial authority to which any function, power, or duty is transferred under this section may accept such transfer; and upon any such transfer, its functions, powers, and duties shall be deemed to be extended in such manner as may be necessary to enable it to undertake, exercise, and perform the function, power, or duty.

(6) A territorial authority which has transferred any function, power, or duty under this section may change or revoke the transfer at any time by notice to the transferee.

(7) A territorial authority to which any function, power, or duty has been transferred under this section may relinquish the transfer in accordance with the transfer agreement.

21. Duty to gather information and monitor—Every territorial authority shall gather such information, and undertake or commission such research, as is necessary to carry out effectively its functions under this Act.
22. Records—(1) Every territorial authority shall keep reasonably available(, at its principal office,) information which is relevant to the administration of this Act(, and the monitoring of building consents and occupancy consents,) to enable the public to be informed of their obligations and to participate effectively under this Act.

(2) The information to be kept by a territorial authority under subsection (1) of this section shall be kept at least for the life of the building to which it relates, and shall include—

(a) All plans and specifications submitted to it in relation to an application for a building consent (or occupancy consent); and

(b) Records of each building consent and occupancy consent granted by it; and

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(b) Records of project information memoranda, building consents, code compliance certificates, compliance schedules, building warrants of fitness, and any orders issued under sections 56 to 59 of this Act, in respect of a building; and

(ba) Records of any information on any land or building received from a statutory authority which has power to classify any land or buildings for any purpose; and

(c) A summary of (all) written complaints received by it during the preceding 5 years concerning alleged breaches of the Act and information on how it dealt with each such complaint.

(3) Subject to the Local Government Official Information and Meetings Act 1987, every person shall have the right to inspect the information referred to in subsections (1) and (2) of this section during ordinary office hours, (without charge,) other than any plan or specification that the person who submitted it has marked as being confidential because of the need to safeguard the copyright of the plan or specification or because of any requirements of the owner of the building relating to the security of the building.

(4) Subject to section 74 of this Act, a local authority shall make photocopying facilities available to persons who inspect
documents under subsection (3) of this section, and may charge a reasonable fee for their use.

23. Charges by territorial authorities—(1) A territorial authority may from time to time, in accordance with section 690A of the Local Government Act 1974, fix charges of any or all of the following kinds:
(a) Charges payable by applicants for or holders of building consents (or occupancy consents (but subject to section 34(3) of this Act)) for the carrying out by the territorial authority of its functions under this Act:

(aa) Charges for the issue of code compliance certificates:
(ab) Charges for the issue of compliance schedules (other than for buildings to which section 38(6) of this Act applies):

(b) Charges for providing information in respect of building consents (and occupancy consents,) payable by the person requesting the information:
(c) Charges for providing information contained in a (land) project information memorandum:
(d) Any other kind of charge authorised under this Act.
(2) Where a charge fixed in accordance with subsection (1) of this section is, in any particular case, inadequate to enable a territorial authority to recover its actual and reasonable costs in respect of the matter concerned, the territorial authority may require the person who is liable to pay the standard charge to also pay an appropriate additional charge to the territorial authority.
(3) Where a territorial authority accepts a building certificate issued under section 49 of this Act, the territorial authority’s charge shall be reduced accordingly.
(4) Where a charge of a kind referred to in this section is payable to a territorial authority, the territorial authority need not perform the action to which the charge relates until the charge has been paid to it in full.

24. Non-performance by territorial authority—(1) If the Minister considers that any territorial authority is not exercising or performing any of its functions, powers, or duties under this Act to the extent that the Minister considers necessary to achieve the purposes of this Act, the
Minister shall consult with the Minister of Local Government and may appoint, on such terms and conditions as the Minister thinks fit, one or more persons to exercise or perform all or any of those functions, powers, or duties in place of the territorial authority.

(2) Before making any appointment under subsection (1) of this section, the Minister shall give the territorial authority at least 20 days’ notice in writing of the Minister’s intention to do so.

(3) Any person appointed under subsection (1) of this section to exercise or perform the functions, powers, or duties of a territorial authority under this Act may do so as if the person were the territorial authority; and the provisions of this Act shall apply accordingly.

(4) All costs, charges, and expenses incurred by the Minister for the purposes of this section, or by a person appointed by the Minister under this section, in exercising or performing any functions, powers, or duties of a territorial authority, shall be recoverable from the territorial authority as a debt due to the Minister or may be deducted from any money payable to the territorial authority by the Minister.

(5) In making any such appointment the Minister shall specify the period for which the appointment is made, and it may from time to time be renewed.

(6) Any person or persons appointed by the Minister may resign in writing addressed to the Minister by giving at least 30 days’ notice.

(7) In determining whether any appointment under this section should be renewed or whether a new appointment should be made, the Minister shall consider whether the territorial authority is capable of exercising its powers, functions, and duties under this Act, and, if the Minister considers the territorial authority is so capable, the territorial authority shall be directed by the Minister to resume those powers, functions, and duties.

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PART VI
BUILDING AND OCCUPANCY CONSENTS

Need for Building and Occupancy Consents

25. Buildings not to be constructed, used, or demolished without consent—(1) It shall not be lawful to
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carry out building work or use any building except in accordance with—

(a) A consent to carry out building work (in this Act called a “building consent”); or

(b) A consent to occupy a building (in this Act called an “occupancy consent”)—

issued by the territorial authority in accordance with this Act.

(2) This section shall not apply in respect of—

(a) Any building or building work to which section 3 (2) of this Act applies; or

(b) Any work specified in the Second Schedule to this Act as being work for which a building consent is not required; or

(c) Any building work carried out by a territorial authority under section 58 or section 60 of this Act; or

(d) The use of any building existing at the commencement of this Part of this Act until the territorial authority, after receiving an application under section 33 (1) (a) of this Act in respect of that building, has made a decision under section 34 of this Act in relation to the application; or

(e) A building to which section 33 (2) of this Act applies.

Building Consents

26. Applications for building consents—(1) The owner of any land on which it is intended to carry out any building work, or the owner's agent, shall, before the commencement of the work, apply to the territorial authority for a building consent in respect of the work.

(2) Every application for a building consent shall be in the prescribed form and be accompanied by the fee fixed by the Council in relation to the making of the application, and by such plans, specifications, and information as the territorial authority reasonably requires.

(3) A series of applications for building consent may be made in respect of stages of the proposed building work.

(4) An application for an amendment to a building consent shall be made in the same manner as the original application.

(5) A territorial authority shall accept the following as establishing compliance with all or any of the provisions of the building code:
(a) A certificate from a building certifier that the building work will comply with the building code:
(b) A determination to that effect issued by the Authority under Part IV of this Act in relation to the building work:
(c) A current and relevant accreditation certificate:
(d) Compliance with any document prepared or approved by the Authority under section 43 of this Act.

27. Processing applications for building consents—
(1) The territorial authority shall grant or refuse an application for a building consent within the prescribed period.
(2) A territorial authority may, within the prescribed period, require further information in respect of the application and, for the purposes of this Act, the prescribed period shall be deemed to have been suspended until the further information is received by the territorial authority.
(3) After considering an application for building consent, the territorial authority shall grant the consent if it is satisfied that the provisions of the building code would be met if the building work was properly completed in accordance with the plans and specifications submitted with the application.
(4) The territorial authority may grant a building consent subject to—
(a) Such waivers or modifications of the building code, or any document for use in achieving compliance with the building code, subject to such conditions as the territorial authority considers appropriate; and
(b) Such conditions as the territorial authority is authorised to impose under this Act or the regulations.
(5) In formulating any additional conditions under subsection 4(b) of this section the territorial authority shall have due regard to the provisions of the building code and the matters set out in section 40 of this Act.
(6) A territorial authority shall refuse to grant a building consent if—
(a) The land on which the building work is to take place is subject to, or is likely to be subject to, erosion, avulsion, subsidence, inundation, or slippage; or
(b) The building work itself is likely to accelerate, worsen, or result in erosion, avulsion, subsidence, inundation, or slippage of that land or any neighbouring property—unless the territorial authority is satisfied that adequate provision has been or will be made to—

(c) Protect the land or building work or neighbouring property concerned from erosion, avulsion, subsidence, inundation, or slippage; or

(d) Restore any damage to the land or neighbouring property concerned as a result of the building work.

(7) Section 304 of the Local Government Act 1974 (relating to the giving of security by a subdividing owner) shall, with the necessary modifications, apply in any case where the territorial authority has issued a consent subject to any condition imposed under this section.

(8) The territorial authority, on the written application of an applicant for a building consent, shall issue to that applicant, as a condition precedent to the issue of the building consent or as a condition of that consent, details of—

(a) All authorisations or requirements (if any) in respect of the proposed building that the territorial authority is authorised to refuse or impose under any Act other than this Act, including, but not limited to, authorisations or requirements in respect of—

(i) The intended use of the proposed building; and
(ii) The site and external dimensions of the proposed building; and
(iii) Provisions to be made for vehicular access; and
(iv) Precautions to be taken in building over or adjacent to any road or public place; and
(v) Provisions to be made for disposing of stormwater and wastewater; and
(vi) Precautions to be taken in building over any existing drains or sewers; and
(vii) Proposed connections to public utilities; and

(b) In respect of each such authorisation or requirement, either—

(i) Confirmation that it has been granted or imposed, together with such information as is necessary to identify any relevant documentation; or
(ii) A statement of the conditions to be observed in order for it to be granted or imposed; and

(c) Confirmation that, subject to the other provisions of this Act, building work may be undertaken subject only to the requirements referred to in paragraph (b)(i) of this subsection and the conditions referred to in paragraph (b)(ii) of this subsection.

28. Grant or refusal of building consent—(1) The territorial authority shall issue each building consent to the applicant in the prescribed form on the payment of any fee fixed by the territorial authority in relation to the consent and on the making of any security that the territorial authority is entitled to charge or require under this Act or the regulations.

(2) If the territorial authority refuses to grant a building consent it shall notify the applicant, in writing, specifying the reasons.

29. Failure to process application for building consent—(1) If the territorial authority fails to decide, within the prescribed period, whether to grant or refuse a building consent, the applicant may commence work on the building work in accordance with the application, but only work that is to be inspected by a building certifier and that is covered by—

(a) A building certificate from a building certifier under section 49 of this Act that the building work will comply with this Act and the building code; or

(b) A determination to that effect issued by the Authority under Part IV of this Act in relation to the building work; or

(c) A relevant and current accreditation certificate.

(2) The applicant may deduct from any fee payable to the territorial authority in respect of the building consent the actual and reasonable charges of any approved certifier engaged for the purposes of subsection (1) of this section, and any such charge not so deducted may be recovered from the territorial authority as a debt.

(3) The applicant shall notify the territorial authority in writing of the applicant’s intention to proceed under subsection (1) of this section.
30. Expiry, lapse, and cancellation of building consent—(1) A building consent shall lapse and be of no effect if—

(a) The building work concerned has not been commenced within 6 calendar months after the date of issue of the consent or within such further period as the territorial authority in its absolute discretion may allow; or

(b) Reasonable progress on the building work has not been made within 12 calendar months after work has commenced or within such further period as the territorial authority in its absolute discretion may allow.

(2) The territorial authority may cancel a building consent in whole or in part forthwith if—

(a) There has been a change of circumstances such that the territorial authority believes that the proposed building work may contravene any provision of the building code or any Act:

(b) The rectification work required to be done by a notice to rectify under section 41 of this Act has not been commenced within a reasonable time, or there has been a breach of a condition of any such notice.

(3) When a territorial authority cancels a building consent all building work to which it relates shall cease immediately, except for work necessary to properly secure and protect the building and to keep the site in a safe condition.

(4) If a building consent is cancelled under subsection (3) of this section, the owner may apply for a new consent as if making an application in respect of an alteration to an existing building.

Additional Requirements for Existing Buildings

31. Alterations to existing buildings—(1) No building consent shall be granted for the alteration of an existing building unless the territorial authority is satisfied that after the alteration the building will—

(a) Comply with the provisions of the building code for access and means of escape from fire as nearly as is reasonably practicable to the same extent as if it were a new building; and
(b) Continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

(2) A territorial authority may refuse building consent for the alteration of an existing building if it considers that such alteration should not be made having due regard to—
(a) The age or state or general condition of the building; or
(b) Any special feature or characteristic of the land on which the building is erected or any other land that might affect or be affected by the building.

32. Buildings having limited intended lives—(1) If any proposed building, or any existing building proposed to be altered, is intended to have a future use of not more than 50 years, any building consent for that building shall be issued only on condition that the building shall be removed or demolished on or before the end of the specified intended life, and subject to such other conditions as the territorial authority considers necessary.

(2) The provisions of this section shall be in addition to the requirements of sections 26 to 30 of this Act.

33. Applications for occupancy consents—(1) Subject to subsection (2) of this section, the owner of every building shall apply to the territorial authority for an occupancy consent in respect of that building—
(a) In the case of a building existing at the commencement of this Part of this Act, within 1 month after being given written notice to do so by the territorial authority; or
(b) In the case of a new building, by giving a prescribed notice of completion.

(2) Subsection (1)(a) of this section shall not apply to a building existing at the commencement of this Act if—
(a) The building is used only as a detached household unit or contains only household units; and
(b) Each household unit in the building has facilities for access, means of escape from fire, cooking, and personal hygiene that are not shared by any other household unit; and
(c) The building does not have any automatic systems whose satisfactory operation is necessary for compliance with the provisions of the building code; and

(d) No building consent has been issued in respect of any alterations to the building.

(3) Every application for an occupancy consent shall be in the prescribed form.

(4) An application for an occupancy consent may be made in respect of all or part of any building and may extend to ancillary buildings or all buildings in a building complex.

(5) An application for an amendment to an occupancy consent, including an amendment to the compliance schedule (if any) to an occupancy consent, shall be made in the same manner.

(6) Every territorial authority shall give a notice under subsection (1)(a) of this section as soon as is reasonably practicable after this Part of this Act comes into operation.

34. Processing applications for occupancy consent—

(1) After considering an application for an occupancy consent, the territorial authority shall grant the consent if it is satisfied—

(a) In the case of an existing building, that the territorial authority has all the information needed to prepare the occupancy consent:

(b) In the case of a new building, that the building has been properly completed.

(2) The territorial authority may grant an occupancy consent subject to—

(a) Such conditions as the territorial authority is authorised to impose under this Act and the regulations:

(b) Any applicable conditions of a building consent:

(c) Such waivers or modifications of the building code, or any document for use in achieving compliance with the building code, subject to such conditions as the territorial authority considers appropriate.

(3) The territorial authority shall issue each occupancy consent to the applicant free of charge, but—

(a) The territorial authority may delay issuing the occupancy consent until any outstanding fees have been paid or security provided in respect of a building under construction; and
(b) Nothing in this subsection shall prevent the territorial authority from charging fees for processing amendments to occupancy consents or reinstatements of cancelled occupancy consents.

(4) If the territorial authority refuses to grant an occupancy consent it shall—

(a) In the case of an existing building, notify the applicant in writing, specifying the reasons:

(b) In the case of a new building, issue a notice under section 41 of this Act requiring any work not done in accordance with the building code to be rectified.

35. Compliance schedule—(1) The territorial authority shall issue, in respect of each building covered by an occupancy consent, a compliance schedule specifying inspection and maintenance procedures in respect of prescribed features that are to be followed as a condition of the occupancy consent, but no compliance schedule shall be issued in respect of a building if—

(a) The building is to be used only as a detached household unit or contains only household units; and

(b) Each household unit in the building has facilities for access, means of escape from fire, cooking, and personal hygiene that are not shared by any other household unit; and

(c) The building does not have any automatic systems whose satisfactory operation is necessary for compliance with the provisions of the building code.

(2) Each compliance schedule shall include—

(a) A list of such of the following features as are present in or form part of the building:

(i) Means of escape from fire:
(ii) Fire-rated construction:
(iii) Emergency-warning systems:
(iv) Emergency lighting:
(v) Signs required to comply with the provisions of the building code:
(vi) Safety barriers:
(vii) Automatic sprinkler systems:
(viii) Lifts or escalators:
(ix) Mechanical ventilation systems:
(x) Any other automatic system whose satisfactory operation is necessary for compliance with the provisions of the building code;

(xi) Means of access and facilities for use by disabled persons;

(xii) Any other special feature of the building the satisfactory operation of which is necessary for compliance with the provisions of the building code;

and

(b) The inspection and maintenance procedures to be followed in respect of each of the listed features.

(5) Inspection and maintenance procedures shall specify the frequency of inspections and may be identified by description, by reference to a document prepared or approved by the Authority under section 43 of this Act, or as being the procedures considered appropriate by an independent qualified person.

36. Inspection and maintenance—(1) It shall be a condition of every occupancy consent that the owner shall ensure that appropriate ongoing inspection and maintenance procedures are undertaken for the purpose of ensuring that the building remains in a safe and sanitary condition.

(2) Without limiting the generality of subsection (1) of this section, the owner of any building for which a statement of compliance has been issued under section 35 of this Act shall ensure—

(a) That the inspection and maintenance procedures specified in the current statement of compliance (if any) are undertaken; and

(b) That adequate records are made of the undertaking of such (if any) of those procedures as are specified to be undertaken by a person other than the owner; and

(c) That those records are kept available for inspection by the territorial authority for not less than 2 years after they are made.

(3) Inspection shall be undertaken by or on behalf of the owner, and inspections shall be made at least once in each period covered by a compliance statement, by independent qualified persons in respect of—

(a) Means of escape from fire; and
(b) Fire-rated construction; and
(c) Automatic sprinkler systems; and
(d) Lifts and escalators; and
(e) Emergency warning systems; and
(f) Any other special feature specified in the compliance schedule.

(4) Maintenance shall be undertaken by independent qualified persons in respect of—
(a) Automatic sprinkler systems; and
(b) Lifts and escalators; and
(c) Emergency-warning systems; and
(d) Any other automatic system or special feature of the building that the territorial authority considers to be of such complexity as to necessitate inspection and maintenance by an independent qualified person.

(5) The owner shall obtain a written report from an independent qualified person each time that that person undertakes a procedure in accordance with the compliance schedule.

(6) At any time during the subsequent 2 years the owner shall, on ceasing to be the owner, deliver those reports to the new owner.

(7) For the purposes of this section and of section 35(3) of this Act an independent qualified person shall be a person who—
(a) Has no financial interest in the building other than as a qualified person; and
(b) Is accepted by the territorial authority as being appropriately qualified to undertake the inspection and maintenance of the feature concerned.

(8) For the purposes of subsection (7) of this section—
(a) Involvement with the construction of the building as the fully-paid designer, builder, manufacturer, or supplier of the feature concerned; and
(b) Entitlement to any fee for acting as an independent qualified person—shall not be regarded as constituting a financial interest.

37. Statements of compliance—(1) At least once in every 12 months from the issuing date of the occupancy consent, the territorial authority shall give the owner written notice to make a statement of compliance.
Within 7 days after receiving such a notice, the owner shall supply the territorial authority with a statement of compliance in the prescribed form stating either—

(a) That the owner is not aware of any breach of the conditions of the occupancy consent, breach of the provisions of the compliance schedule (if any) or deterioration or damage to the building that might have caused the building to become dangerous or insanitary; or

(b) That there has been such a breach, deterioration, or damage and the remedial action that the owner has taken or intends to take.

This section shall not apply in respect of any building where—

(a) The building is used only as a detached household unit or contains only household units; and

(b) Each household unit in the building has facilities for access, means of escape from fire, cooking, and personal hygiene that are not shared by any other household unit; and

(c) The building does not have any automatic systems whose satisfactory operation is necessary for compliance with the provisions of the building code.

