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Building Act 2004

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Commencement see section 2

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Department of Building and Housing.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Building Act 2004.

Part 1

Preliminary provisions

Subpart 1—General

Commencement

2 Commencement

- (1) The following provisions come into force on 30 November 2004:
- (a) section 1:
 - (b) Part 1 (except sections 12 to 14):
 - (c) sections 131 and 132:
 - (d) subpart 1 of Part 3:
 - (e) Part 4:

- (f) Part 5 (except sections 414 and 415, 429 to 448, and 450):
- (g) Schedule 3.
- (2) The rest of this Act comes into force on 31 March 2005 (except sections 45(1)(e) and 45(2) to 45(4) and 84 to 89).
- (3) Sections 45(1)(e) and 45(2) to 45(4) and 84 to 89 come into force on 30 November 2010.

Section 2(3): amended, on 15 March 2008, by section 4 of the Building Amendment Act 2008 (2008 No 4).

Purpose and principles

3 Purpose

The purpose of this Act is to provide for the regulation of building work, the establishment of a licensing regime for building practitioners, and the setting of performance standards for buildings, to ensure that—

- (a) people who use buildings can do so safely and without endangering their health; and
- (b) buildings have attributes that contribute appropriately to the health, physical independence, and well-being of the people who use them; and
- (c) people who use a building can escape from the building if it is on fire; and
- (d) buildings are designed, constructed, and able to be used in ways that promote sustainable development.

Compare: 1991 No 150 s 6(1)

4 Principles to be applied in performing functions or duties, or exercising powers, under this Act

- (1) This section applies to—
 - (a) the Minister; and
 - (b) the chief executive; and
 - (c) a territorial authority or regional authority (but only to the extent that the territorial authority or regional authority is performing functions or duties, or exercising powers, in relation to the grant of waivers or modifications of the building code and the adoption and review of policy on dangerous, earthquake-prone, and insanitary buildings or, as the case may be, dangerous dams).

- (2) In achieving the purpose of this Act, a person to whom this section applies must take into account the following principles that are relevant to the performance of functions or duties imposed, or the exercise of powers conferred, on that person by this Act:
- (a) when dealing with any matter relating to 1 or more household units,—
 - (i) the role that household units play in the lives of the people who use them, and the importance of—
 - (A) the building code as it relates to household units; and
 - (B) the need to ensure that household units comply with the building code;
 - (ii) the need to ensure that maintenance requirements of household units are reasonable;
 - (iii) the desirability of ensuring that owners of household units are aware of the maintenance requirements of their household units;
 - (b) the need to ensure that any harmful effect on human health resulting from the use of particular building methods or products or of a particular building design, or from building work, is prevented or minimised;
 - (c) the importance of ensuring that each building is durable for its intended use;
 - (d) the importance of recognising any special traditional and cultural aspects of the intended use of a building;
 - (e) the costs of a building (including maintenance) over the whole of its life;
 - (f) the importance of standards of building design and construction in achieving compliance with the building code;
 - (g) the importance of allowing for continuing innovation in methods of building design and construction;
 - (h) the reasonable expectations of a person who is authorised by law to enter a building to undertake rescue operations or firefighting to be protected from injury or illness when doing so:

- (i) the need to provide protection to limit 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:
- (j) the need to provide for the protection of other property from physical damage resulting from the construction, use, and demolition of a building:
- (k) the need to provide, both to and within buildings to which section 118 applies, facilities that ensure that reasonable and adequate provision is made for persons with disabilities to enter and carry out normal activities and processes in a building:
- (l) the need to facilitate the preservation of buildings of significant cultural, historical, or heritage value:
- (m) the need to facilitate the efficient use of energy and energy conservation and the use of renewable sources of energy in buildings:
- (n) the need to facilitate the efficient and sustainable use in buildings of—
 - (i) materials (including materials that promote or support human health); and
 - (ii) material conservation:
- (o) the need to facilitate the efficient use of water and water conservation in buildings:
- (p) the need to facilitate the reduction in the generation of waste during the construction process.