Cancellation of occupancy consents—(1) Unless earlier cancelled, an occupancy consent shall expire on the expiry date (if any) stated on that consent.

(2) The territorial authority may cancel, or impose conditions or additional conditions on, an occupancy consent if—

(a) The building is used other than in accordance with the current consent; or

(b) Records of the inspection and maintenance specified in the current statement of compliance (if any)—

(i) Are defective; or

(ii) Show that the inspection and maintenance is not up-to-date; or

(c) Damage to the building is such that the territorial authority considers continuing compliance with the provisions of the building code cannot be assured; or

(d) Destruction or demolition of the building has occurred; or
(e) A notice, order, or requisition under this or any other Act has been issued which is incompatible with the continued use of the building in accordance with the current occupancy consent.

(2) On becoming aware of any of the occurrences set out in subsection (2) of this section, the territorial authority may give written notice to the owner of its intention to cancel, or to impose additional conditions on, the occupancy consent unless specified remedial action (if any is possible) is completed within a specified time.

(3) In formulating any additional conditions under subsection (3) of this section, the territorial authority shall have due regard to the provision of the building code and the matters set out in section 40 of this Act.

(4) The cancellation of, or the imposition of additional conditions on, an occupancy consent shall be by notice in accordance with section 59 of this Act, and may apply to all or any part of the building concerned, and be subject to such conditions as the territorial authority specifies.

39. Changes of use of buildings—(1) It is the duty of an owner of a building to advise a territorial authority in writing if it is proposed to change the use of that building.

(2) No occupancy consent shall be issued or amended to permit a change of use for a building unless the territorial authority is satisfied that in its new use the building will—

(a) Comply with the provisions of the building code for access, means of escape from fire, protection of household units from fire, sanitary facilities, and structural behaviour as nearly as is reasonably practicable to the same extent as if it were a new building for the new use; and

(b) Continue to comply with the other provisions of the building code to at least the same extent as before the change of use, but subject to section 33 of this Act.

40. Matters for consideration by territorial authorities in relation to consents—(1) In the exercise of its powers under sections 26 to 39, 56, and 57 of, and the Second Schedule to, this Act the territorial authority shall have due regard to the following matters:
(a) The size of the building; and
(b) The complexity of the building; and
(c) The location of the building in relation to other buildings, public places, and natural hazards; and
(d) The intended life of the building; and
(e) How often people visit the building; and
(f) How many people spend time in or in the vicinity of the building; and
(g) The intended use of the building, including any special traditional and cultural aspects of the intended use; and
(h) The expected useful life of the building and any prolongation of that life; and
(i) The reasonable practicality of any work concerned; and
(j) In the case of an existing building, any special historical or cultural value of that building; and
(k) Any other matter that the territorial authority considers to be relevant.

(2) In addition to the matters provided for in subsection (1) of this section, the territorial authority, in the exercise of such powers, shall comply with the provisions of section 25 of the Disabled Persons Community Welfare Act 1975.

Notices of Rectification

41. Notices to rectify—(1) The territorial authority may issue to the owner or to the person undertaking any building work a notice to rectify, in the prescribed form, requiring any building work not done in accordance with the Act or the regulations to be rectified.
(2) A notice under this section may also direct that all or any building work shall cease forthwith until the territorial authority is satisfied that the persons concerned are able and willing to resume operations in compliance with the Act and the regulations.
PART VI
BUILDING WORK AND USE OF BUILDINGS

Project Information Memoranda

25. Applications for project information memoranda—(1) An owner who is contemplating undertaking any building work for which a building consent is required or the owner's agent may, without applying for a building consent under section 28 of this Act, apply to the territorial authority for a project information memorandum in respect of the work.

(2) If no application is made under subsection (1) of this section, an application under section 28 of this Act shall be deemed to include an application for a project information memorandum.

(3) Every application for a project information memorandum shall be in the prescribed form and be accompanied by—

(a) The charge fixed by the territorial authority in relation to the making of the application; and

(b) Such information as the territorial authority reasonably requires in relation to authorisations or requirements (if any) likely to be relevant to the design and construction of the proposed building that the territorial authority is authorised to refuse or impose under any Act, other than this Act, and including (but not limited to) authorisations or requirements in respect of—

(i) The intended use of the proposed building; and

(ii) The location and external dimensions of the proposed building; and

(iii) Provisions to be made for vehicular access; and

(iv) Provisions to be made in building over or adjacent to any road or public place; and

(v) Provisions to be made for disposing of stormwater and wastewater; and

(vi) Precautions to be taken where building work is to take place over any existing drains or sewers or in close proximity to wells or watermains; and

(c) Such information as the territorial authority (acting as agent for a network utility operator by prior agreement with that network utility operator)
Building

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requires in respect of proposed connections to public utilities from the proposed building work.

26. Issuing project information memoranda—(1) After considering an application for a project information memorandum, the territorial authority shall issue the memorandum if satisfied that it has received all information required under section 25 of this Act.

(2) Every project information memorandum shall include—

(a) Information identifying each (if any) special feature of the land concerned, including (but not limited to) potential erosion, avulsion, subsidence, slippage, alluvion, or inundation, or the likely presence of hazardous contaminants, being a feature or characteristic that—

(i) Is likely to be relevant to the design and construction or alteration of the building or proposed building; and

(ii) Is known to the territorial authority; but

(iii) Is not apparent from the district scheme under the Town and Country Planning Act 1977 or the district plan under the Resource Management Act 1991:

(b) Information which, in terms of any other Act, has been notified to the territorial authority by any statutory organisation having the power to classify land or buildings for any purpose:

(c) Details of any existing stormwater or wastewater utility systems which relate to the proposed building work or which are on or adjacent to the site of the proposed building work:

(d) Details of each, if any, authorisation in respect of the proposed building work which the territorial authority or any network utility operator is authorised to refuse or require under any Act, other than this Act, and, in respect of each of them, a statement of the requirements to be met in order for the authorisation to be granted or imposed and the conditions that such an authorisation will be subject to.
(3) Every project information memorandum shall further include, either—

(a) Confirmation, subject to the other provisions of this Act, that building work may be undertaken subject to the requirements of the building consent and subject also to all other necessary authorisations being obtained; or

(b) Notification that building work may not be undertaken because any necessary authorisation has been refused, notwithstanding the issue of any building consent.

(4) For the purposes of this section, the land concerned shall be the land on which the proposed building work is to be undertaken and any other land likely to affect or be affected by the building work.

(5) Where any project information memorandum contains any information previously supplied to the territorial authority by any network utility operator or any statutory organisation that has power to classify land or buildings, a copy of the memorandum shall be supplied by the territorial authority to that operator or that organisation.

Building Consents

27. Buildings not to be constructed, used, or demolished without consent—(1) It shall not be lawful to carry out building work except in accordance with a consent to carry out building work (in this Act called a “building consent”), issued by the territorial authority, in accordance with this Act.

(2) This section shall not apply in respect of—

(a) Any building or building work to which section 3 (2) of this Act applies; or

(b) Any building work specified in the Second Schedule to this Act as being work for which a building consent is not required, but excluding any gasfitting or sanitary plumbing as defined in the Plumbers, Gasholders, and Drainlayers Act 1976 and any prescribed electrical work as defined in the Electrical Registration Act 1979; or

(c) Any building work which the territorial authority is authorised to carry out under this Act.
The Governor-General may from time to time, by Order in Council, add any building work or class of building work to the Second Schedule to this Act as being building work for which a building consent is not required.

28. Applications for building consents—(1) An owner intending to carry out any building work, or the owner’s agent, shall, before the commencement of the work, apply to the territorial authority for a building consent in respect of the work.

(2) Every application for a building consent shall be in the prescribed form and be accompanied by the charge fixed by the territorial authority in relation to the making of the application, and by such plans and specifications and other information as the territorial authority reasonably requires.

(3) A series of applications for building consent may be made in respect of stages of the proposed building work.

(4) An application for an amendment to a building consent shall be made in the same manner as the original application.

(5) A territorial authority may, at its discretion, accept from the applicant a producer statement establishing compliance with all or any of the provisions of the building code.

29. Processing building consents—(1) The territorial authority shall grant or refuse an application for a building consent within the prescribed period.

(2) A territorial authority may, within the prescribed period, require further reasonable information in respect of the application and, for the purposes of this Act, the prescribed period shall be deemed to have been suspended until the further information is received by the territorial authority.

(3) After considering an application for building consent, the territorial authority shall grant the consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work was properly completed in accordance with the plans and specifications submitted with the application.

(4) The territorial authority may grant a building consent subject to—

(a) Such waivers or modifications of the building code, or any document for use in achieving compliance with the
building code, subject to such conditions as the territorial authority considers appropriate; and
(b) Such conditions as the territorial authority is authorised to impose under this Act or the regulations.

(5) In formulating any additional conditions under subsection (4) of this section, the territorial authority shall have due regard to the provisions of the building code and the matters set out in section 41 of this Act.

(6) In exercising its powers under subsection (4)(a) of this section, the territorial authority shall not grant any waiver or modification in respect of a fence required under the building code to prevent young children having access to a swimming pool if that waiver or modification would significantly increase the danger to young children; and where such powers are exercised in respect of those fencing requirements they may only be exercised by a resolution of the territorial authority, or a committee thereof, comprised only of members of the territorial authority.

(7) Notwithstanding subsection (4) of this section, in relation to any building to which section 25 of the Disabled Persons Community Welfare Act 1975 applies, a waiver or modification relating to access to and facilities for use by people with disabilities shall only be granted by the Authority in a determination issued under Part IV of this Act which is in accordance with the requirements of the said section 25.

(8) Where the issue of a building consent involves any waiver or modification of the building code the territorial authority shall notify the Authority of the particulars concerning that waiver or modification.

30. Issue of building consent—(1) The territorial authority shall issue each building consent to the applicant in the prescribed form on the payment of any charge fixed by the territorial authority in relation to the consent.

(2) If the territorial authority refuses to grant a building consent it shall notify the applicant, in writing, specifying the reasons.

(3) The issue of a building consent shall not of itself—
(a) Relieve the owner of the building or proposed building, to which the building consent relates, of any duty or
responsibility under any other Act relating to or affecting the building or proposed building; or

(b) Permit the construction or demolition or removal of the building or proposed building if that construction, demolition, or removal would be in breach of any other Act.

Limitations and Restrictions on Building Consents

31. Building on land subject to erosion, etc.—(1) Except as provided for in subsection (2) of this section, a territorial authority shall refuse to grant a building consent involving construction of a building or major alterations to a building if—

(a) The land on which the building work is to take place is subject to, or is likely to be subject to, erosion, avulsion, alluvion, subsidence, inundation, or slippage; or

(b) The building work itself is likely to accelerate, worsen, or result in erosion, avulsion, alluvion, subsidence, inundation, or slippage of that land or any other property—

unless the territorial authority is satisfied that adequate provision has been or will be made to—

(c) Protect the land or building work or that other property concerned from erosion, avulsion, alluvion, subsidence, inundation, or slippage; or

(d) Restore any damage to the land or that other property concerned as a result of the building work.

(2) Where a building consent is applied for and the territorial authority considers that—

(a) The building work itself will not accelerate, worsen, or result in erosion, avulsion, alluvion, subsidence, inundation, or slippage of that land or any other property; but

(b) The land on which the building work is to take place is subject to, or is likely to be subject to, erosion, avulsion, alluvion, subsidence, inundation, or slippage—

the territorial authority shall, if it is satisfied that the applicant is the owner in terms of this section, grant the building consent, and shall include as a condition of that consent that the territorial authority shall, forthwith upon the issue of that
consent, notify the District Land Registrar of the land registration district in which the land to which the permit relates is situated; and the District Land Registrar shall make an entry on the certificate of title to the land that a building consent has been issued in respect of a building on land that is described in subsection (1)(a) of this section.

(3) Where the territorial authority determines that the entry referred to in subsection (2) of this section is no longer required, it shall send notice of the determination to the District Land Registrar who shall amend his or her records accordingly.

(4) Where—
(a) Any building consent has been issued under subsection (2) of this section; and
(b) The territorial authority has notified the District Land Registrar in accordance with subsection (2) of this section that it has issued the consent; and
(c) The territorial authority has not notified the District Land Registrar under subsection (3) of this section that it has determined that the entry made on the certificate of title of the land is no longer required; and
(d) The building or alteration to which the building consent relates later suffers damage arising directly or indirectly from erosion, subsidence, avulsion, alluvion, inundation, or slippage, or from inundation arising from such erosion, subsidence, avulsion, alluvion, or slippage—
the territorial authority and every member, employee, or agent of the territorial authority shall not be under any civil liability to any person having an interest in that building on the grounds that it issued a building consent for the building or alteration in the knowledge that the building or alteration for which the consent was issued or the land on which the building or alteration was situated was, or was likely to be, subject to damage arising, directly or indirectly, from erosion, subsidence, avulsion, alluvion, inundation, or slippage or from inundation arising from such erosion, subsidence, avulsion, alluvion, or slippage.

(5) Where it comes to the knowledge of the territorial authority that a proposed building or alteration to an existing building to be erected or made by or on behalf of the Crown is such that, if the applicant were not the Crown, subsection (2) of
this section would otherwise apply, the territorial authority shall notify the appropriate Minister and the Chief Surveyor for the land district in which the land is situated; and such notification shall be deemed to meet the requirements of this section.

(6) For the purposes of this section the term “owner” means the person having ownership of the fee simple of the land on which the building work is or has taken place.

81A. **Construction of building on 2 or more allotments**—(1) Where application is made to a territorial authority for a building consent to construct a building over land of the applicant comprised or partly comprised of 2 or more allotments of an existing subdivision or existing subdivisions (whether comprised in the same certificate of title or not), and those allotments are held by the applicant as owner in fee simple, the territorial authority shall, as a condition of the grant of the consent, require that any specified one or more of those allotments shall not be transferred or leased except in conjunction with any specified other or others of those allotments.

(2) Every such condition shall be set out in a certificate authenticated by the territorial authority in terms of section 252 of the Local Government Act 1974 and signed by the owner, and shall be lodged with the District Land Registrar who, subject to subsection (7) of this section, shall make an entry on each certificate of title for any allotment (or part thereof) to which the condition applies to the effect that it is subject to the condition specified in that certificate.

(3) When the entry referred to in subsection (2) of this section has been made on the certificates of title for the several allotments affected, then none of those allotments shall be capable of being transferred or leased except in conjunction with the other or others of them.

(4) Where an entry specified in subsection (2) of this section is made on 2 or more certificates of title and any of the land less than the whole of the land comprised in all those certificates of title is, at the time of the making of the entry, independently subject to a registered instrument under which a power to sell, a right of renewal, or a right or obligation to purchase is lawfully conferred or imposed, and that power, right, or
obligation becomes exercisable but is not able to be exercised or fully exercised because of subsection (3) of this section, the whole of the land comprised in all those certificates of title shall be deemed to be subject to that registered instrument, and all the powers, rights, and obligations thereunder, as if it had been registered against the land at the time of the making of that entry.

(5) Where any instrument to which subsection (4) of this section applies is a mortgage, charge, or lien and if any of the land to which that mortgage, charge, or lien is extended is already subject to a registered mortgage, charge, or lien, that registered mortgage, charge, or lien shall have priority over the registered mortgage, charge, or lien extended over that land by the provisions of subsection (4) of this section.

(6) Where, pursuant to subsection (4) of this section, any registered mortgage, charge, or lien is extended over the land comprised in any certificate of title, it shall be deemed to have priority over any mortgage, charge, or lien against that land which is registered subsequent to the making of the entry against the certificate of title to that land pursuant to subsection (2) of this section.

(7) Where a certificate referred to in subsection (2) of this section is lodged with the District Land Registrar, but the District Land Registrar is satisfied that it is not practicable or desirable to make on the certificates of title the entry specified in that subsection, the District Land Registrar may require that a plan be prepared in accordance with section 167 of the Land Transfer Act 1952 amalgamating all the allotments into one allotment, or, where the circumstances render it expedient or desirable, into 2 or more allotments, be deposited under the Land Transfer Act 1952, and a certificate or certificates of title under that Act be issued for the land in terms of the plan.

(8) Where the requirements of subsections (1) to (6) of this section or the requirements of section 643 (1) to (6) of the Local Government Act 1974 or any previous enactment were met in order to enable a building to be built on 2 or more allotments and the building is removed or demolished or destroyed, the owner may apply to the territorial authority for approval for the removal of the requirement that any specified one or more of those allotments shall not be transferred or leased except in
conjunction with any specified other or others of those allotments.

(9) Where the territorial authority approves, in terms of subsection (8) of this section, the removal of those requirements, the decision of the territorial authority shall be set out in a certificate authenticated by the territorial authority in terms of section 252 of the Local Government Act 1974 and signed by the owner, and shall be lodged with the District Land Registrar who shall make an appropriate entry on the certificate of title for each allotment (or part thereof), and any mortgage, charge, or lien whose application was extended to additional land under subsection (4) of this section shall thereupon cease to apply to that additional land.

(10) The provisions of subsections (8) and (9) of this section shall apply, with appropriate modification, to any request by an owner of land where the requirements of section 643 (1) to (6) of the Local Government Act 1974 or any previous enactment or subsections (1) to (6) of this section were applied in error.

32. Alterations to existing buildings—(1) No building consent shall be granted for the alteration of an existing building unless the territorial authority is satisfied that after the alteration the building will—

(a) Comply with the provisions of the building code for access and means of escape from fire, and for access and facilities for use of people with disabilities (where this is a requirement in terms of section 25 of the Disabled Persons Community Welfare Act 1975), as nearly as is reasonably practicable, to the same extent as if it were a new building; and

(b) Continue to comply with the other provisions of the building code to at least the same extent as before the alteration.

33. Buildings having specified intended lives—(1) If any proposed building, or any existing building proposed to be altered, is intended to have a use of not more than 50 years, any building consent for that building shall be issued only on condition that the building shall be altered, removed, or demolished on or before the end of the specified intended life,
and subject to such other conditions as the territorial authority considers necessary.

(2) In subsection (1) of this section, “specified intended life”, in relation to a building, means the period of time, as stated in an application for a building consent or in the consent itself, for which the building is proposed to be used for its intended use.

**Failure to Issue Building Consents, Etc.**

34. Failure to process application for building consent—(1) Subject to this Act, if the territorial authority fails to decide, within the prescribed period, whether to grant or refuse a building consent, the application shall be deemed to have been approved, but only building work that is to be inspected by a building certifier and that is covered by—

(a) A building certificate from a building certifier under section 49 of this Act that the building work will comply with this Act and the building code; or

(b) A determination to that effect issued by the Authority under Part IV of this Act in relation to the building work; or

(c) A relevant and current accreditation certificate.

(2) The applicant may deduct from any fee payable to the territorial authority in respect of the building consent the actual and reasonable charges of any approved certifier engaged for the purposes of subsection (1) of this section, and any such charge not so deducted may be recovered from the territorial authority as a debt.

35. Expiry, lapse, and cancellation of building consent—(1) A building consent shall lapse and be of no effect if—

(a) The building work concerned has not been commenced within 6 calendar months after the date of issue of the consent or within such further period as the territorial authority in its absolute discretion may allow; or

(b) Reasonable progress on the building work has not been made within 12 calendar months after work has commenced or within such further period as the territorial authority in its absolute discretion may allow.
(2) The territorial authority may cancel a building consent in whole or in part forthwith if—
   (a) There has been a change of circumstances such that the territorial authority believes that the proposed building work may contravene any provision of the building code as in force at the time the work commenced; or
   (b) The rectification work required to be done by a notice to rectify under section 36 of this Act has not been commenced within a reasonable time, or there has been a breach of a condition of any such notice.