Compare: 1991 No 150 s 6(2)

Section 4(2)(k): amended, on 15 March 2008, by section 5 of the Building Amendment Act 2008 (2008 No 4).

Overview

5 Overview

- (1) This Act replaces the Building Act 1991.
- (2) In this Act,—
 - (a) this Part deals with preliminary matters, including—
 - (i) the purpose of this Act:
 - (ii) interpretation:
 - (iii) the application of this Act to the Crown:

- (b) Part 2 and Schedules 1 and 2 deal with matters relating to the building code and building control, including—
 - (i) the requirements relating to building work (for example, the requirement for a building consent):
 - (ii) the requirements relating to the use of buildings (for example, the requirement for a compliance schedule or the provisions relating to access to buildings by persons with disabilities):
 - (iii) provisions for certain categories of buildings (including dangerous, earthquake-prone, or insanitary buildings):
 - (iv) provisions for the safety of dams:
- (c) Part 3—
 - (i) sets out the main functions, duties, and powers of the chief executive, territorial authorities, building consent authorities, and regional authorities under this Act:
 - (ii) empowers the chief executive to register building consent authorities that have been accredited to allow them to perform functions under Parts 2 and 3:
 - (iii) provides for the appointment of a building consent accreditation body and the accreditation of building consent authorities:
 - (iv) provides for the appointment of a dam owner accreditation body and the accreditation of dam owners:
 - (v) provides for the appointment of a product certification accreditation body and the accreditation of product certification bodies:
 - (vi) sets out a process for the certification of building methods or products:
- (d) Part 4 and Schedule 3 deal with matters relating to the licensing and disciplining of building practitioners, the establishment of the Building Practitioners Board, and the making of rules relating to licensed building practitioners:

- (e) Part 5 and Schedule 4 deal with miscellaneous matters that underpin the substantive provisions of this Act, including—
 - (i) offences and criminal proceedings:
 - (ii) implied terms of contracts that provide for building work to be carried out in relation to household units:
 - (iii) regulation-making powers:
 - (iv) amendments to other enactments and the repeal of the Building Act 1991:
 - (v) transitional provisions.
- (3) This section is intended only as a guide to the general scheme and effect of this Act.

Section 5(2)(c)(ii): amended, on 14 April 2005, by section 16(2)(a) of the Building Amendment Act 2005 (2005 No 31).

Application of Act to the Crown

6 Act binds the Crown

- (1) This Act binds the Crown except as provided in subsections (2) to (4).
- (2) This Act does not apply to a Crown building or Crown building work if the Minister of Defence certifies in writing that the building or building work is necessary for reasons of national security.
- (3) An instrument of the Crown may be prosecuted for an offence against this Act only if—
 - (a) it is a Crown organisation; and
 - (b) the offence is alleged to have been committed by the Crown organisation; and
 - (c) the proceedings are commenced—
 - (i) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and
 - (ii) in accordance with the Crown Organisations (Criminal Liability) Act 2002.

- (4) The Crown may not be prosecuted for an offence against this Act, except to the extent and in the manner provided for in subsection (3).

Compare: 1991 No 150 s 5

Subpart 2—Interpretation

General

7 Interpretation

In this Act, unless the context otherwise requires,—

acceptable solution means a solution that must be accepted as complying with the building code

accredited dam owner means an owner of a dam who is accredited under section 258

allotment has the meaning given to it by section 10

alter, in relation to a building, includes to rebuild, re-erect, repair, enlarge, and extend the building

appurtenant structure, in relation to a dam, means a structure that is integral to the proper functioning of the dam

Authority means the Building Industry Authority established under section 10(1) of the former Act

Board has the meaning given to it by section 282

building has the meaning given to it by sections 8 and 9

building code means the regulations made under section 400

building consent means a consent to carry out building work granted by a building consent authority under section 49

building consent accreditation body means the person referred to in section 248(2)

building consent authority means a person whose name is entered in the register referred to in section 273(1)(a)

building levy means a levy payable under section 53

building method or product has the meaning given to it by section 20

building work—

(a) means work—

(i) for, or in connection with, the construction, alteration, demolition, or removal of a building; and