(3) When a territorial authority cancels a building consent all building work to which it relates shall cease immediately, except for work necessary to properly secure and protect the building and to keep the site in a safe condition.

(4) If a building consent is cancelled under subsection (2) of this section, the owner may apply for a new consent as if making an application in respect of an alteration to an existing building.

**Notices of Rectification**

36. **Notices to rectify**—(1) The territorial authority may issue to the owner or to the person undertaking any building work a notice to rectify, in the prescribed form, requiring any building work not done in accordance with this Act or the building code to be rectified.
   (2) A notice under this section may also direct that all or any building work shall cease forthwith until the territorial authority is satisfied that the persons concerned are able and willing to resume operations in compliance with this Act and the regulations.
   (3) A notice to rectify only applies—
      (a) To building work required during the period in which a building consent is operative; and
      (b) In respect of building work for which a building consent should have been obtained; and
      (c) In respect of building work for which a building consent was not required but where there was a requirement that the work meet the building code.
   (4) The provisions of subsection (3) (b) of this section shall not be read as relieving the owner of the requirements of section 28.
of this Act to obtain a building consent for building work for which a notice to rectify has been issued under this section.

37. Code compliance certificate—(1) An owner or the owner's agent shall advise the territorial authority, in the prescribed form, as soon as possible after the completion of any building work for which a building consent was previously issued.

(2) The owner shall include with the advice any certificates from a building certifier that the building work complies with the building code, and shall, where a building certifier has had full responsibility for supervision of the building work, also includes a code compliance certificate from that building certifier.

(3) Except where a code compliance certificate has already been provided in terms of subsection (2) of this section, the territorial authority shall, within the prescribed period and after making such inquiries and undertaking such investigations as it considers necessary, issue a code compliance certificate, if it is satisfied that—

(a) The building work to which the certificate relates complies with the building code; or

(b) The building work to which the certificate relates complies with the building code to the extent previously authorised in terms of any previously approved waiver or modification.

Use of Buildings

38. Compliance schedules—(1) A compliance schedule shall be required for any new building (other than a building used only as a detached household unit), if the building contains any of the following systems:

(a) Automatic sprinkler systems or other systems of fire protection; or

(b) Automatic doors, which form part of any fire wall and which are designed to close shut and remain shut on an alarm of fire; or

(c) Emergency fire warning systems; or

(d) Emergency lighting; or

(e) Escape route pressurisation systems; or

(f) Riser mains for fire services use; or
(g) Any automatic back-flow preventor connected to a potable water supply; or
(h) Lifts, escalators, or travelators or other similar systems; or
(i) Mechanical ventilation or air conditioning systems serving all or a major part of the building; or
(j) Any other mechanical, electrical, hydraulic, or electronic system whose proper operation is necessary for compliance with the building code; or
(k) Building maintenance units for providing access to the exterior walls of buildings; or
(l) Such signs as are required by the building code in respect of any of the above-mentioned systems.

(2) Every compliance schedule shall be in the prescribed form, shall be issued by the territorial authority to the owner, and shall specify the inspection and maintenance procedures to be followed in respect of the systems specified in subsection (1) of this section.

(3) For the purposes of subsection (2) of this section, the inspection and maintenance procedures in the compliance schedule shall specify the frequency of inspections and may be identified by description, by reference to a document prepared or approved by the Authority under section 43 of this Act, or as being the procedures considered appropriate by an independent qualified person.

(4) It shall be a condition of the issue of a compliance schedule that the owner shall ensure the appropriate ongoing inspection and maintenance procedures are undertaken in accordance with the requirements of the compliance schedule.

(5) Where a compliance schedule is a requirement for the purposes of subsections (1) and (2) of this section it may also include, where appropriate, systems or features relating to—
(a) Means of escape from fire; and
(b) Safety barriers; and
(c) Means of access and facilities for use by persons with disabilities and signs which meet the requirements of section 25 of the Disabled Persons Community Welfare Act 1975; and
(d) Hand-held hose reels for fire fighting—
and the provisions of subsections (2) to (4) of this section shall apply as if the systems or features were required under subsection (1) of this section.
(6) The provisions of subsections (1) to (5) of this section shall apply with respect to existing buildings which contain systems or features referred to in subsection (1) of this section which are present in or form part of those buildings, as if they were new buildings, and—

(a) In the case of a building where the owner notifies the territorial authority of the requirement for a compliance schedule, the said compliance schedule shall be issued within 2 months after the territorial authority being notified:

(b) In the case of a building where a party in terms of section 13 (e) of this Act notifies the territorial authority of the requirement for a compliance schedule, the said compliance schedule shall be issued within 6 months after the territorial authority being notified; and

(c) In the case where no notification is received by the territorial authority in terms of paragraph (a) or paragraph (b) of this subsection, then the said compliance schedule shall be issued within 2 years after the coming into force of this Part of this Act.

(7) Where any building work requiring a building consent is carried out which results in the alteration of any specified feature or system which is covered by a compliance schedule, the territorial authority, on completion of that work, shall determine whether the provisions of the compliance schedule shall be amended.

(8) The provision of subsection (7) of this subsection shall apply, with appropriate modification, where specified features and systems are added to or removed from the building as a result of building work or if the building is demolished.

(9) For the purposes of this section, an independent qualified person shall be a person who—

(a) Has no financial interest in the building, other than as a qualified person; and

(b) Is accepted by the territorial authority as being appropriately qualified to undertake the inspection and maintenance of the feature or system concerned.

(10) For the purposes of subsection (9) of this section—

(a) Involvement with the construction of the building as the fully-paid designer, builder, manufacturer, or supplier of the feature or system concerned; and
39. Annual building warrant of fitness—(1) On the annual anniversary of the issue of a compliance schedule and on every subsequent annual anniversary, the owner of every building in respect of which a compliance schedule has been issued shall supply to the territorial authority a building warrant of fitness, in the prescribed form and containing the prescribed particulars, that states that the requirements attaching to the compliance schedule have been fully complied with during the previous 12 months.

(2) A copy of the warrant of fitness shall be publicly displayed in a place in the building by the owner so that the users of the building can have ready access to it.

(3) Where the owner obtains written reports in relation to the requirements attaching to the compliance schedule, those reports shall be kept by the owner for inspection by the territorial authority and any person or organisation that has a right of inspection of the building under any Act, and the location of those reports shall be shown on the warrant of fitness displayed in accordance with subsection (2) of this section.

(4) The territorial authority may issue a notice in the prescribed form at any time if it is satisfied on reasonable grounds that the current building warrant of fitness is not, or has ceased to be, correct, or that the compliance schedule provisions are not or have not been properly complied with, and that notice shall be deemed to be a notice to rectify in terms of section 36 of this Act.

40. Change of use of buildings, etc.—(1) It is the duty of an owner of a building to advise the territorial authority in writing if it is proposed—

(a) To change the use of a building and the change of use will require alterations to the building in order to bring that building into compliance with the building code; or

(b) To extend the life of a building that has a specified intended life in terms of section 33 of this Act; or
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(c) To carry out a subdivision by way of company lease or cross lease in terms of section 244 of the Resource Management Act 1991; or

(d) To carry out a subdivision by way of the Unit Titles Act 1972.

(2) The use of a building shall not be changed, or the life of a building with a specified intended life shall not be extended, or the subdivision shall not proceed, unless the territorial authority is satisfied that in its new use or extended life or subdivision the building will—

(a) Comply with the provisions of the building code for access, means of escape from fire, protection from fire, sanitary facilities, and structural behaviour, and for access and facilities for use of people with disabilities (where this is a requirement in terms of Section 25 of the Disabled Persons Community Welfare Act 1975) as nearly as is reasonably practicable to the same extent as if it were a new building; and

(b) Continue to comply with the other provisions of the building code to at least the same extent as before the change of use or extension of life or subdivision.

(3) Where the territorial authority determines that a change of use or extension of life of a building with a specified intended life has occurred which would require alterations to the building in order to bring that building into compliance with the building code, the territorial authority shall determine whether the owner intends building work to proceed, and if it considers that is not the owner’s intention, the territorial authority shall issue a notice in the prescribed form, and that notice shall be deemed to be a notice to rectify in terms of section 36 of this Act.

41. Matters for consideration by territorial authorities in relation to exercise of powers—In the exercise of its powers under sections 25 to 40 and 56 to 59 of, and the Second Schedule to, this Act the territorial authority shall have due regard to the following matters:

(a) The size of the building; and

(b) The complexity of the building; and
(c) The location of the building in relation to other buildings, public places, and natural hazards; and
(d) The intended life of the building; and
(e) How often people visit the building; and
(f) How many people spend time in or in the vicinity of the building; and
(g) The intended use of the building, including any special traditional and cultural aspects of the intended use; and
(h) The expected useful life of the building and any prolongation of that life; and
(i) The reasonable practicality of any work concerned; and
(j) In the case of an existing building, any special historical or cultural value of that building; and
(k) Any other matter that the territorial authority considers to be relevant.

PART VII

NATIONAL BUILDING CODE

42. Regulations—(1) The Governor-General may from time to time, by Order in Council, make regulations, to be called the building code, for prescribing the functional requirements for buildings and the performance criteria with which buildings must comply in their intended use.

(2) In addition to the power conferred by subsection (1) of this section, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) Prescribing procedures for regulating and controlling the construction, maintenance, and demolition of buildings:

(b) Prescribing the form or content of applications, or any other documentation or information, as may be required under this Act:

(c) Prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or in place of any of the provisions of section 76 of this Act:
(d) Providing for such other matters as are contemplated by, or necessary for giving full effect to, this Act and for its due administration.

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(2A) Any regulation made under this section shall be made on the advice of the Minister following the recommendation of the Authority.

(2B) Before making any recommendation for the purposes of subsection (1) or subsection (2) of this section the Authority shall—

(a) Do everything reasonably practicable on its part to advise all persons and organisations, who or which in its opinion will be affected by any regulations made in accordance with the recommendation, of the proposed terms of the regulations, and give such persons and organisations a reasonable opportunity to make submissions on them to the Authority; and

(b) Give notice in the Gazette, not less than 21 days before making the recommendation, of its intention to make the recommendation and state briefly in the notice the matters to which the recommendation relates; and

(c) Make copies of every recommendation available for inspection by any person who so requests before any regulation is made in accordance with the recommendation.

(2C) Subsection (2A) of this section shall not apply in respect of any regulation if it is desirable in the public interest that the regulation be made urgently.

(2D) A failure to comply with subsection (2A) of this section shall not affect the validity of any Order in Council made under this section.

(3) All regulations made under subsection (2)(e) of this section that are still in force on the day that is 5 years after the date of commencement of this section shall expire at the close of that day.

(4) Except as specifically provided to the contrary in any Act, no person, in undertaking any building work, shall be required to achieve performance criteria additional to or more restrictive in relation to that building work than those specified in the building code.
43. Documents for use in establishing compliance with building code—(1) The Authority may prepare or may approve, in whole or in part and subject to any modification it considers necessary or desirable, any document for use in establishing compliance with the provisions of the building code.

(2) Any document, prepared or approved by the Authority under subsection (1) of this section shall be accepted for the purposes of this Act as establishing compliance with those provisions of the building code to which it relates, but it shall not be the only means of establishing such compliance.

(3) Preparation or approval of any document under subsection (1) of this section shall not include approval of any provision of that document which—

(a) Relates to contractual or commercial requirements; or

(b) Relates to regulatory approvals, dispensations, or waivers; or

(c) Is inconsistent with the provisions of this Act or of any regulations made under this Act.

(4) Any document prepared or approved under subsection (1) of this section shall be subject to this Act and the building code.

(5) Any approval given by the Authority under this section shall be an approval of the document as it existed at the time of the approval, unless otherwise specified by the Authority.

(6) The Authority may withdraw approval of any document prepared or approved under subsection (1) of this section, but the withdrawal shall not be retrospective.

(7) Where a Minister of the Crown has submitted to the Authority, under subsection (1) of this section, a document that has been previously approved by a Minister of the Crown under any other enactment, the Authority shall not modify that document without the approval of the Minister administering that enactment.

(8) Subsection (7) of this section shall not apply to any document approved by a Minister of the Crown pursuant to section 10 (4) of the Standards Act 1988.

(9) When preparing or proposing to modify any document under this section, the Authority shall do everything reasonably practicable on its part to advise all persons and organisations, who or which in its opinion will be affected by that document, of the proposed terms of the document, and give such persons...
or organisations a reasonable opportunity to make submissions on them to the Authority.

43A. Establishing compliance with building code—(1) A territorial authority shall accept the following documents as establishing compliance with the provisions of the building code:

(a) A building certificate or code compliance certificate to that effect issued by a building certifier under section 37 or section 49 of this Act;

(b) A determination to that effect given by the Authority under section 16 of this Act;

(c) A current and relevant accreditation certificate to that effect issued by the Authority under section 52 of this Act;

(d) Compliance with the provisions to that effect of a document prepared or approved by the Authority under section 43 of this Act.

(2) A building certifier shall accept the documents set out in paragraphs (b), (c), and (d) of subsection (1) of this section as establishing compliance with the provisions of the building code.

(3) For the avoidance of doubt, no civil proceedings may be brought against a territorial authority or a building certifier for anything done in good faith in reliance on a document set out in subsection (1) or subsection (2) of this section.

PART VIII
BUILDING CERTIFIERS
Applications to Authority

44. Applications for approval as building certifiers—

(1) Any person may apply to the Authority for approval as a building certifier.

(2) Every application shall be in the prescribed form and shall specify the provisions of the building code in respect of which the applicant wishes to be approved as a building certifier.

(3) Except as provided by subsection (5) of this section, each application shall include—

(a) Information that will enable the Authority to decide whether or not the applicant has appropriate
Building qualifications, adequate relevant experience and sufficient knowledge of the building code, and, if so,—

(i) The specific provisions of the building code in respect of which the applicant should be approved; and

(ii) Any limitations which should be placed on such approval:

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(b) A statement as to whether or not the applicant has been convicted of any offence punishable by a term of imprisonment of 3 months or more and, if the applicant has been so convicted, details of the conviction:

(c) Evidence that a scheme of insurance approved by the Authority will apply in respect of any civil liability of the applicant that might arise out of the issuing by the applicant of a certificate under section 49 of this Act.

(4) Each application shall be accompanied by the fee (if any) charged by the Authority under section 19 of this Act.

(5) In the case of an applicant who is or has been a building certifier and who is applying for continuation or renewal of approval in respect of the same provisions of the building code, the application need not be accompanied by the documentation required by subsection (3) (a) of this section but instead shall be accompanied by—

(a) A list of any additional qualifications that the applicant has acquired since that person's previous application; and

(b) A request for any changes to any limitations imposed on the previous approval, with reasons for the request.

45. Processing applications for approval as building certifiers and appeals—(1) The Authority may require the applicant for approval as a building certifier to provide further information in support of the application.

(2) If the applicant is unable to comply with any requirement of the Authority under subsection (1) of this section, the applicant shall inform the Authority of the reasons why the applicant is unable to comply.
(3) The application shall be considered by the Authority as soon as practicable.

(4) The Authority shall notify the applicant not less than 10 days before any meeting at which it is intended to consider the application.

(5) The applicant may, and if the Authority so requires the applicant shall, appear and be heard at (the meeting) a meeting of the Authority.

(6) After considering an application for approval as a building certifier the Authority shall grant the approval if it is satisfied—

(a) That the applicant has—

(i) Appropriate qualifications; and

(ii) Adequate relevant experience; and

(iii) Sufficient knowledge of the building code; and

(iv) Complied with any other prescribed conditions; and

(b) That the applicant is a fit and proper person as provided for in Schedule 1A to this Act; and

(c) That a scheme of insurance approved by the Authority will apply in respect of any civil liability of the applicant that might arise out of the issuing by the applicant of a certificate under section 49 of this Act.

(7) For the purposes of this section, appropriate qualifications shall include—

(a) Those qualifications (if any) that may be prescribed in relation to the provisions of the building code specified in the application; and

(b) Evidence of training in the skills relevant to the provisions of the building code specified in the application, whether or not such training consisted of formal courses and examinations.
(8) If the Authority declines an application it shall notify the applicant in writing, specifying the reasons.

(9) Any applicant aggrieved by any decision of the Authority refusing to grant approval as a building certifier under this section may, within 21 days after the date of the decision or within such further time as the Court on application may allow, appeal against that decision, in accordance with the District Courts Rules 1948, to the District Court.

(10) For the purposes of hearing the appeal the Court shall have all the powers vested in it in its civil jurisdiction.

(11) On hearing the appeal the Court may make such order as it thinks fit, and every such order shall be binding on the appellant and the Authority.

46. Register of building certifiers—

(1) The Authority shall establish and maintain a register of building certifiers.

(2) Whenever the Authority approves a person as a building certifier it shall cause to be entered on the register—

(a) The date of approval; and
(b) The name and address of the person approved; and
(c) The specific provisions of the building code in respect of which the person is approved; and
(d) Any limitations on the matters in respect of or in connection with which the person may certify compliance with those provisions; and
(e) The date of expiry of approval, being the first anniversary of the date of approval or such other date as the Authority may direct, but not later than the second anniversary of the date of approval; and
(f) Such other matters relating to the approval as the Authority directs.

(3) The specific provisions of the building code in respect of which the building certifier is approved may be identified by reference to the numbering of the provisions, or to a description of the matters covered by the provisions, or to the areas of expertise concerned.

(4) A certificate under this Part of this Act purporting to be under the hand of a person duly authorised by the Authority to issue such a certificate shall, in the absence of proof to the contrary, and without proof of the signature appended to the certificate, be sufficient evidence of the matters therein specified.
Complaints Concerning Building Certifiers

47. Complaints to Authority—(1) If the Authority receives any complaint about, or has cause to query the conduct or ability of, a building certifier, the Authority shall appoint a person, not being a member of the Authority, to investigate the complaint or query.

(2) The person appointed under subsection (1) of this section shall—

(a) Inform the complainant (if any) that the complaint is under investigation and invite the complainant to make a further submission; and

(b) Inform the building certifier of the nature of the complaint or query and invite the building certifier to make a submission; and

(c) Obtain such other information as the person considers relevant.

(3) As soon as practicable after the complaint is received, the person appointed under subsection (1) of this section shall consider any available relevant information and shall refer the matter to the Authority with a recommendation that the Authority either take no further action or conduct an inquiry.

(4) The Authority shall as soon as practicable—

(a) Notify the complainant (if any) and the building certifier of—

(i) Any information obtained under subsection (2) (c) of this section; and

(ii) The action being taken; and

(iii) The date of the meeting of the Authority at which the Authority will consider any recommendation under subsection (3) of this section, being a date not less than 20 days after the date of the notification; and

(b) Invite the complainant to make a written submission for consideration at that meeting; and

(c) If a recommendation to conduct an inquiry is made, notify the building certifier of the reasons for that recommendation.

(5) At the meeting referred to in subsection (4) of this section the Authority shall accept the recommendation made under subsection (3) of this section unless persuaded otherwise by any submissions received for consideration at that meeting.

48. Inquiry by Authority—(1) If the Authority decides to conduct an inquiry into the conduct or ability of a building certifier, it shall—
(a) Appoint a person, not being a member of the Authority, to present to the inquiry information relevant to the complaint or query; and

(b) Notify the complainant (if any) and the approved certifier of the place and time at which the inquiry will be held and at which they will be able to appear and be heard before the Authority.

(2) A reasonable time before the inquiry is to be held, the person appointed under subsection (1)(a) of this section shall notify the building certifier of the information to be presented to the inquiry.

(3) An inquiry shall be a meeting of the Authority at which the Authority is bound by the rules of natural justice.

(4) If, after completing its inquiry under this section, the Authority is satisfied that the building certifier—

(a) Has been negligent as a building certifier; or

(b) Is incompetent to act as a building certifier; or

(c) Is unable for any reason to continue to act as a building certifier; or

(d) For any other reason should not continue to be a building certifier on the terms of the approval or on any terms—

the Authority may exercise any one or more of the following powers:

(e) It may reprimand the building certifier;

(f) It may require the building certifier to pay the costs of or incidental to the inquiry:

(g) It may require the building certifier to give an undertaking to refrain from some specific conduct:

(h) It may suspend the approval for a period not exceeding 3 years:

(i) It may amend or cancel the approval.

(5) Where the finding of the Authority is favourable to the building certifier, the Authority shall pay the building certifier's actual and reasonable costs.

(6) Where the Authority makes an order under this section in relation to any person the Authority shall notify that person in writing of the making of the order and the reasons for it.

Certification by Building Certifiers

49. Issue of building certificates—(1) A building certificate issued by a building certifier under this section shall—

(a) Be in writing; and
(b) Identify the specific item or items that are the subject of the certificate, being items not excluded by any limitation on the building certifier’s approval; and

(c) Identify the specific provisions of the building code with respect to which those items are certified, being specific provisions in respect of which the building certifier is approved; and

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(d) Be signed by the building certifier.

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(d) Be signed by the building certifier; and

(e) Be accompanied by any relevant project information memorandum.

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(2) A building certificate shall signify that the building certifier has used all reasonable skill and care to verify that either—

(a) The proposed building would comply with the applicable provisions of the building code if construction is properly completed in accordance with the plans and specifications; or

(b) The building did comply with the applicable provisions of the building code on the date of certification.

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(2) A building certifier may issue a building certificate or a code compliance certificate if the building certifier is satisfied on reasonable grounds that—

(a) The proposed building would comply with applicable provisions of the building code if construction is properly completed in accordance with the plans and specifications; or

(b) The building did comply with the applicable provisions of the building code on the date of certification.
(3) A building certifier shall not issue a building certificate unless a scheme of insurance approved by the Authority applies in respect of any civil liability of the building certifier that might arise out of the issuing of the certification.

(4) No building certifier shall issue a building certificate in respect of a building in which (he or she) the building certifier has a professional or financial interest.

(5) A person shall be regarded as having a professional or financial interest in a building if (he or she) that person—
(a) Is or has been responsible for the design or construction of any part of the building in any capacity; or
(b) Is a partner or is in the employment of a person who has a professional or financial interest in the building; or
(c) Is, or any nominee of (his or hers) that person's is, a member, officer, or employee of a company or other body which has a professional or financial interest in the building:

Provided that this paragraph shall not apply to officers or employees of (any State service) any Government department or Crown agency, territorial authority, or other body that acts pursuant to law for public purposes and not for its own profit.

(6) For the purposes of this section—
(a) A person shall be regarded as having a professional or financial interest in the work even if having that interest only as a trustee for the benefit of some other person;
(b) In the case of married people not living apart, the interest of one spouse shall, if known to the other, be deemed to be also an interest of the other.

(7) For the purposes of this section—
(a) Involvement with the building as an approved certifier; and
(b) Entitlement to any fee paid for acting as a building certifier—

shall not be regarded as constituting a professional or financial interest.

50. Terms of engagement of building certifiers—(1) The issuing of a building certificate under section 49 of this Act shall not be a condition of entitlement to any fee to be paid to a building certifier.
(1A) A building certifier shall not, in the terms of engagement, limit any civil liability which might arise from the issue of a building certificate or code compliance by that building certifier.

(2) The engagement of a building certifier to inspect specified items while building work is being undertaken shall be subject to the following provisions:

(a) The building certifier shall report to the territorial authority in the prescribed manner:

(b) The building certifier shall notify the territorial authority if the building certifier—
   (i) Becomes or expects to become unable to inspect all or any of the specified items for any reason; or
   (ii) Believes that there is a contravention of the provisions of the building code in respect of the specified items, and has directed the person carrying out the work to rectify the contravention, but that person has not done so within a reasonable time:

(c) The owner or the person undertaking the work concerned shall notify the territorial authority if it appears to that person that the building certifier is no longer willing or able to inspect the specified items, and shall give a copy of any such notification to the building certifier if it is practicable to do so.

(3) On receiving notification under subsection (2) (b) or (c) of this section, the territorial authority shall amend the building consent accordingly, and shall make such inspections and issue such notices to rectify as it considers necessary.

PART IX

ACCREDITATION OF BUILDING PRODUCTS AND PROCESSES

51. Processng applications for accreditation—(1) The proprietor or the proprietor's agent may apply to the Authority for the accreditation of any proprietary item, being a material, method of construction, design, or component relating to building work.

(2) An application made under subsection (1) of this section shall be accompanied by an appraisal complying with subsections (4) and (5) of this section and by the fee charged by the Authority.
(3) The Authority may refuse to consider any application made under this section and, where it refuses to consider an application, it shall refund the fee paid.

(4) An appraisal shall be a detailed and reasoned technical opinion issued by an appropriately qualified organisation having (no proprietary or financial interest in the appraised item other than the issuing of the appraisal) no proprietary interest in the appraised item.

(5) An appraisal shall include—

(a) Identification of the appraised item and its purpose, being a purpose within the scope of the building code; and

(b) Identification of the manufacturer (and the installer if necessary); and

(c) An opinion that the product is suitable for its purpose provided it is manufactured and installed under specified conditions; and

(d) A specification of the product and, if necessary, of the manner of its installation; and

(e) The specific conditions to which the opinion is subject; and

(f) The basis of appraisal; and

(g) A list of other documents (if any) that need to be referred to in order to check that an individual application of the appraised item conforms to the conditions.

52. Granting of accreditation—(1) After considering any report and recommendations obtained by the Authority, the Authority shall accredit the item if it is satisfied that the item, if used under the conditions specified in the appraisal, will comply with specified provisions of the building code.

(2) In determining any application for accreditation the Authority may obtain any further advice necessary to assist it in reaching its decision.

(3) Where the Authority accredits an item under this section, the Authority shall issue to the applicant a certificate of accreditation in respect thereof.

(4) A certificate of accreditation shall state that the item concerned has been appraised by a named appraisal organisation and, if used under the conditions specified in that appraisal, is to be accepted as complying with specified provisions of the building code.
(5) A certificate of accreditation shall be subject to such conditions and qualifications and shall be issued for such period as are stated in the certificate or in the corresponding appraisal.

(6) A certificate under this Part of this Act purporting to be under the hand of a person duly authorised by the Authority to issue such a certification shall, in the absence of proof to the contrary, and without proof of the signature appended to the certificate, be sufficient evidence of the matters therein specified.

(7) If the Authority refuses to accredit an item under this section it shall notify the applicant, in writing, specifying the reasons.

53. Renewal, extension, or amendment of accreditation—The proprietor of an accredited item or the proprietor’s agent may apply to the Authority for the renewal, extension, or amendment of the certificate of accreditation, and the provisions of sections 51 and 52 of this Act shall apply, with any necessary modifications, in respect of any such application.

54. Revocation of accreditation—(1) The Authority may at any time revoke an accreditation if it is satisfied that—
(a) The accreditation has been obtained by fraud, misrepresentation, or concealment of facts; or
(b) The accredited item—
(i) Is no longer satisfactory; or
(ii) Differs from, or fails to comply with, the specification of that item as at the time the accreditation was granted; or
(c) Any other accreditation, certificate of accreditation, or similar authorisation issued or granted in respect of that item, or the corresponding appraisal, has been revoked or cancelled for any reason other than failure to renew the accreditation, certificate, or authorisation.

(2) Where the Authority determines to revoke an accreditation the Authority shall notify the holder of the certificate in writing of the Authority’s determination and the reasons for it.
55. Certain information to be confidential—

(1) Notwithstanding the provisions of the Official Information Act 1982, the information contained in any application for accreditation shall be regarded as confidential and shall not be disclosed (except pursuant to this Part of this Act) by any member or employee of, or person engaged by, the Authority unless disclosure is authorised in writing by the person who made the application.

(2) Any member or employee of, or person engaged by, the Authority who discloses any information, whether orally or in writing, in contravention of subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding $10,000.

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PART X

LEGAL PROCEEDINGS AND MISCELLANEOUS PROVISIONS

Dangerous and Insanitary Buildings

56. Buildings which are deemed to be dangerous or insanitary—

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(1) A building shall be deemed to be dangerous for the purposes of this Part of this Act if the building fails to comply with the provisions of the building code to such an extent that—

(a) In the ordinary course of events (excluding earthquakes) the building would be likely to cause bodily injury or death to persons in it or in any neighbouring building or on any adjoining land, or to passers-by; or

(b) In a moderate earthquake, the building would be likely to suffer catastrophic collapse causing bodily injury or death to persons in it or on any adjoining land, or to passers-by:

Provided that this paragraph shall not apply to any
(2) A building shall be deemed to be prone to suffer catastrophic collapse if it is constructed wholly or substantially of unreinforced concrete or unreinforced masonry.

(3) A building shall be deemed to be insanitary if—

(a) It is so situated or of such construction or in such a state of disrepair as to be offensive or likely to be injurious to health; or

(b) Its provisions against moisture penetration are so insufficient or in such a defective condition as to cause dampness in the building or in any adjoining building; or

(c) It is without a supply of potable water adequate for its intended use; or

(d) It has inadequate sanitary facilities for its intended use.

(1) A building shall be deemed to be dangerous for the purposes of this Act if it is—

(a) A building which, in the ordinary course of events (excluding earthquakes), is likely to cause injury or death (whether by potential collapse or otherwise) to any persons in it or to any other property (not held under the same ownership); or

(b) A building which, by reason of fire hazard and occupancy of the building, would be likely to give rise to an almost certain loss of life in a fire.

(2) For the purposes of subsection (1) (b) of this section, a building shall be deemed to be dangerous by reason of fire hazard and occupancy if there is a change of fire hazard or a change of occupancy sufficient to ensure that—

(a) In the case of a building with a high or abnormal fire hazard which was previously not used for human occupation, the building is now being used for human occupation; or

(b) In the case of a building which has an occupancy which involves one or more household units, other type of accommodation or residential purpose, the fire
hazard is high or abnormal or has been increased to an unacceptable level; or

(c) In the case of a building which has an occupancy which provides a place for members of the public to gather for a common purpose, the fire hazard is high or abnormal or has been increased to an unacceptable level; or

(d) In the case of a building used for the storage or processing of hazardous substances, the fire hazard is sufficient to endanger—

(i) Persons who work in the building or on land adjoining the building; or

(ii) Persons who are on property adjoining that land or building; or

(e) In the case of a building in which the safety of people is directly dependent on the ongoing functioning of specified life safety features or systems, there is a failure of those features or systems being properly maintained.

(3) For the purpose of determining whether any building is of any of categories described in subsection (2) of this section, the territorial authority may seek advice from such members of the New Zealand Fire Service as the Fire Service National Commander deems competent to give such advice, and, where such advice is sought, the territorial authority shall have due regard to that advice.

57. Powers of territorial authorities in respect of dangerous or insanitary buildings—(1) Without limiting its powers under Part VI of this Act, a territorial authority, on being satisfied that any building is a building deemed to be dangerous under section 56 of this Act, may—

(a) Put up a hoarding or fence so as to prevent persons approaching nearer than is safe:

(b) Except as provided in section 60 (b) of this Act, give notice in accordance with section 59 of this Act requiring work to be done on the building to reduce or remove the danger within a time specified in the notice, being not less than 10 days.

(2) On being satisfied that any building is a building deemed to be insanitary under section 56 of this Act, a territorial
Building

authority may give notice in accordance with section 59 of this Act requiring work to be done on the building to prevent it from remaining insanitary.

(3) In forming any requirement under subsection (1) or subsection (2) of this section, the territorial authority shall have due regard to the provisions of the building code and the matters set out in section 40 of this Act.

(4) If, within the time specified in a notice under subsection (1) or subsection (2) of this section or within such further time as the territorial authority may allow, the work required by the notice is not completed or not proceeding with all reasonable expedition, the territorial authority, upon giving the owner of the building not less than 10 days' notice of its intention to do so, may apply to the District Court for an order authorising the territorial authority to carry out the work.

(5) Where a territorial authority carries out work under the authority of an order made under subsection (4) of this section, the owner of the building shall be liable for the costs of the work; and the territorial authority may recover those costs from the owner (as if they were rates due on the property), and the amount recoverable by the territorial authority shall be a charge on the land on which the work was done.

(6) Work required or authorised to be done under this section may include the demolition of all or part of a building.

(7) The provisions of this section are in addition to and not in derogation of the powers of a territorial authority under section 58 of this Act.

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57A. Buildings which are deemed to be earthquake prone—(1) A building shall be deemed to be earthquake prone for the purposes of this Part of this Act if, because of an insufficient earthquake loading and by reason of its construction either wholly or substantially of unreinforced concrete or unreinforced masonry, the building would be likely to suffer catastrophic collapse causing bodily injury or death to persons in it or on any adjoining land, or to passers-by:

Provided that this subsection shall not apply to any building which is used wholly or principally for residential purposes, unless the building is of 2 or more storeys and contains 3 or more household units.
(2) Without limiting its powers under Part IV of this Act, a territorial authority, on being satisfied that any building is a building deemed to be earthquake prone, may—
(a) Put up a hoarding or fence so as to prevent persons approaching nearer than is safe;
(b) Except as provided in section 60 (b) of this Act, give notice in accordance with section 59 of this Act requiring work to be done on the building to reduce or remove any danger within a time specified in the notice, being not less than 10 days.
(3) For the purposes of this section, in relation to any building that is deemed to be earthquake prone,—
"Insufficient earthquake loading" means any loading that is insufficient to enable that building to withstand seismic forces one-half as great as those specified in New Zealand Standard Model Building Bylaw NZS 1900, Chapter 8: 1965 (notwithstanding its revocation) for the zone (as described in that New Zealand Standard) in which the building is situated:
"Unreinforced masonry" means masonry classified as unreinforced by New Zealand Standard Model Building Bylaw NZS 1900, Chapter 9.2: 1964 (notwithstanding its revocation).

578. Objections on earthquake prone buildings—
(1) Within 10 days after the notice is given under section 57A (2) (b) of this Act, the owner may object in writing to the territorial authority against the requirements of the notice, and the notice shall thereupon be deemed to be suspended pending the determination of the objection, or, where application is made to the Court to confirm the notice, pending the decision of the Court.
(2) Where any such objection is received by the territorial authority, the territorial authority shall, as soon as practicable, inquire into and dispose of the objection.
(3) No objection shall be dismissed unless reasonable notice of the date and time when and the place where it is to be considered has been given to the objector, who, if present at the appointed time and place, shall be entitled to be heard and submit evidence and call witnesses in support of his or her
objection; and any objector may be represented at the hearing by counsel or otherwise.

(4) Where on inquiry into the objection the territorial authority reaffirms its requirements, the territorial authority shall apply to a District Court for an order confirming the notice given by the territorial authority.

57c. Hearing by District Court—(1) The District Court hearing an application under section 57a (4) of this Act shall hear the application with the assistance of 2 assessors, to be appointed by the Court for the purposes of that application from a panel of appropriate persons from time to time appointed by the Authority and published by the Authority in the Gazette; and the sole function of the assessors shall be to assist the Court in determining the application, and the application shall be determined by the Court alone.

(2) If any assessor dies or is for any reason unable to act or to continue to act, another assessor may be appointed to act in the assessor’s place, whether or not the hearing of the application has commenced.

(3) There shall be paid to assessors, out of money appropriated by Parliament for the purpose, remuneration by way of fees or allowances and travelling allowances or expenses in accordance with the Fees and Travelling Allowances Act 1951, and that Act shall apply accordingly as if those assessors were members of a statutory Board within the meaning of that Act.

(4) On the hearing of the application, the Court may—
(a) Confirm the notice without modification; or
(b) Confirm the notice subject to modification; or
(c) Extend the time specified in the notice for removing the danger; or
(d) Set aside the notice.

57d. Appeal to High Court—(1) Where any party to the proceedings is dissatisfied with any determination of a District Court on any application under section 57a of this Act as being erroneous in point of law, the party may appeal to the High Court for the opinion of that Court on a question of law only.

(2) Part IV of the Summary Proceedings Act 1957, so far as it relates to appeals by way of case stated on a question of law.
only, shall apply, so far as it is applicable, to every appeal under
this section.
(3) The decision of the High Court on any appeal under this
section shall be final.
(4) The operation of the order against which an appeal is
made under this section shall be suspended until the appeal is
determined.

58. Measures to avert immediate danger or rectify insanitary conditions—If, arising from the state of any
building,—
(a) Immediate danger is apprehended; or
(b) Immediate action for the rectification of insanitary
conditions is necessary—
the Chairperson of the territorial authority, on the report of an
officer of the council or some competent person appointed by
the Chairperson, may, by warrant under the Chairperson’s
hand, cause any measures to be taken necessary in the
Chairperson’s judgment to secure the safety of the public or to
rectify the insanitary conditions; and the territorial authority
may recover the costs thereof from the owner as if they were
rates due on the property concerned.

58. Measures to avert immediate danger or rectify insanitary conditions—(1) If, arising from the state of any
building,—
(a) Immediate danger to the safety of people is apprehended
in terms of section 56 of this Act; or
(b) Immediate action for the rectification of insanitary
conditions is necessary—
the chief executive of the territorial authority may, by warrant
under the chief executive’s hand, cause any measures to be
taken which are necessary in the chief executive’s judgement to
secure the safety of the public or to rectify the insanitary
Building

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conditions; and the territorial authority may recover the costs thereof from the owner, and the amount recoverable by the territorial authority shall be a charge on the land on which the building is situated.

(2) Where a chief executive issues a warrant under subsection (1) of this section, the territorial authority, upon completion of the measures specified in the warrant, shall apply to a District Court for confirmation of the warrant.

(3) On the hearing of an application under this section, the District Court may—
(a) Confirm the warrant without modification; or
(b) Confirm the warrant subject to modification; or
(c) Set aside the warrant.

59. Notices in respect of dangerous or insanitary buildings—(1) Without limiting section 71 of this Act, any notice given by a territorial authority under section 57 or section 57a of this Act shall be in writing fixed to the building concerned; and a copy of the notice shall be given to—
(a) The owner of the building; and
(b) The occupier of the building; and
(c) Every person having an interest in the land on which the building is erected under any mortgage or other encumbrance, being an interest registered under the Land Transfer Act 1952; and
(d) Every person claiming an interest in the land which is protected by a caveat lodged under section 137 of the Land Transfer Act 1952 and for the time being in force; and
(e) Any statutory organisation that has authority to classify land or buildings for any purpose.

(2) Notwithstanding the other provisions of this section, if any such notice is fixed on the building, that notice shall not be invalid solely because a copy of it has not been given to any or all of the persons mentioned in this section.
59A. Authority may report to District Court—The District Court may, at its discretion, request the Authority to report on any matter under section 57 of this Act as the Court considers relevant, and the Authority shall report accordingly.

59B. Buildings to which sections 56 to 59 apply—Sections 56 to 59 of this Act shall apply to all buildings whenever constructed.

Territorial Authority May Carry Out Work

60. Work may be done by territorial authority—(1) Where, under this Act or the building code, any person is required to do any work on or in connection with any building and—

(a) That person, after notice requiring such work to be undertaken, makes default in commencing to comply with the notice within the time specified in the notice in that behalf or, if no such time is specified, within a reasonable time; or

(b) If any such work is certified by any officer of the territorial authority to be of an urgent nature, and the contents of that certificate have been communicated to that person, and the default is made for 24 hours from the time of that communication; and

(c) In either case that person does not immediately proceed with the work with all reasonable expedition—

the territorial authority may enter upon the land on which the building is situated and itself do that work and recover the costs thereof from the owner (as if they were rates due on the property concerned), and the amount recoverable by the territorial authority shall be a charge on the land.

(2) The power to enter upon land conferred by subsection (1) of this section shall be subject to the following conditions:

(a) Entry upon the land shall only be made by an employee, contractor, or agent of the territorial authority authorised by it in writing;

(b) Entry shall be made at reasonable times;

(c) The person entering shall carry with him or her and shall produce on initial entry, if required to do so, evidence of his or her authority to enter and of his or her identity:
(d) As soon as practicable after entry is made, the territorial authority shall advise the owner and the occupier of the land, in writing, of the entry and the reasons for it.

61. Recovery of costs when territorial authority does work on default—(1) Where a territorial authority is entitled under this Act to recover the costs of doing any work from the owner of any building or land, the money payable shall be (deemed to be a rate;) a charge on the land, and the provisions of the Rating Powers Act 1988 and of the Local Government Act 1974 shall apply accordingly, but the person primarily liable for payment shall be the owner.

(2) The territorial authority may destroy or sell or otherwise dispose of any materials resulting from the doing of any work by the authority and, in the case of the sale of any materials, shall apply the proceeds of the sale towards payment of the amount payable to the territorial authority under subsection (1) of this section and pay the surplus (if any) to the owner.

(3) The exercise by the territorial authority of the powers conferred by this section shall not relieve any person from any penalty for failure to comply with the requirements of any notice under this Act.

(4) Any work done or to be done by the territorial authority pursuant to this section is hereby declared to be a public work for the purposes of the Public Works Act 1981.

Inspections by Territorial Authority

62. Inspection by territorial authority—(1) For the purposes of this Part of this Act, “inspection” means the taking of all reasonable steps to ensure—

(a) That any building work is being done in accordance with a building consent; or

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(b) That there has been no occurrence that would entitle the territorial authority to cancel an occupancy consent; or
(b) That in respect of any building concerning which a compliance schedule is issued, the inspection and maintenance provisions of that compliance schedule are being complied with; or

(ba) That buildings remain safe, sanitary, and have means of escape from fire; or

(c) That buildings which, in the opinion of the territorial authority, are likely to be deemed to be dangerous or insanitary under section 56 of this Act come to the attention of the local authority.

(2) The provisions (if any) as to inspection during the carrying out of building work endorsed on any building consent and the compliance schedule (if any) (accompanying any occupancy consent) shall be read as including the provisions of this section.

(3) It shall be a condition of every building consent that the territorial authority’s authorised officers shall be entitled, at all times during normal working hours or while building work is being done,—

(a) To inspect—

(i) Any land on which building work is or is proposed to be undertaken; and

(ii) Any building work that has been or is being done on or off the building site; and

(iii) Any building; and

(b) To enter any premises for that purpose or for the purpose of determining whether the premises are dangerous or insanitary within the meaning of section 56 of this Act.

(4) The owner and occupier of any building and every person engaged in any building work shall give every reasonable facility to enable the territorial authority’s authorised officers to inspect all or any part of the building or the building work.

(5) Every officer of a territorial authority who is authorised by this Act, or by an order of the District Court made under this section, to enter private land shall, if requested on entry or at any subsequent time, produce to the occupier of the building a written warrant issued under section 710 of the Local Government Act 1974.

(6) The provisions of section 710 (4) of the Local Government Act 1974 shall not apply in respect of the inspection of building work.
(7) Nothing in this section shall authorise entry to any household unit being used as such without the consent of the occupier of the household unit or an order of the District Court made under this section.

(8) Where any authorised officer of a territorial authority wishes to enter, for the purpose of this section, any household unit being used as such, the officer may, upon giving the occupier of the (dwelling) household unit not less than 10 days' notice of his or her intention to do so, apply to the District Court for an order under this section.

(9) On being satisfied that the proposed entry is necessary for the purposes of this section, and that the authorised officer has taken all reasonable steps to obtain the consent of the occupier to the proposed entry, the Court may make an order authorising any officer authorised by the territorial authority to enter the household unit in accordance with this section subject to such conditions as the Court thinks fit to impose.

(10) Before exercising any power of entry pursuant to any such order of the Court, the authorised officer shall serve the order on the occupier of the household unit to which the order relates.

(11) The powers conferred by this section are in addition to, and not in derogation of, the powers conferred by (section 708 (3)) section 708A (3) of the Local Government Act 1974.

63. Authorisation and responsibilities of enforcement officers—(1) A territorial authority may authorise any of its officers to carry out all or any of the functions and powers as an enforcement officer under this Act.

(2) Every enforcement officer shall be supplied with a warrant by the territorial authority, and that warrant shall clearly state the functions and powers that the person concerned has been authorised to exercise and carry out under this Act.

(3) Every enforcement officer who exercises or purports to exercise any power conferred on him or her by or under this Act shall have with him or her, and shall produce if required to do so, his or her warrant and evidence of his or her identity.

(4) Every enforcement officer who holds a warrant issued under this section shall, on the termination of his or her appointment as such, surrender the warrant to the territorial authority.
Further Powers of Building Authority

64. Special powers of Authority for monitoring performance of functions under this Act—(1) For the purpose of monitoring the performance by territorial authorities and building certifiers, and of their functions under this Act, the Authority—

(a) Shall have full access at all reasonable times to all records and documents of every description in the possession or control of any territorial authority or building certifier that relate to the performance of functions under this Act, and, subject to subsection (3) of this section, to any place where such records or documents are kept:

(b) May require any territorial authority or building certifier to supply any information or answer any question relating to the performance of functions under this Act:

(c) May, by notice in writing, require any person having possession or control of any information, records, or documents of any description relating to the performance by any territorial authority or building certifier of functions under this Act, to supply to the Authority, in a manner specified in the notice, all or any such information, records, or documents:

(d) Subject to subsection (3) of this section, may enter and re-enter any land or building, with such appliances, machinery, and equipment as are reasonably necessary, to—

(i) Make such surveys, investigations, tests, and measurements as are reasonably necessary for the purposes of this section; and

(ii) Generally do all such other things as are reasonably necessary to enable such surveys, investigations, tests, and measurements to be carried out.

(2) Nothing in subsection (1) of this section shall—

(a) Derogate from any Act that imposes a prohibition or restriction on the availability of any information; or

(b) Authorise the Authority to enter any household unit being used as such without the permission of the occupier of the household unit.

(3) The power to enter any land or building pursuant to subsection (1) of this section shall be subject to the following conditions:
(a) The person entering shall, if requested on entry or at any subsequent time, produce to the owner or occupier of the building the written warrant referred to in subsection (4) of this section:

(b) Entry shall be made at reasonable times.

(4) The Authority shall supply to every person duly authorised to enter land or buildings on behalf of the Authority a written warrant containing—

(a) A reference to this section; and

(b) The full name of the person; and

(c) A statement of the powers conferred by this section.

(5) Every person supplied with a warrant under subsection (4) of this section—

(a) Shall surrender the warrant to the Authority on the termination of his or her appointment:

(b) Shall not purport to act under such a warrant after the termination of his or her appointment with the Authority or, as the case may be, his or her authority to act on behalf of the Authority.

(6) No person not having a warrant under this section shall represent himself or herself to be the holder of such a warrant.

Offences and Proceedings

65. Offences—(1) Every person commits an offence who—

(a) Except as provided in section 25 (2) or section 27 (2) of this Act, does any building work, or permits any other person to do any building work, otherwise than in accordance with a current building consent:

(b) Except as provided in section 33 (2) of this Act, uses any building, or permits any other person to use a building, otherwise than in accordance with a current occupancy consent:

(b) Uses any building, or permits any other person to use any building, for a use for which the building is not safe or sanitary, or has inadequate means of escape from fire:
(ba) Fails to comply with any notice issued in terms of section 36 or section 39 or section 40 of this Act:

(bb) Knowingly fails to display any building warrant of fitness required to be displayed under this Act, or displays any false or misleading building warrant or fitness:

(c) Intentionally fails to do any act that is directed to be done by this Act or by the building code:

(d) Intentionally does any act, other than an act to which paragraph (a) or paragraph (b) of this subsection applies, that is forbidden to be done by this Act or by the building code:

(e) Intentionally fails to comply with any direction given by a person authorised to give that direction by this Act or by the building code:

(f) Personates a person named in any warrant of appointment supplied under section 63 or section 64 of this Act or mentioned in section 62 of this Act or named on the register of building certifiers:

(g) Personates a building certifier or a person acting under warrant or authority issued under this Act or the Local Government Act 1974:

(h) Wilfully obstructs, hinders, or resists any person in the execution of any powers conferred on him or her by this Act or by regulations:

(i) Wilfully removes or defaces any notice published under this Act, or incites any other person to do so:

(j) Knowingly makes any false or misleading statement in any document required to be supplied under this Act or by regulations.

(2) Every person who commits an offence against subsection (1) of this section is liable on summary conviction—

(a) In the case of an offence against subsection (1)(a) of this section, to a fine not exceeding $100,000 and, in the case of a continuing offence, to a further fine not exceeding $10,000 for every day or part of a day during which the offence has continued:

(b) In the case of an offence against (subsection (1)(b) of this section) subsection (1)(b) and (ba) of this section, to a fine not exceeding $200,000 and, in the case of a continuing offence, to a further fine not exceeding
Building

$20,000 for every day or part of a day during which
the offence has continued:
(c) In the case of an offence against paragraph (f) or paragraph (g) of
subsection (1) of this section, to a fine not exceeding
$10,000:
(d) In the case of any other offence against subsection (1) of this
section, to a fine not exceeding $5,000.

(3) Any person who does any act or makes any default, being
an act or default that is an offence against this Act and also an
offence against any other Act, may be proceeded against either
under this Act or under that other Act, but no person shall be
punished under both this Act and also under any other Act in
respect of the same act or default.

66. Injunctions may be granted by District Court for
certain continuing breaches—(1) Where it appears to the
(High Court) District Court, on the application of the Authority
or any territorial authority or any other party as defined in
section 13 (e) of this Act, that any person is committing (a
continuing) or is about to commit a breach of (paragraph (a) or
paragraph (b) of section 65 (1) of this Act) paragraph (a) or paragraph (b) or
paragraph (ba) of section 65 (1) of this Act, or that a building is
dangerous or insanitary in terms of section 56 of this Act and the
territorial authority has failed to take appropriate action, the
(High Court) District Court may grant an injunction or make
some other appropriate order, on such terms as the (High
Court) District Court considers appropriate, restraining the
person from engaging in that conduct or for the purpose of
ensuring that the person does not engage in that conduct:
Provided that in the case of a building that does not comply
with the provisions of the building code any such injunction or
order may be issued in respect of the owner of the building,
whether or not the owner has committed any offence against
the said section 65, and without prejudice to the liability of any
other person.

(1A) On any application under subsection (1) of this section, the
District Court may direct the Authority to issue a determination
under Part IV of this Act in respect of such matters as the Court
shall specify.
(2) The (High Court) District Court may at any time rescind or vary an injunction granted or order made under subsection (1) of this section.

(3) Where an application is made to the (High Court) District Court under subsection (1) of this section for the grant of an injunction restraining a person from engaging in conduct of a particular kind the (High Court) District Court may—

(a) If it is satisfied that the person has engaged in conduct of that kind, grant an injunction restraining the person from engaging in conduct of that kind; or

(b) If in the opinion of the (High Court) District Court it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind—whether or not it appears to the (High Court) District Court that the person intends to engage again, or to continue to engage, in conduct of that kind.

(4) Any order may be granted under subsection (1) of this section—

(a) Notwithstanding that proceedings for the offence constituted by the breach have not been taken; or

(b) Where the person is convicted of such an offence, either—

(i) In the proceedings for the offence, in substitution for or in addition to any penalty imposed for the offence; or

(ii) In subsequent proceedings.

67. Liability of principal for acts of agents, etc.—

(1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he or she had personally committed the offence.

(2) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection, it shall be a good defence to the charge if the defendant proves that the offence was committed without his or her knowledge and that he or she took all reasonable steps to
prevent the commission of the offence and to remedy any effects of the act or omission giving rise to the offence.

(3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent, or that he or she knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

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67. Liability of principal for acts of agents—(1) Where an offence is committed against this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.

(2) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection, it shall be a good defence if the defendant proves—

(a) In the case of a natural person (including a partner in a firm) that—

(i) He or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) He or she took all reasonable steps to prevent the commission of the offence:

(b) In the case of a body corporate that—

(i) Neither the directors nor any person involved in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) The body corporate took all reasonable steps to prevent the commission of the offence; and

(c) In all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.
(3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of the like offence if it is proved—

(a) That the act that constituted the offence took place with his or her authority, permission, or consent; and

(b) That he or she knew or could reasonably be expected to have known that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

67A. Strict liability and defences—(1) In any prosecution for an offence of contravening or permitting a contravention of any of the provisions of this Act or of the building code, it is not necessary to prove that the defendant intended to commit the offence.

(2) Subject to subsection (3) of this section, it is a defence to prosecution of the kind referred to in subsection (1) of this section if the defendant proves—

(a) That—

(i) The action or event to which the prosecution relates was necessary for the purposes of saving or protecting life or health or preventing serious damage to property; and

(ii) The conduct of the defendant was reasonable in the circumstances; and

(iii) The effects of the action or event were adequately mitigated or remedied by the defendant after it occurred; or

(b) That the action or event to which the prosecution relates was due to an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage, and in each case either—

(i) The action or event could not reasonably have been foreseen or been provided against by the defendant; and

(ii) The effects of the action or event were adequately mitigated or remedied by the defendant after it occurred.

(3) Except with the leave of the Court, subsection (2) of this section does not apply unless, within 7 days after the service of
the summons or within such further time as the Court may allow, the defendant delivers to the prosecutor a written notice—

(a) Stating that he or she intends to rely on subsection (2) of this section; and
(b) Specifying the facts that support his or her reliance on subsection (2) of this section.

68. Fines to be paid to territorial authority instituting prosecution—(1) Subject to subsection (2) of this section, where a person is convicted of an offence under section 65 (1) of this Act and the Court imposes a fine, the Court shall, if the information for that offence was laid by a territorial authority, order that the fine be paid to that territorial authority.

(2) There shall be deducted from every amount payable to a territorial authority under subsection (1) of this section a sum equal to 10 percent thereof, and that sum shall be credited to a Crown Bank Account nominated by the Minister of Finance for the purposes of this subsection.

(3) Notwithstanding anything in subsection (2) of this section, where any money awarded by a Court in respect of any loss or damage is recovered as a fine, and that fine is ordered to be paid to a territorial authority under subsection (1) of this section, no deduction shall be made under subsection (2) of this section in respect of that money.

(4) Subject to subsection (2) of this section, an order of the Court made under subsection (1) of this section shall be sufficient authority for the Registrar receiving the fine to pay that fine to the territorial authority entitled to it under the order.

(5) Nothing in section 73 of the Public Finance Act 1989 shall apply to any fine ordered to be paid to any territorial authority under subsection (1) of this section.

69. Prosecution of offences—Unless otherwise expressly provided, all offences against this Act may be prosecuted, and all fines or sums of money imposed or declared to be due or owing by or under this Act may be sued for and recovered, before any Court having jurisdiction for punishment of offences of the like nature or for the recovery of fines or sums of money of the like amount.
70. Appeals on questions of law—(1) This section applies to the following decisions of the Authority:
   (a) To issue a determination under Part IV of this Act; and
   (b) To decline an application for approval or to make an order under Part VIII of this Act; and
   (c) To decline an application for an accreditation under Part IX of this Act.

(2) Any decision to which this section applies may be appealed to the High Court on a point of law by—
   (a) The applicant; or
   (b) The person in respect of whom the order was made; or
   (c) Any party as defined in section 13 of this Act.

(3) An appeal under this section shall be made in accordance with the High Court Rules except to any extent that those rules are inconsistent with this section.

(4) An appellant shall file a notice of appeal within 15 working days after the date on which the appellant is notified of the Authority’s decision.

(5) The appeal shall be filed with the Registrar of the High Court.

(6) Before or immediately after the appeal is filed, the appellant shall serve a copy of the notice on the Authority and, in the case of an appeal against a determination under Part IV of this Act, on any party in respect of that determination as defined in section 13 of this Act.

(7) A person served with notice under subsection (6) of this section who wishes to appear on the appeal shall give notice of his or her intention to appear to—
   (a) The appellant; and
   (b) The Registrar of the High Court; and
   (c) Any other person to whom the appellant is required to service notice under subsection (6) of this section.

(8) The notice to appear under subsection (7) of this section shall be served within 10 days after the party was served with the notice of appeal.

71. Service of documents—(1) Where a notice or other document is to be served on a person for the purposes of this Act, it may be served—
   (a) By delivering it personally to the person; or
   (b) By delivering it at the usual or last known place of residence or business of the person, including by facsimile; or
(c) By sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person.

(2) Where a notice or other document is to be served on a body (whether incorporated or not) for the purposes of this Act, service on any officer of the body in accordance with subsection (1) of this section shall be deemed to be service on the body.

(3) Where a notice or other document is to be served on a partnership for the purposes of this Act, service on any one of the partners in accordance with subsections (1) and (2) of this section shall be deemed to be service on the partnership.

(4) Where a notice or other document is sent by post to a person in accordance with subsection (1)(c) of this section it shall be deemed to be received by the person at the time at which the letter would have been delivered in the ordinary course of post.

72. Notices and consents in relation to Maori land—
Where—
(a) A notice or other document is to be served on the owner of land for the purpose of this Act; and
(b) The approval or consent of an owner of land is sought or required for the purpose of this Act—
the notice, other document, or consent shall be deemed to have been served or obtained, as the case may be, on or from all the owners of Maori land if it has been served on or obtained from such owner or owners as have been nominated for the purpose by the Registrar of the Maori Land Court at the request of the person seeking to serve the notice or other document, or obtain the approval or consent.

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Actions in Relation to Authority or Territorial Authority

73. Proceedings against Authority or territorial authority—(1) No proceedings, civil or criminal, shall lie against the Authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions under this Act, unless it is shown that the Authority acted without reasonable care or in bad faith.

(2) No proceedings, civil or criminal, shall lie against any member of the Authority, or any employee or consultant of the Authority, or any member of a committee appointed by the
Authority, for anything that person may do or say in the course of the operations of the Authority, unless it is shown that that person acted in bad faith.

(3) Subject to section 74(5) of this Act, no proceedings, civil or criminal, shall lie against any territorial authority for anything it may do or fail to do in the course of the exercise or intended exercise of its functions under this Act, unless it is shown that the territorial authority acted without reasonable care or in bad faith.

Land Information Memorandum

74. Land information memorandum—(1) A person may apply to a territorial authority for the issue, within 4 days, of a land information memorandum in relation to matters affecting any land in the district of the authority.

(2) The matters which may be requested by that person for inclusion in any memorandum are—

(a) Information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsion, subsidence, slippage, or inundation, or likely presence of hazardous contaminants, being a feature or characteristic that—

(i) Is known to the territorial authority; but

(ii) Is not apparent from the district scheme under the Town and Country Planning Act 1977:

(b) Information relating to any rates owing in relation to the land:

(c) Details of any consent, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority (whether under this Act or any other Act):

(d) Information relating to the use to which that land may be put and conditions attached to that use:

(e) Prescribed information.

(3) In addition to the information provided for under subsection (2) of this section, a territorial authority may provide in the memorandum such other information concerning the land as the authority considers in its absolute discretion to be relevant.
(4) An application for a land information memorandum shall be in writing and shall be accompanied by any fee fixed by the territorial authority under section 23 of this Act.

(5) A territorial authority shall not incur any liability in respect of any information provided, in good faith, in addition to the information provided under subsection (2), of this section.

(6) In the absence of proof to the contrary, a land information memorandum shall be sufficient evidence of the correctness, as at the date of its issue, of any information included in it pursuant to subsection (2) of this section.

Civil Proceedings and Defences

73. Civil proceedings against members, employees, etc.—No civil proceedings shall be brought for an act done in good faith under this Act against a member, building referee, or employee of the Authority, or a member or employee of a territorial authority, or a member of a committee appointed by the Authority or a territorial authority.

73A. Civil proceedings against building certifiers—Civil proceedings against a building certifier arising out of the issue under this Act of a building certificate or code compliance certificate are to be brought in tort and not in contract.

73B. Limitation defences—(1) Except to the extent provided in subsection (2) of this section, the provisions of the Limitation Act 1950 apply to civil proceedings against any person where those proceedings arise from—

(a) The construction or alteration of any building; or

(b) The exercise of any function under this Act relating to the construction or alteration of that building.

(2) Civil proceedings may not be brought against any person 15 years or more after the date of the act or omission on which the proceedings are based.

(3) For the purposes of subsection (2) of this section if—

(a) Civil proceedings are brought against a territorial authority, a building certifier, or the Authority; and
(b) The proceedings arise out of the issue of a building consent, a building certificate, a code compliance certificate, or an Authority determination—the date of the act or omission is the date of issue of the consent or certificate or determination.

(4) For the purposes of subsection (2) of this section, if civil proceedings are brought against the Authority and the proceedings arise out of the issue of an accreditation certificate, the date of the act or omission is the date at which the accreditation certificate was relied on.

(5) Notwithstanding section 76(1)(a) of this Act, this section applies to any proceedings commenced after this Part of this Act comes into operation, except proceedings commenced before the 1st day of July 1993.

Amendments to Other Acts, Repeals, Transitional Provisions, and Savings

75. Amendments to other Acts and consequential repeals—(1) The enactments specified in the Third Schedule to this Act are hereby amended in the manner specified in that Schedule.

(2) The following enactments are hereby consequentially repealed:

(a) The Health Amendment Act 1958;
(b) Section 10 of the Health Amendment Act 1964;
(c) Section 7 of the Health Amendment Act 1973;
(d) Sections 3(2) and 6 of the Health Amendment Act 1979;
(e) Section 48 of the Local Government Amendment Act 1980;
(f) Sections 19 to 21 of the Local Government Amendment Act (No. 2) 1981;
(g) Section 3 of the Health Amendment Act 1982;
(h) Section 25(2) of the Local Government Amendment Act (No. 2) 1982;
(i) So much of the Schedule to the Area Health Boards Act 1983 as relates to sections 50 and 51 of the Health Act 1956;
(j) Section 36 of the Local Government Amendment Act 1985;
(k) Section 15 of the Health Amendment Act 1987;
(l) So much of the Fifth Schedule to the Rating Powers Act 1988 as relates to section 624 (3) (c) of the Local Government Act 1974:

(m) Section 452 of the Children, Young Persons, and Their Families Act 1989.

New

(3) The regulations and orders specified in the Fourth Schedule to this Act are hereby revoked.

76. Transitional provisions and savings—(1) The following matters shall continue as if this Act had not been passed:

(a) Any proceedings in or out of any Court in respect of any act or omission before Parts IV to VII and X of this Act came into operation:

(b) Any application properly made before Parts IV to VII and X of this Act came into operation:

(c) Any authorisation lawfully given before Parts IV to VII and X of this Act came into operation:

(d) The lawful construction of any building commenced under an authorisation properly applied for before Parts IV to VII and X of this Act came into operation.

(2) During the period of 6 calendar months after Parts VI to VII and X of this Act came into force, any person who wishes to commence the construction of a building may, at that person’s option, choose to apply—

(a) For a building consent under this Act; or

(b) For the authorisation that would have been required if this Act had not been passed, in which case the application shall be deemed for the purposes of subsection (1) of this section to have been made before Parts VI to VII and X of this Act came into operation.

(3) If a building is being constructed pursuant to an authorisation to which subsection (1) (d) or subsection (2) (b) of this section applies, and reasonable progress of construction to the satisfaction of the territorial authority concerned has not been made for 4 calendar months, then those subsections shall cease to apply and a building consent under this Act shall be required in respect of any further construction.
PART XI
Amendment to Local Government Official Information and Meetings Act 1987

77. This Part to be read with the Local Government Official Information and Meetings Act 1987—This Part of this Act shall be read together with and deemed part of the Local Government Official Information and Meetings Act 1987 (in this Part of this Act referred to as the principal Act).

78. Land information memorandum—The principal Act is hereby amended by inserting, after section 44, the following heading and section:

"Land Information Memoranda

44A. Land information memorandum—(1) A person may apply to a territorial authority for the issue, within 10 working days, of a land information memorandum in relation to matters affecting any land in the district of the authority.

(2) The matters which shall be included in that memorandum are—

(a) Information identifying each (if any) special feature or characteristic of the land concerned, including but not limited to potential erosion, avulsion, subsidence, slippage, alluvion, or inundation, or likely presence of hazardous contaminants, being a feature or characteristic that—

(i) Is known to the territorial authority; but

(ii) Is not apparent from the district scheme under the Town and Country Planning Act 1977 or a district plan under the Resource Management Act 1991:

(b) Information on private and public stormwater and sewerage drains as shown in the territorial authority’s records:

(c) Information relating to any rates owing in relation to the land:

(d) Details of any consent, certificate, notice, order, or requisition affecting the land or any building on the land previously issued by the territorial authority.
(whether under the Building Act 1991 or any other Act):

“(e) Information relating to the use to which that land may be put and conditions attached to that use:

“(f) Information which, in terms of any other Act, has been notified to the territorial authority having the power to classify land or buildings for any purpose.

“(3) In addition to the information provided for under subsection (2) of this section, a territorial authority may provide in the memorandum such other information concerning the land as the authority considers, at its discretion, to be relevant.

“(4) An application for a land information memorandum shall be in writing and shall be accompanied by any charge fixed by the territorial authority in relation thereto.

“(5) In the absence of proof to the contrary, a land information memorandum shall be sufficient evidence of the correctness, as at the date of its issue, of any information included in it pursuant to subsection (2) of this section.

“(6) Notwithstanding anything to the contrary in this Act, there shall be no grounds for the territorial authority to withhold information specified in terms of subsection (2) of this section or to refuse to provide a land information memorandum where this has been requested.”
Building

SCHEDULES

FIRST SCHEDULE Section 8 (5)

PROVISIONS RELATING TO BUILDING INDUSTRY AUTHORITY

1. Appointment of members and terms of office of members—
   (1) Each member of the Authority shall be appointed for such term not exceeding 3 years as the Minister shall specify in the instrument appointing the member.
   (2) Each member of the Authority may be re-appointed from time to time.
   (3) Where the term of office of a member of the Authority expires, that member, unless sooner vacating or removed from office under clause 2 of this Schedule, shall continue to hold office until—
      (a) That member is re-appointed; or
      (b) A successor to that member is appointed; or
      (c) That member is informed in writing by the Minister that he or she is not to be re-appointed.

2. Vacation of office—
   (1) Any member of the Authority may at any time be removed from office by the Minister for (disability) inability to perform the duties of office, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Minister.
   (2) Any member of the Authority may at any time resign from office by writing addressed to the Minister.
   (3) If any member of the Authority is removed from office, resigns, or dies, the office of the member shall become vacant.
   (4) The powers of the Authority shall not be affected by any vacancy in its membership.

2A. Disclosure of interests—
   (1) Any member of the Authority or of any committee of the Authority or any building referee who, otherwise than as such member or referee, is directly or indirectly interested in the exercise of any power or function by the Authority, or who is directly or indirectly interested in any arrangement, agreement, or contract made or entered into, or proposed to be made or entered into, by the Authority shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Authority.
   (2) A disclosure under this section shall be recorded in the minutes of the Authority and, except as otherwise provided by resolution of the Authority, the member or referee—
      (a) Shall not take part after the disclosure in any deliberation or decision of the Authority relating to the exercise of the power or function by the Authority or referees or to the arrangement, agreement, or contract; and
      (b) Shall be disregarded for the purpose of forming a quorum of the Authority or referees for any deliberation or decision.

3. Presiding member—
   (1) The Minister shall appoint one of the members of the Authority to be the presiding member of the Authority.
(2) The Authority shall elect one of its members to be deputy presiding member for such period, not exceeding 2 years, as the Authority decides.

(3) The deputy presiding member shall hold office as such until the deputy presiding member's successor is elected or the deputy presiding member sooner ceases to be a member of the Authority.

(4) If a vacancy occurs in the office of deputy presiding member before the expiration of the period for which he or she has been elected, the Authority shall, at its first meeting after the vacancy occurs, elect some other member of the Authority to be deputy presiding member.

(5) Subject to this Act, the deputy presiding member shall have and may exercise all the powers and duties of the presiding member during the presiding member's absence or incapacity or while there is a vacancy in the office of presiding member.

(6) No acts done by a person holding office as deputy presiding member of the Authority in that person's capacity as such deputy, and no acts done by the Authority while a deputy presiding member is acting as such deputy, shall in any proceedings be questioned on the ground that the occasion for the deputy presiding member so acting had not arisen or had ceased.

4. Meetings—(1) Meetings of the Authority shall be held at such times and places as the Authority or the presiding member appoints.

(2) At any meeting of the Authority, the quorum shall be half the members if the total membership is even, and a majority of members if the total membership is odd.

(3) The presiding member shall preside at all meetings of the Authority at which the presiding member is present and, in the absence of the presiding member, the deputy presiding member shall preside.

(4) In the absence of the presiding member and the deputy presiding member from a meeting, the members present shall appoint one of their number to be presiding member for the purposes of that meeting.

(5) No acts done by a presiding member appointed under subclause (4) of this clause shall in any proceedings be questioned on the ground that the occasion for so acting had not arisen or had ceased.

(6) All questions arising at a meeting of the Authority shall be decided by a majority of the votes of the members present and voting and the presiding member shall, in the event of an equality of votes, have a casting vote.

(7) A resolution in writing signed, or assented to by letter, telegram, cable, or facsimile message, by all the members of the Authority shall be as valid and effectual as if it had been passed at a meeting of the Authority duly called and constituted.

(8) The Authority may co-opt a person or persons for any particular meeting (but not permanently) to assist the Authority to resolve a matter under consideration at that meeting, but such a person shall not be entitled to vote.

(9) Subject to this Act, the Authority may regulate its own proceedings and the proceedings of any committee appointed by the Authority.

5. Funds and resources—(1) The funds and resources of the Authority shall consist of—
FIRST SCHEDULE—continued

PROVISIONS RELATING TO BUILDING INDUSTRY AUTHORITY—continued

(a) Any money appropriated by Parliament and paid to the Authority for the purposes of the Authority; and
(b) All money and property provided to the Authority by way of grants, subsidies, donations, gifts, charges, and subscriptions; and
(c) All money derived from the sale, lease, or hire of property held by or on behalf of the Authority; and
(d) All other money and property lawfully received by the Authority for the purposes of the Authority; and
(e) All accumulations of income derived from any such property or money.

(2) The Authority may expend its funds as provided in this Act or for any purpose reasonably necessary for or incidental to the performance of its functions.

(3) The Authority may, in any financial year, expend out of its funds for purposes not authorised by this or any other Act a sum or sums totalling not more than 0.1 percent of its total expenditure in that year.

6. Bank accounts—(1) For the purposes of this Act, the Authority shall maintain, at any bank or banks, bank accounts into which shall be paid all money received by the Authority.

(2) The Authority may from time to time open at the bank or banks at which its accounts are kept, or at any branch or agency of the bank or banks, such subsidiary accounts as the Authority thinks necessary for the performance and exercise of its functions and powers.

(3) Every account under this section shall be operated upon only by cheque or other instrument (not being a bill or promissory note) signed by such person or persons as may from time to time be authorised by the Authority for that purpose.

7. Investment of money—Any money that belongs to the Authority and that is not immediately required for expenditure by the Authority may be invested pursuant to section 25 of the Public Finance Act 1989.

8. Remuneration, allowances, and expenses of members of the Authority—

Struck Out

(1) There shall be paid to the members of the Authority such remuneration by way of fees, salary, or allowances as may be fixed, whether generally or in respect of any member of the Authority, by the Minister.

(2) Any decision under subclause (1) of this clause shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein, and if no such date is specified, the decision shall take effect on the date thereof.

(3) The Authority is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
FIRST SCHEDULE—continued

PROVISIONS RELATING TO BUILDING INDUSTRY AUTHORITY—continued

(4) There shall be paid to the members of the Authority remuneration by way of fees, salary, or allowances, and travelling allowances and travelling expenses, in accordance with the Fees and Travelling Allowances Act 1951; and the provisions of that Act shall apply accordingly.

9. Payments to committee members, consultants, and hearing adjudicators—The Authority may pay to members of committees, consultants, hearing adjudicators appointed or engaged by the Authority, and persons co-opted under clause 4(8) of this Schedule, for services rendered by them, fees and commission, or either, at such rates as the Authority thinks fit, and may separately reimburse them for expenses reasonably incurred in rendering services for the Authority.

10. Seal—The Authority shall have a seal which shall be judicially noted in all Courts and for all purposes.

11. Employees of Authority—(1) Subject to this clause, the Authority may from time to time appoint a person to be the chief executive of the Authority and may appoint a temporary chief executive during the temporary absence of the chief executive.

(2) The chief executive may from time to time appoint such employees (including employees on secondment from other organisations and acting, temporary, or casual employees) as the chief executive thinks necessary for the efficient performance and exercise of the functions and powers of the Authority.

(3) The Authority or chief executive, as the case may be, may at any time terminate or suspend the employment of the chief executive or other employee appointed under this section.

(4) The employees of the Authority shall be employed on such terms and conditions of employment and shall be paid such salaries and allowances as the Authority from time to time determines.

(5) Any determination under subclause (4) of this clause shall take effect on such date (whether the date of the determination or any earlier or later date) as may be specified in the determination, or, if no date is so specified, on the date of the determination.

12. Superannuation and retiring allowances—(1) For the purpose of providing superannuation or retiring allowances for its employees, the Authority may from time to time pay sums of money by way of subsidy into any superannuation scheme.

(2) Notwithstanding anything in this Act, any person who, immediately before becoming an officer or employee of the Authority, is a contributor to the Government Superannuation Fund under Part II or Part IIA of the Government Superannuation Fund Act 1956 shall be deemed for the purposes of that Act to be employed in the Government service so long as the person continues to be an officer or employee of the Authority, and that Act shall apply to the person in all respects as if service as such an officer or employee were Government service.

(3) For the purposes of the Government Superannuation Fund Act 1956, nothing in subclause (2) of this clause shall entitle any person to whom that subclause applies to become a contributor to the Government Superannuation Fund after ceasing to be a contributor to that fund.
104

Building

FIRST SCHEDULE—continued

PROVISIONS RELATING TO BUILDING INDUSTRY AUTHORITY—continued

(4) For the purposes of the Government Superannuation Fund Act 1956, the Authority shall be the controlling authority in relation to any officer or employee to whom that Act applies by virtue of subclause (2) of this clause.

(5) Subject to the Government Superannuation Fund Act 1956, nothing in subclause (2) of this clause shall entitle any person to whom that subclause applies to become a contributor to the Government Superannuation Fund after ceasing to be a contributor to that fund.

13. Minister may require Authority to supply reports—The Minister may from time to time require the Authority to supply the Minister with a report on its operations and on the operation of (this Act) the building code.

14. Annual report—(1) The Authority shall in each year supply the Minister with a report on its operations and on the operation of (this Act) the building code.

(2) The Authority shall include in every annual report of the Authority the financial statements prepared by the Authority, in accordance with Part V of the Public Finance Act 1989, in respect of the financial year to which the report relates, together with the audit report and the management statement relating to those financial statements.

(3) A copy of every annual report of the Authority shall be tabled in the House of Representatives in accordance with section 44 of the Public Finance Act 1989.

15. Exemption from income tax—The income of the Authority shall be exempt from income tax.
SCHEDULE 1A

Section 45 (6) (b)

CRITERIA FOR FIT AND PROPER PERSON

1. For the purpose of determining whether or not a person is a fit and proper person under section 45 (6) (b) of this Act, the Authority shall, having regard to the degree and nature of the person's proposed involvement in the building industry, have regard to, and give such weight as the Authority considers appropriate to, the following matters:

(a) The person's related experience (if any) within the building industry; and

(b) The person's knowledge of the applicable building regulatory requirements; and

(c) Any conviction for any offence in terms of the Health Act 1956, the Local Government Act 1974, the Fire Service Act 1975, or this Act, or the equivalent provisions in overseas legislation, whether or not—

(i) The conviction was in a New Zealand Court; or

(ii) The offence was committed before the commencement of this Act.

2. The Authority shall not be confined to consideration of the matters specified in clause 1 of this Schedule and may take into account such other matters and evidence as may be relevant.

3. The Authority may, for the purpose of determining whether or not a person is a fit and proper person under section 45 (6) (b) of this Act,—

(a) Seek and receive such information as the Authority thinks fit; and

(b) Consider information obtained from any source.

4. Where the Authority is considering whether a corporation is a fit and proper person under section 45 (6) (b) of this Act, paragraphs (a) to (c) of clause 1 of this Schedule shall be read as if every reference in those paragraphs to a person is a reference to the corporation and its directors and chief executive.

5. If the Authority proposes to take into account any information that is or may be prejudicial to a person, the Authority shall, subject to clause 6 of this Schedule, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

6. Nothing in clause 5 of this Schedule shall require the Authority to disclose any information if the disclosure would be likely to endanger the safety of any person.

7. Where the Authority determines not to disclose any information in reliance on clause 6 of this Schedule—

(a) The Authority shall inform the person of the fact of non-disclosure and that the person may seek a review by an Ombudsman of that non-disclosure pursuant to the Official Information Act 1982; and

(b) The provisions of that Act shall apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld in reliance on section 6 (d) of that Act.
SECOND SCHEDULE

EXEMPT BUILDING WORK

1. Building consent shall not be required in respect of the following buildings or building work:

   (a) Any detached building—
       (i) Housing fixed plant or machinery, the only normal visits to
           which are intermittent visits to inspect or maintain the plant or
           machinery; or
       (ii) Into which people cannot or do not normally go; or
       (iii) Used only by people engaged in the construction or
           maintenance of another building in respect of which a building
           consent does apply; or
       (iv) Not exceeding 1 storey, not exceeding 10 square metres in
           floor area, and not containing sleeping accommodation or
           sanitary facilities.

   (b) Any power pylon, motorway sign, or similar simple structure owned
       or controlled by any public authority or public utility
       corporation.

   (c) Any mast, pole, or radio or television aerial that does not exceed 7
       metres in height above the point of its attachment or base
       support.

   (d) Any retaining wall that retains not more than 1.5 metres depth of
       ground and that does not support any surcharge such as a road, a
       building, or any other load additional to the load of that ground:

   (e) Any wall (other than a retaining wall), fence, or hoarding of a height
       not exceeding 2 metres above the supporting ground.

   (f) Any tank or pool (other than a swimming pool as defined in section 2
       of the Fencing of Swimming Pools Act 1987), including any
       structural support thereof,—
       (i) Not exceeding 25,000 litres capacity and supported directly
           by the ground; or
       (ii) Not exceeding 2,000 litres capacity and supported not more
           than 2 metres above the supporting ground; or
       (iii) Not exceeding 500 litres capacity and supported not more
           than 4 metres above the supporting ground.

   (g) Any tent or marquee not exceeding 30 square metres in area and
       remaining in use for not more than 1 month.

   (h) Any platform or the like from which it is not possible for a person to
       fall more than 1 metre.

   (i) Any temporary storage stack of goods or materials.

   (j) Maintenance work, excluding the alteration or replacement of
       anything necessary for compliance with the provisions of the
       building code.

   (k) Any offshore installation used or to be used for mining operations as
       defined in section 2 (1) of the Petroleum Act 1937.

   (l) Any vehicle or chattel, whether fixed or movable, not hereinbefore
       described or referred to unless it is used or to be used as a place,
       or part of a place, of residence, business, or storage.
SECOND SCHEDULE—continued

EXEMPT BUILDING WORK—continued

(m) Any internal partitioning or other building work in respect of which the territorial authority considers that the issuing of a building consent is not necessary for the purposes of this Act.

2. In considering, under clause 1 (m) of this Schedule, whether the issuing of a building consent in relation to particular building work is necessary for the purposes of this Act, the territorial authority shall have due regard to the matters set out in section 40(1) of this Act and shall comply with the provisions of section 25 of the Disabled Persons Community Welfare Act 1975.

New

SECOND SCHEDULE

EXEMPT BUILDINGS AND BUILDING WORK

1. In this Schedule, unless the context otherwise requires,—

“Falsework” means any temporary structure or framework used in construction work to support materials, equipment, or any assembly; and includes the use of steel tubes, adjustable steel props, proprietary frames, or any other means to support a permanent structure during its construction until it becomes self-supporting; but does not include scaffolding or cranes for support:

“Scaffolding” means any structure, framework, swinging stage, suspended scaffolding, or boatswains chair, of a temporary nature, used or intended to be used for the support or protection of workmen engaged in or in connection with construction work for the purpose of carrying out that work, or for the support of materials used in connection with any such work; and includes any plank, coupling, fastening, fitting, or device used in connection with the construction or use of scaffolding.

2. A building consent shall not be required in respect of the following building work:

(a) Routine maintenance and refurbishment, but excluding the alteration or replacement of anything necessary for compliance with the provisions of the building code;

(b) Any power pole, pylon, motorway sign, or similar simple structure owned or controlled by any network utility operator or other organisation;

(c) Any dam that retains not more than 3 metres depth, and not more than 20,000 cubic metres volume, of water, and any stopbank or culvert:
(d) Any mast, pole, or telecommunication aerial, excluding dish aerials, that does not exceed 7 metres in height above the point of its attachment or base support:

(e) Any retaining wall that retains not more than 1.5 metres depth of ground and that does not support any surcharge or any load additional to the load of that ground, such as the load of vehicles on a road:

(f) Any wall (other than a retaining wall), fence (other than a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987), or hoarding of a height not exceeding 2 metres above the supporting ground:

(g) Any tank or pool and any structural support thereof (excluding a swimming pool as defined in section 2 of the Fencing of Swimming Pools Act 1987), including any tank or pool that is part of any other building for which a building consent is required,—

(i) Not exceeding 25,000 litres capacity and supported directly by the ground; or

(ii) Not exceeding 2,000 litres capacity and supported not more than 2 metres above the supporting ground; or

(iii) Not exceeding 500 litres capacity and supported not more than 4 metres above the supporting ground:

(h) Any tent or marquee not exceeding 30 square metres in floor area and remaining in use for not more than 1 month:

(i) Any platform, bridge, or the like from which it is not possible for a person to fall more than 1 metre even if it collapses:

(j) Any offshore installation to be used for petroleum mining as defined in section 2 (1) of the Petroleum Act 1957:

(k) Any temporary storage stack of goods or materials:

(l) Any scaffolding and any falsework for use in the construction or maintenance of a building or for other work:

(m) Any vehicle or chattel, whether fixed or movable, not hereinbefore described or referred to unless it is used as a place, or part of a place, of residence, business, or storage:

(n) Any detached building (other than a building which is required to be licensed in terms of the Dangerous Goods Act 1974 or a building closer than its own height to any residential accommodation or to any legal boundary) which—

(i) Houses fixed plant or machinery, the only normal visits to which are intermittent visits for routine inspection and maintenance of that plant or machinery; or

(ii) Into, or into the immediate vicinity of which, people cannot or do not normally go; or

(iii) Is used only by people engaged in the construction or maintenance of another building in respect of which a building consent is required; or
SECOND SCHEDULE—continued

EXEMPT BUILDINGS AND BUILDING WORK—continued

(iv) Does not exceed either 1 storey, or 10 square metres in floor area, and does not contain sleeping accommodation or sanitary facilities or facilities for the storage of potable water:

(o) Any other building work or building for which the territorial authority considers that a building consent is not necessary for the purposes of this Act because that building work or building either—

(i) Is unlikely to be constructed otherwise than in accordance with the building code; or

(ii) If constructed otherwise than in accordance with the building code, is unlikely to endanger people or adjoining property.
## Amendments to Other Acts

<table>
<thead>
<tr>
<th>Act Amended</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>1937, No. 27—The Petroleum Act 1937 (R.S. Vol. 7, p. 647)</td>
<td>By inserting, after section 46, the following section:</td>
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<tr>
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<td>“46A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.</td>
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<td>“(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
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<tr>
<td>1950, No. 53—The Boilers, Lifts, and Cranes Act 1950 (R.S. Vol. 1, p. 377)</td>
<td>By inserting, after section 4 (1) (b), the following paragraph:</td>
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<td>“(c) Any lift that is permanently incorporated into a building as defined in section 2 of the Building Act 1990.”</td>
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<tr>
<td>1952, No. 55—The Dairy Industry Act 1952 (Reprinted 1976, Vol. 4, p. 3393)</td>
<td>By inserting, after section 9, the following section:</td>
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<tr>
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<td>“9A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.</td>
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<td>“(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
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<tr>
<td>1952, No. 55—The Dairy Industry Act 1952 (Reprinted 1976, Vol. 4, p. 3593)—continued</td>
<td>‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
</tr>
<tr>
<td>1956, No. 65—The Health Act 1956 (R.S. Vol. 19, p. 493)</td>
<td>By omitting from section 29 (d) the words “are of such construction, or”. By repealing section 29 (e). By omitting from section 39 (1) the words “regulations or bylaws in force in the district, or, in the absence of such regulations or bylaws, to the satisfaction of the Medical Officer of Health,”, and substituting the words “the building code and the Building Act 1990”. By repealing sections 40 and 42 (a). By omitting from section 42 (b) the words “structure or state of disrepair or”. By repealing sections 42 (1) (c) and (d), 48, 49, 50, 51, and 52. By omitting from section 46 (2) the expression “to (e)”, and substituting the expression “and (b)”. By omitting from section 53a (1) the words “sections 41, 42, 44, 46, 48, and 50”, and substituting the words “sections 41, 42, 44, and 46”. By omitting from section 53b the expression “46, 48, and 50”, and substituting the expression “and 46”. By omitting from section 53b (a) the words “repairs, alterations, or”. By omitting from section 53c (1) the expression “46, 48, and 50”, and substituting the expression “and 46”. By repealing section 64 (1) (e) and (f). By omitting from section 64 (1) (g) the words “, septic tanks, sanitary conveniences, and sanitary appliances”, and substituting the words “and septic tanks (other than septic tanks constructed in accordance with a building consent under the Building Act 1990)”.</td>
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<td>Act Amended</td>
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| 1956, No. 65—The Health Act 1956 (R.S. Vol. 19, p. 493)—continued | By omitting from section 64 (1) (h) the words “and repairing”.
By omitting from section 64 (1) (p) the words “and structure”.
By inserting, after section 65, the following section:

"65A. Effect of Building Act 1990 on bylaws—(1) A local authority may not make any bylaw under this Act that purports to have the effect of requiring any building to achieve performance criteria additional to or more restrictive than those specified in the Building Act 1990 or the building code.

“(2) For the purposes of this section, the terms ‘building’, ‘building code’, and ‘performance criteria’ have the meanings ascribed to them by section 2 of the Building Act 1990.”

By omitting from section 117 (1) (c) the words “buildings and”.

By repealing section 120A, and substituting the following section:

“120A. Regulations as to homes and day-care centres for aged persons—(1) Regulations made under this Act may provide for the registration, licensing, and control of homes and day-care centres for aged persons within the meaning of subsections (4) and (5) of this section.

“(2) Any such regulations may—

“(a) Prescribe, either by reference to other enactments or otherwise, minimum standards of staffing to be provided in all such homes and day-care centres or in any class or classes of such homes or day-care centres:

“(b) Require compliance by the proprietors of all such homes and day-care centres with specified codes of practice or specified standards:
<table>
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| 1956, No. 65—The Health Act 1956 (R.S. Vol. 19, p. 493)—continued | “(c) Provide for the inspection of all such homes and day-care centres and of premises reasonably believed to be such homes or day-care centres:  
“(d) Prescribe licence fees to be payable by the proprietors of all such homes and day-care centres or any class or classes of such homes or day-care centres:  
“(e) Prescribe conditions to govern, or that may be imposed in respect of, the grant and transfer of licences for such homes and day-care centres and the duties of licensees thereof:  
“(f) Provide for the cancellation of such licences:  
“(g) Exempt or provide for the exemption of any such home or day-care centre or any class or classes of such homes or day-care centres from all or any of the provisions of the regulations:  
“(h) Provide for the granting of temporary licences in respect of homes and day-care centres which do not comply with the minimum standards prescribed:  
“(i) Prescribe the conditions subject to which persons may be accommodated in homes, whether those persons have attained the age of 65 years or not:  
“(j) Prescribe minimum standards of care to be provided for residents in homes and for aged persons in day-care centres: |
"(k) Prescribe activity programmes to be conducted for residents in homes and for aged persons in day-care centres:

"(l) Prescribe the qualifications required for managers of homes:

"(m) Prescribe training courses required to be undergone by persons employed in homes and day-care centres.

"(3) Every person commits an offence against this Act who holds out, or uses any words which are likely to lead persons to believe, that any home is a licensed private hospital or that premises which are not registered or licensed under regulations made pursuant to this section are in fact so registered or licensed.

"(4) In this section the term 'home' means any premises where 3 or more persons who have attained the age of 65 years and are not related by blood or marriage to the house-holder are, or are to be, in residence and paying for their lodging and for one or more meals a day, being any premises that are, or purport to be, conducted principally for aged-frail persons, and not being a licensed private hospital, an institution under the control of the Department of Health or of an area health board, or a hospital within the meaning of the Mental Health Act 1969.

"(5) In this section the term 'day-care centre' means any premises which are or purport to be used regularly, although not necessarily continuously, for the accommodation (for the purposes of care, occupation, recreation, or entertainment), during the day, of 5 or more persons who have attained the age of 65 years, who are not related by blood or marriage to the occupier of the
1956, No. 65—The Health Act 1956 (R.S. Vol. 19, p. 493)—continued

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premises, and by whom or on whose behalf payment is made in respect of such accommodation or in respect of one or more meals provided in the course of such accommodation, whether or not the premises are used at the same time for the accommodation of other persons or for other purposes; but does not include—

“(a) A home; or
“(b) Any premises expressly excepted from the definition of ‘home’ in subsection 4 of this section; or
“(c) Any premises in which such accommodation may be provided by virtue of powers conferred by, or by virtue of a licence issued by a local authority under, any other enactment.”

By omitting from section 120c (1) the word “For”, and substituting the words “Subject to the Building Act 1990, for”.

By inserting, after section 128, the following section:

“128A. Building Act 1990—
(1) Where any person making an inspection in accordance with section 128 of this Act believe that any building or sitework does not comply with the Building Act 1990, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.
“(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”
**Building**

**THIRD SCHEDULE—continued**

**AMENDMENTS TO OTHER ACTS—continued**

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<tr>
<td>1957, No. 19—The Explosives Act 1957 (R.S. Vol. 6, p. 361)</td>
<td>By inserting, after section 10, the following section: <strong>Building Act 1990</strong>—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. <strong>(2)</strong> For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
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<tr>
<td>1959, No. 32—The Construction Act 1959 (R.S. Vol. 23, p. 227)</td>
<td>By inserting, after section 18c, the following section: <strong>Building Act 1990</strong>—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. <strong>(2)</strong> For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
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<tr>
<td>1962, No. 136—The Shearers Act 1962 (R.S. Vol. 9, p. 575)</td>
<td>By adding to section 9 (1) the words “and the Building Act 1990”. By repealing sections 10, 11, 12 (7) to (9), and 15 (1) (b).</td>
</tr>
<tr>
<td>1964, No. 75—The Burial and Cremation Act 1964 (R.S. Vol. 16, p. 1)</td>
<td>By omitting from section 38 (2) the word “erection”, and substituting the word “operation”. By omitting from section 38 (2) the word “proposed”. By repealing section 105b (i). By inserting, after section 203, the following section: <strong>Building Act 1990</strong>—(1) Where any person making an inspection under this Act believes that any building or sitework does not comply with the Building Act 1990, that person shall by notice in writing give to</td>
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### Building

**THIRD SCHEDULE—continued**

**AMENDMENTS TO OTHER ACTS—continued**

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<tr>
<td>1964, No. 135—The Education Act 1964 (Reprinted 1975, Vol. 3, p. 1)—continued</td>
<td>the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.</td>
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<td>&quot;(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
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<td>By omitting from section 31 (g) the words “erection or structural alteration of buildings”, and substituting the words “fitout and layout of buildings (including internal partitioning)”</td>
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<tr>
<td>1965, No. 23—The Radiation Protection Act 1965 (R.S. Vol. 18, p. 673)</td>
<td>By inserting, after section 42, the following section:</td>
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<td>“42A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.</td>
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<td>“(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
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<td>By omitting from section 65 (m) the words “construction, design”, and substituting the words “fitout and layout”.</td>
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<td>By omitting from section 65 (m) the word “structural”.</td>
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<tr>
<td>1967, No. 51—The Animal Remedies Act 1967 (R.S. Vol. 21, p. 11)</td>
<td>By omitting from section 65 (mb) the words “are structurally altered”, and substituting the words “are altered in respect of any of the matters referred to in paragraph (m) of this section”.</td>
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<td>1969, No. 23—The Building Research Levy Act 1963 (R.S. Vol. 21, p. 195)</td>
<td>By inserting in section 2, in its appropriate alphabetical order, the following definition: “Building consent’ means a building consent in terms of the Building Act 1990; but does not include a consent issued in respect of any demolition.” By repealing paragraphs (a) and (b) of section 5 (2), and substituting the following paragraphs: “(a) The value (if any) specified in the building consent; or “(b) If no value is so specified, the value shall be such value as may be agreed upon between the association and the builder or, in default of such agreement, as may be determined by arbitration under section 6 of this Act.” By repealing section 5 (3), and substituting the following subsection: “(3) Every such levy shall become due and payable by the builder at the time the building consent is issued.” By omitting from section 7 (2) the words “building permit”, and substituting the words “building consent”. By omitting from section 7 (2) the word “permit”, and substituting the word “consent”. By inserting, after section 17, the following section: “17A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. “(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
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Building THIRD SCHEDULE—continued AMENDMENTS TO OTHER ACTS—continued
### Amended Acts

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<tr>
<td>1971, No. 25—The Mining Act 1971. (R.S. Vol. 17, p. 355)—continued</td>
<td>By inserting in section 48A (2) (f), after the words “erection and maintenance”, the words “…in accordance with the Building Act 1990…”. By inserting in section 55 (1) (ba), after the words “erect, maintain, and use”, the words “…in accordance with the Building Act 1990…”. By inserting in section 152, after the words “Construction Act 1959,” in both places where they occur, the words “or the Building Act 1990…”.</td>
</tr>
<tr>
<td>1972, No. 15—The Unit Titles Act 1972 (R.S. Vol. 24, p. 787)</td>
<td>By inserting in section 5A (1) (b), after the words “of all necessary”, the words “consents and”. By inserting in section 5A (1) (d), after the words “other manner”, the words “…or any of the requirements of the Building Act 1990…”.</td>
</tr>
<tr>
<td>1974, No. 26—The Dangerous Goods Act 1974 (R.S. Vol. 24, p. 241)</td>
<td>By inserting, after section 24, the following section: “24A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. “(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.” By omitting from section 35 (c) the word “construction,” and substituting the words “fitout, layout,”.</td>
</tr>
<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)</td>
<td>By inserting in section 2 (1), in its appropriate alphabetical order, the following definition: “‘Building consent’ has the meaning ascribed to it by section 2 of the Building Act 1990.”. By omitting from paragraph (a) of the proviso to section 283 (3) the words “…concerning the pit…”.</td>
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### Act Amended

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| 1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued | “building permit”, and substituting the words “building consent”. By omitting from paragraph (b) of the proviso to section 283 (3) the words “building permit”, and substituting the words “building consent”.

By inserting in section 283 (5), after the words “the council”, the words “subject to the Building Act 1990.”.

By inserting in section 314 (1)(b), after the words “building permit”, the words “or building consent”.

By adding to section 314 (1)(b) the words “or the Building Act 1990, as the case may be”.

By inserting in section 354 (1), after the words “other excavation”, the words “other than a cellar or other excavation to be constructed or made in accordance with a building consent under the Building Act 1990”.

By repealing section 382, and substituting the following section:

“382. Persons supplied with water to prevent waste—Every person supplied with water from the waterworks shall prevent the water running to waste. If any such person intentionally allows such water to run to waste the council may stop the supply of water to that person in such manner as it thinks fit.”

By repealing section 491 (1) (l), and substituting the following paragraph:

“(l) Requiring the discharge of solids or grease or other constituents of any kind from trade premises to be prevented or controlled by and at the expense of the occupier of the trade premises concerned.”

By repealing sections 527, 623 to 636, 636A to 636p, 637 to 641, 641A (1), and the Fifteenth Schedule.
### Amendments to Other Acts—continued

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<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By omitting from section 641A(2) the words &quot;section 641 (2) of this Act&quot;, and substituting the words &quot;section 27 (6) of the Building Act 1990&quot;.</td>
</tr>
<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By omitting from section 641B(b) the words &quot;subsection (1) or&quot;.</td>
</tr>
<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By repealing section 641C, and substituting the following section:</td>
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<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td><strong>&quot;641C. Objections and appeals—</strong> Where the council by decision under section 641A(2) of this Act issues a building consent subject to conditions, sections 299 and 300 of this Act (relating to objections to the council and appeals to the Planning Tribunal) shall apply with respect to the decision.”</td>
</tr>
<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By omitting from section 643(1) the words &quot;permit under bylaws made pursuant to section 684 of this Act&quot;, and substituting the words &quot;building consent&quot;.</td>
</tr>
<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By omitting from section 643(1) the words &quot;the grant of a permit&quot;, and substituting the words &quot;the building consent&quot;.</td>
</tr>
<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By omitting from section 643(3) the word &quot;permit&quot;, and substituting the words &quot;building consent&quot;.</td>
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<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By omitting from section 643(8)(a) and (b) the words &quot;building permit&quot;, and substituting in each case the words &quot;building consent&quot;.</td>
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<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>By inserting, after section 684, the following section:</td>
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<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td><strong>&quot;684A. Effect of Building Act 1990 on bylaws—</strong>(1) A council may not make any bylaw under this Act that purports to have the effect of requiring any building to achieve performance criteria additional to or more restrictive than those specified in the Building Act 1990 or the building code.</td>
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### Third Schedule—continued

#### Amendments to Other Acts—continued

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<tr>
<td>1974, No. 66—The Local Government Act 1974 (R.S. Vol. 20, p. 1)—continued</td>
<td>“(2) For the purposes of this section, the terms ‘building’, ‘building code’, and ‘performance criteria’ have the meanings ascribed to them by section 2 of the Building Act 1990.”</td>
</tr>
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| 1975, No. 122—The Disabled Persons Community Welfare Act 1975 | By inserting, after section 22, the following section:  
“22A. **Building Act 1990**—(1) Where any person making an inspection in accordance with section 22 of this Act believes that any building or sitework does not comply with the Building Act 1990, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.  
“(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.” |
| | By repealing subsection (2) of section 25, and substituting the following subsection:  
“(2) Any provision that is made to meet the requirements of people with disabilities in accordance with New Zealand Standard Specification No. 4121 (being the code of practice for design for access and use of buildings by disabled persons) and any amendments thereof (whether made before or after the commencement of this subsection), or in accordance with any standard specification that is in substitution therefor, shall, in respect of—  
“(a) Matters subject to the Building Act 1990, be deemed to be one of the documents establishing compliance with the building code for the purposes of section 43 of that Act: |
ACT AMENDED

BUILDING

THIRD SCHEDULE—continued

AMENDMENTS TO OTHER ACTS—continued

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<tr>
<td>1975, No. 122—The Disabled Persons Community Welfare Act 1975—continued</td>
<td>(b) Matters with respect to buildings and premises not subject to the Building Act 1990, be deemed to be a reasonable and adequate provision for the purposes of subsection (1) of this section.</td>
</tr>
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By inserting in section 21(1), after the words “building industry,”, the words “the Building Industry Authority,”.

By inserting in section 21(3), after the words “consultation with”, the words “the Building Industry Authority, where appropriate,”.

By repealing section 22, and substituting the following section:

“22. Evacuation schemes for public safety—(1) Subject to subsection (2) of this section, where any building is used as—

(a) A place where 100 or more people can gather, whether for commercial, social, cultural, religious, or any other purpose whatsoever; or

(b) A place where workplaces can be provided for 25 or more persons (whether self-employed or employed by one or more employers); or

(c) A place where accommodation is provided for 10 or more people (whether on an overnight, short-term, or long-term basis)—

the Fire Service Commission may require the owner of that building to make provision for a scheme which—

(d) In the case of a building which is sprinkler-protected, provides for evacuation from the scene of the fire to some other place (whether within or outside the building);
THIRD SCHEDULE—continued
AMENDMENTS TO OTHER ACTS—continued

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| 1975, No. 42—The Fire Service Act 1975—continued | “(c) In the case of a building which is not sprinkler-protected, provides for evacuation from the scene of the fire to a place of safety outside the building.

"(2) For the purposes of subsection (1) of this section, the Commission’s requirements shall be as provided for in regulations made under this Act, which regulations shall specify, in performance requirement terms, with respect to sprinkler-protected buildings and non-sprinkler-protected buildings, such evacuation times and procedures as are necessary for safeguarding persons who are lawful occupants of the building or who are otherwise lawfully entitled to be in the building (whether as visitors or otherwise).

“(3) For the purposes of subsection (2) of this section, the requirements for such evacuation times and procedures as are necessary for safeguarding persons shall, in the case of the regulations, also be deemed to include, with respect to any sprinkler-protected building, the criteria that shall be applied by the Commission in determining whether evacuation from the scene of the fire shall be to some other place within or outside the building.

“(4) Where any owner fails within the time required by the regulations to prepare a scheme to the Commission’s requirements or otherwise refuses to prepare a scheme, the Commission may apply to the District Court for an order requiring the building to be closed until such time as the owner prepares a scheme which meets the requirements of subsection (2) of this section.”

By adding to section 29 the following subsections:

“(3) Where a person having access to land and buildings under this section believes that any building or sitework
### Third Schedule—Continued

#### Amendments to Other Acts—Continued

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<td>1975, No. 42—The Fire Service Act 1975—Continued</td>
<td>does not comply with the Building Act 1990, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.</td>
</tr>
<tr>
<td>1975, No. 9—The Ombudsmen Act 1975 (R.S. Vol. 21, p. 657)</td>
<td>By repealing section 92 (3) and (4). By inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item: “The Building Industry Authority.”</td>
</tr>
<tr>
<td>1977, No. 43—The Agricultural Workers Act 1977 (R.S. Vol. 22, p. 1)</td>
<td>By inserting, after section 6, the following section: “6A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.</td>
</tr>
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</table>
| 1977, No. 121—The Town and Country Planning Act 1977 (R.S. Vol. 16, p. 521) | By omitting from section 61 (a) the words “design, construction, and”. By inserting in section 31 (5) (b), after the word “permit”, the words, “or building consent under the Building Act 1990.”. By omitting from section 36 (5) (a) (as substituted by section 6 (1) of the Town and Country Planning Amendment Act 1987) the words “design and”. By repealing section 36 (6) (d), and substituting the following paragraph: “(d) The appearance of buildings and signs and the provision and appearance of verandahs;”.

*Building* 125
<table>
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<th>Amendment</th>
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| 1977, No. 121—The Town and Country Planning Act 1977 (R.S. Vol. 16, p. 521)—continued | By omitting from clause 7 (b) of the Second Schedule the word “design.” By omitting from clause 7 (e) of the Second Schedule the words “provision of insulation from internally or externally generated noise”, and substituting the words “control of noise”. By omitting from clause 7 (h) of the Second Schedule the words “section 25 of the Disabled Persons Community Welfare Act 1975 and”. By inserting, after section 16, the following section: “16A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. “(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.” By omitting from section 103 (a) the words “Construct, erect”, and substituting the words “Construct in accordance with the Building Act 1990.” By inserting in section 122, after the words “Construction Act 1959”, the words “or the Building Act 1990”. By omitting from section 82 (1) (k) the word “construction,” and substituting the words “fitout and layout (including internal partitioning),”.
| 1979, No. 27—The Toxic Substances Act 1979 | By omitting from clause 7 (b) of the Second Schedule the word “design.” By omitting from clause 7 (e) of the Second Schedule the words “provision of insulation from internally or externally generated noise”, and substituting the words “control of noise”. By omitting from clause 7 (h) of the Second Schedule the words “section 25 of the Disabled Persons Community Welfare Act 1975 and”. By inserting, after section 16, the following section: “16A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. “(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.” By omitting from section 103 (a) the words “Construct, erect”, and substituting the words “Construct in accordance with the Building Act 1990.” By inserting in section 122, after the words “Construction Act 1959”, the words “or the Building Act 1990”. By omitting from section 82 (1) (k) the word “construction,” and substituting the words “fitout and layout (including internal partitioning),”.
| 1979, No. 21—The Coal Mines Act 1979 | By inserting, after section 16, the following section: “16A. Building Act 1990—(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. “(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings ascribed to them by section 2 of the Building Act 1990.” By omitting from section 103 (a) the words “Construct, erect”, and substituting the words “Construct in accordance with the Building Act 1990.” By inserting in section 122, after the words “Construction Act 1959”, the words “or the Building Act 1990”. By omitting from section 82 (1) (k) the word “construction,” and substituting the words “fitout and layout (including internal partitioning),”.

Building

THIRD SCHEDULE—continued

AMENDMENTS TO OTHER ACTS—continued
Act Amended | Amendment
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1979, No. 139—The Electrical Registration Act 1979 | By adding to section 3 the following subsection:
“(5) Notwithstanding anything in this section, any prescribed electrical work that is the subject of a building certificate under the Building Act 1990 shall be deemed to have been inspected, tested, and approved under this Act.”
By inserting in section 27 (3) (a), after the words “any other person”, the words “(other than a person acting pursuant to a building consent under the Building Act 1990)”. By adding to section 38 the following subsection:
“(7) Notwithstanding anything in this section, any prescribed electrical work that is the subject of a building certificate under the Building Act 1990 shall be deemed to have been inspected, tested, and approved under this section.”

1980, No. 16—The Historic Places Act 1980 | By adding to section 41 the following subsection:
“(10) Any works referred to in this section shall be done in accordance with the Building Act 1990.”

1981, No. 25—The Factories and Commercial Premises Act 1981 | By repealing sections 27 (3) and 28 (2).
By omitting from section 37 (1) (c) the words “and to section 28 (2) of this Act”.
By repealing section 39, and substituting the following section:
“39. Sanitary conveniences—The occupier of an undertaking shall ensure that the sanitary conveniences required by the Building Act 1990 are—
“(a) Conveniently accessible to the persons for whose use they are intended; and
“(b) Properly maintained and kept clean; and
“(c) Where sanitary conveniences are provided for the use of females, provision to the satisfaction of an Inspector is made for the disposal of sanitary towels.”
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| 1981, No. 25—The Factories and Commercial Premises Act 1981—continued      | By repealing section 42, and substituting the following section:  
  “42. Washing facilties—The occupier of an undertaking shall ensure that the washing facilities required by the Building Act 1990 are—  
  “(a) Conveniently accessible to the persons for whose use they are intended; and  
  “(b) Kept in a clean and orderly condition; and  
  “(c) Supplied with soap and clean towels or other suitable means of cleaning and drying.”  
By adding to section 55 the following subsections:  
  “(3) Notwithstanding anything to the contrary in subsection (2) of this section, no requisition issued by an Inspector shall have the purpose of requiring any building to achieve performance criteria additional to or more restrictive than those in the Building Act 1990 or the building code.  
  “(4) For the purposes of subsection (3) of this section, the terms ‘building’ and ‘performance criteria’ have the meanings ascribed to them by section 2 of the Building Act 1990.”  
By inserting, after section 57, the following section:  
  “57A. Building Act 1990—(1) Without limiting the generality of sections 56 and 57 of this Act, where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply.  
  “(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’ have the meanings
### Act Amended

<table>
<thead>
<tr>
<th>Act Amended</th>
<th>Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1981, No. 56—The Meat Act 1981</td>
<td>By inserting, after section 8, the following section:</td>
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<td>&quot;8A. Building Act 1990—(1) Where an Inspector or examining officer believes that any building or</td>
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<td>sitework does not comply with the Building Act 1990, the Inspector or examining officer shall by</td>
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<td>notice in writing give to the appropriate territorial authority details of the respects in which</td>
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<td>the building or sitework is believed not to comply.</td>
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<td>&quot;(2) For the purposes of this section, the terms ‘building’, ‘sitework’, and ‘territorial authority’</td>
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<td>have the meanings ascribed to them by section 2 of the Building Act 1990.&quot;</td>
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<td>By repealing section 25 (1), and substituting the following subsection:</td>
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<td>&quot;(1) Subject to any regulations made under this Act, where any person proposes to erect any</td>
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<td>premises, or to reconstruct or adapt any existing premises, with the intention that they be used as</td>
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<td>premises for which a licence is required under this Act, that person shall, before the work is</td>
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<td>commenced, submit to the Director-General, in a form approved by the Director-General, the plans</td>
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<td>(including a site plan) and specifications thereof and its equipment for the Director-General’s</td>
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<td>approval.&quot;</td>
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<td></td>
<td>By repealing section 26 (2) (b) (i) (as substituted by section 2 of the Meat Amendment Act 1988),</td>
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<td>and substituting the following subparagraph:</td>
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<td>&quot;(i) The premises concerned comply with the Building Act 1990 and all relevant planning schemes;</td>
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<td></td>
<td>and&quot;</td>
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<td>By omitting from section 49 (1) (m) the word “construction,”, and substituting</td>
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### Amended Acts

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<tr>
<th>Act Amended</th>
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<tbody>
<tr>
<td>1981, No. 56—The Meat Act 1981—continued</td>
<td>the words “layout and fitout (including food contact surfaces),”.</td>
</tr>
<tr>
<td>1981, No. 35—The Public Works Act 1981</td>
<td>By adding to section 184 the words “in accordance with the Building Act 1990, where that Act applies to the work”.</td>
</tr>
<tr>
<td>1987, No. 178—The Fencing of Swimming Pools Act 1987</td>
<td>By repealing the definitions of the terms “fence” and “gates or doors” in section 2, and substituting the following definition: “‘Fence’ means a barrier to prevent any child under the age of 6 years from gaining unaided access to a swimming pool; and includes any part of a building and any gates or doors that fulfil that function; and also includes a barrier that complies with the requirements of the Schedule to this Act; and ‘fenced’ has a corresponding meaning.”</td>
</tr>
<tr>
<td>1989, No. 63—The Sale of Liquor Act 1989</td>
<td>By inserting, after section 4, the following section: “4A. This Act subject to Building Act 1990—The provisions of this Act shall be subject to the Building Act 1990.”</td>
</tr>
</tbody>
</table>

By adding to section 7 (2) the words “An application for a building consent under the Building Act 1990 shall be deemed to be notification under this subsection”.

By omitting from the heading to the Schedule the words “REQUIREMENTS FOR”, and substituting the words “SPECIFICATIONS OF BARRIERS INCLUDED IN DEFINITION OF”.

By repealing section 9 (1) (e), and substituting the following paragraph: “(e) Where the application relates to any premises (including any premises proposed to be constructed or altered), be accompanied by a certificate by the local authority that— “(i) The proposed use of the premises meets town planning requirements; and
**Act Amended** | **Amendment**
---|---
1989, No. 63—The Sale of Liquor Act 1989—continued | "(ii) The premises comply with the requirements of the Building Act 1990 by virtue of being a building which has an occupancy consent which is compatible with the issue of a licence under Part I of this Act or by virtue of being a building or proposed building which will be eligible for an occupancy consent compatible with the issue of a licence under Part I of this Act upon successful completion of any building work for which building consents have been granted."

By repealing section 11 (1) (c).

By omitting from section 11 (2) the words "the member of the fire service, ."

By omitting from section 12 (2) (e) the words "of town planning approval ."

By inserting in section 18 (2), after paragraph (d), the following paragraph:

"(da) Where the application relates to any premises, be accompanied by a certificate by the local authority that the premises are the subject of an occupancy consent in terms of the Building Act 1990 which is compatible with the renewal of a licence under Part I of this Act; and"

By repealing section 31 (1) (e), and substituting the following paragraph:

"(e) Where the application relates to any premises (including any premises proposed to be constructed or altered), be accompanied by a certificate by the local authority that—

"(i) The proposed use of the premises meets town planning requirements; and"
### 1989, No. 63—The Sale of Liquor Act 1989—continued

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<thead>
<tr>
<th>Act Amended</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>1989, No. 63—The Sale of Liquor Act 1989—continued</td>
<td>“(ii) The premises comply with the requirements of the Building Act 1990 by virtue of being a building which has an occupancy consent which is compatible with the issue of a licence under Part II of this Act or by virtue of being a building or proposed building which will be eligible for an occupancy consent compatible with the issue of a licence under Part II of this Act upon successful completion of any building work for which building consents have been granted.”</td>
</tr>
</tbody>
</table>

By omitting from section 34 (2) (e) the words “of town planning approval”.

By inserting in section 41 (2), after paragraph (d), the following paragraph:

“(da) Where the application relates to any premises, be accompanied by a certificate by the local authority that the premises are the subject of an occupancy consent in terms of the Building Act 1990 which is compatible with the renewal of a licence under Part II of this Act; and”.

By repealing section 55 (1) (e), and substituting the following paragraph:

“(e) Where the application relates to any premises (including any premises proposed to be constructed or altered), be accompanied by a certificate by the local authority that—

“(i) The proposed use of the premises meets town planning requirements; and

“(ii) The premises comply with the requirements of the Building Act 1990 by virtue of
Act Amended | Amendment
---|---
1989, No. 68—The Sale of Liquor Act 1989—continued | being a building which has an occupancy consent which is compatible with the issue of a licence under Part III of this Act or by virtue of being a building or proposed building which will be eligible for an occupancy consent compatible with the issue of a licence under Part III of this Act upon successful completion of any building work for which building consents have been granted."

By repealing section 57 (1) (c).
By omitting from section 57 (2) the words "the member of the fire service, ".
By omitting from section 58 (2) (e) the words "of town planning approval".
By inserting in section 64 (2), after paragraph (d), the following paragraph:
"(da) Where the application relates to any premises, be accompanied by a certificate by the local authority that the premises are the subject of an occupancy consent in terms of the Building Act 1990 which is compatible with the renewal of a licence under Part III of this Act; and".

By adding to section 80 (3) (b) the words "and to whether the premises has an occupancy consent in terms of the Building Act 1990 for a use or intended use which is compatible with the issue of a licence under Part IV of this Act".

By inserting, after section 131, the following section:
"131A. **Building Act 1990**—
(1) Where an Inspector believes that any building or sitework does not comply with the Building Act 1990, the Inspector shall by notice in writing give to the appropriate territorial authority details
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<td>1989, No. 63—The Sale of Liquor Act 1989—continued</td>
<td>of the respects in which the building or sitework is believed not to comply. &quot;(2) For the purposes of this section, the terms 'building', 'sitework', and 'territorial authority' have the meanings ascribed to them by section 2 of the Building Act 1990.&quot;</td>
</tr>
<tr>
<td>1989, No. 24—The Children, Young Persons, and Their Families Act 1989</td>
<td>By inserting in section 134 (1), after the words “comply with any requirements”, the words &quot;(other than requirements under the Building Act 1990)&quot;. By omitting from section 134 (3) the words “carry out all such work”, and substituting the words “do all such things”. By omitting from section 134 (4) the words “all work necessary or desirable to remedy the default has been carried out”, and substituting the words “all things necessary or desirable to remedy the default have been done&quot;. By inserting, after section 467, the following section: &quot;467A. Building Act 1990— (1) Where any person making inspections under this Act believes that any building or sitework does not comply with the Building Act 1990, that person shall by notice in writing give to the appropriate territorial authority details of the respects in which the building or sitework is believed not to comply. &quot;(2) For the purposes of this section, the terms 'building', 'sitework', and 'territorial authority' have the meanings ascribed to them by section 2 of the Building Act 1990.&quot;</td>
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## FOURTH SCHEDULE

### REGULATIONS AND ORDERS REVOKED

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<thead>
<tr>
<th>Title</th>
<th>Statutory Regulations Serial Number or Gazette Reference</th>
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<tbody>
<tr>
<td>The Municipal Corporations (Earthquake Dangers) Order 1969</td>
<td>1969/103</td>
</tr>
<tr>
<td>The Municipal Corporations (Earthquake Dangers) Order (No. 2) 1969</td>
<td>1969/204</td>
</tr>
<tr>
<td>The Counties (Earthquake Dangers) Order 1970</td>
<td>1970/146</td>
</tr>
<tr>
<td>The Municipal Corporations (Earthquake Dangers) Order 1972</td>
<td>1972/28</td>
</tr>
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<td>The Municipal Corporations (Earthquake Dangers) Order (No. 2) 1972</td>
<td>1972/258</td>
</tr>
<tr>
<td>The Municipal Corporations (Earthquake Dangers) Order (No. 2) 1976</td>
<td>1976/109</td>
</tr>
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<td>The Local Government (Earthquake Dangers) Order 1987</td>
<td>1987/196</td>
</tr>
<tr>
<td>The Local Government (Earthquake Dangers) Order (No. 2) 1987</td>
<td>1987/280</td>
</tr>
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<td>1990/304</td>
</tr>
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<td>The Local Government (Earthquake Dangers) Order (No. 2) 1990</td>
<td>1990/346</td>
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<td>The Local Government (Earthquake Dangers) Order 1991</td>
<td>1991/176</td>
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