- (ii) on an allotment that is likely to affect the extent to which an existing building on that allotment complies with the building code; and
- (b) includes sitework; and
- (c) includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act; and
- (d) in Part 4, and the definition in this section of supervise, also includes design work (relating to building work) of a kind declared by the Governor-General by Order in Council to be building work for the purposes of Part 4

cable car—

- (a) means a vehicle—
 - (i) that carries people or goods on or along an inclined plane or a suspended cable; and
 - (ii) that operates wholly or partly outside of a building; and
 - (iii) the traction for which is supplied by a cable or any other means; but
- (b) does not include a lift that carries people or goods between the floors of a building

certificate of acceptance means a certificate issued under section 96

chief executive means the chief executive of the Ministry

code compliance certificate means a certificate issued by a building consent authority under section 95

compliance document has the meaning given to it by section 22

compliance schedule means a compliance schedule required under section 100

consideration, in relation to estimated value, has the meaning given to it in section 2(1) of the Goods and Service Tax Act 1985

construct, in relation to a building, includes to design, build, erect, prefabricate, and relocate the building

Crown organisation has the meaning given to it by section 4 of the Crown Organisations (Criminal Liability) Act 2002

dam—

- (a) means an artificial barrier, and its appurtenant structures, that—
 - (i) is constructed to hold back water or other fluid under constant pressure so as to form a reservoir; and
 - (ii) is used for the storage, control, or diversion of water or other fluid; and
 - (iii) *[Repealed]*
- (b) includes—
 - (i) a flood control dam; and
 - (ii) a natural feature that has been significantly modified to function as a dam; and
 - (iii) a canal; but
- (c) does not include a stopbank designed to control floodwaters

dam owner accreditation body means the person referred to in section 256

dam safety assurance programme means a dam safety assurance programme prepared by an owner of a dam under section 140

determination means a determination made by the chief executive under subpart 1 of Part 3

employee includes,—

- (a) in relation to a Crown organisation, the chief executive or principal officer (however described) of that organisation; and
- (b) in relation to the New Zealand Defence Force, a member of the Armed Forces (as that term is defined in section 2(1) of the Defence Act 1990)

energy work means—

- (a) gasfitting; or
- (b) prescribed electrical work

energy work certificate means a certificate of the kind referred to in section 19(1)(e)

enforcement officer means an officer of a territorial authority who is authorised, under section 229, to issue infringement notices under section 372

estimated value, in relation to building work, means the estimated aggregate of the consideration, determined in accordance with section 10 of the Goods and Services Tax Act 1985, of all goods and services to be supplied for the building work

falsework, in relation to building work or the maintenance of a building,—

- (a) means any temporary structure or framework used to support materials, equipment, or an assembly; and
- (b) includes steel tubes, adjustable steel props, proprietary frames, or other means used to support a permanent structure until it becomes self-supporting; but
- (c) does not include scaffolding or cranes used for support

fire hazard means the danger of potential harm and degree of exposure arising from—

- (a) the start and spread of fire; and
- (b) the smoke and gases that are generated by the start and spread of fire

former Act means the Building Act 1991

functional requirements, in relation to a building, means those functions that the building is required to perform for the purposes of this Act

gasfitting has the meaning given to it by section 4 of the Plumbers, Gasfitters, and Drainlayers Act 2006

household unit—

- (a) means a building or group of buildings, or part of a building or group of buildings, that is—
 - (i) used, or intended to be used, only or mainly for residential purposes; and
 - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include a hostel, boardinghouse, or other specialised accommodation

intended use, in relation to a building,—

- (a) includes any or all of the following:
 - (i) any reasonably foreseeable occasional use that is not incompatible with the intended use:
 - (ii) normal maintenance:

- (iii) activities undertaken in response to fire or any other reasonably foreseeable emergency; but
- (b) does not include any other maintenance and repairs or rebuilding

large dam means a dam that retains 3 or more metres depth, and holds 20 000 or more cubic metres volume, of water or other fluid

licensed building practitioner means a building practitioner whose name is, for the time being, entered in the register established and maintained under section 298(1)

means of escape from fire, in relation to a building that has a floor area,—

- (a) means continuous unobstructed routes of travel from any part of the floor area of that building to a place of safety; and
- (b) includes all active and passive protection features required to warn people of fire and to assist in protecting people from the effects of fire in the course of their escape from the fire

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of this Act

minor customisation, in relation to an application for a building consent that incorporates plans and specifications that have national multiple-use approval, means a minor modification, addition, or variation to those plans and specifications that is permitted by regulations made under section 402(1)(kc)

minor variation means a minor modification, addition, or variation to a building consent that is permitted by regulations made under section 402(1)(kd)

national multiple-use approval means an approval issued by the chief executive under section 30F

natural hazard has the meaning given to it by section 71

network utility operator means a person who—

- (a) undertakes or proposes to undertake the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or
- (b) operates or proposes to operate a network for the purpose of—
 - (i) telecommunication as defined in section 5 of the Telecommunications Act 2001; or
 - (ii) radiocommunications as defined in section 2(1) of the Radiocommunications Act 1989; or
- (c) is an electricity operator or electricity distributor as defined in section 2 of the Electricity Act 1992 for the purpose of line function services as defined in that section; or
- (d) undertakes or proposes to undertake the distribution of water for supply (including irrigation); or
- (e) undertakes or proposes to undertake a drainage or sewerage system

notice to fix has the meaning given to it by section 164(2)

NUO system means a system owned or controlled by a network utility operator

other property—

- (a) means any land or buildings, or part of any land or buildings, that are—
 - (i) not held under the same allotment; or
 - (ii) not held under the same ownership; and
- (b) includes a road

owner, in relation to land and any buildings on the land,—

- (a) means the person who—
 - (i) is entitled to the rack rent from the land; or
 - (ii) would be so entitled if the land were let to a tenant at a rack rent; and
- (b) includes—
 - (i) the owner of the fee simple of the land; and
 - (ii) for the purposes of sections 32, 44, 92, 96, and 97, any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, and

who is bound by the agreement because the agreement is still in force

performance criteria, in relation to a building, means qualitative or quantitative criteria that the building is required to satisfy in performing its functional requirements

person includes—

- (a) the Crown; and
- (b) a corporation sole; and
- (c) a body of persons (whether corporate or unincorporate)

person with a disability means a person who has an impairment or a combination of impairments that limits the extent to which the person can engage in the activities, pursuits, and processes of everyday life, including, without limitation, any of the following:

- (a) a physical, sensory, neurological, or intellectual impairment;
- (b) a mental illness

plans and specifications—

- (a) means the drawings, specifications, and other documents according to which a building is proposed to be constructed, altered, demolished, or removed; and
- (b) includes the proposed procedures for inspection during the construction, alteration, demolition, or removal of a building; and
- (c) in the case of the construction or alteration of a building, also includes—
 - (i) the intended use of the building; and
 - (ii) the specified systems that the applicant for building consent considers will be required to be included in a compliance schedule required under section 100; and
 - (iii) the proposed procedures for inspection and routine maintenance for the purposes of the compliance schedule for those specified systems

prescribed electrical work has the meaning given to it by section 2(1) of the Electricity Act 1992

prescribed fee includes a fee calculated in accordance with a rate or method prescribed for this purpose in regulations made under this Act

product certification accreditation body means the person referred to in section 261(2)

property—

- (a) includes land, buildings, and goods; but
- (b) does not include incorporeal forms of property

publicly notify means publish a notice—

- (a) in 1 or more daily newspapers circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and
- (b) in the *Gazette*; and
- (c) on the Internet in an electronic form that is publicly accessible at all reasonable times

recognised engineer, in relation to a dam, means an engineer who meets the requirements in section 149

regional authority means—

- (a) a regional council; or
- (b) a unitary authority

regional council has the meaning given to it by section 5(1) of the Local Government Act 2002

Registrar has the meaning given to it by section 282

regulations means regulations in force under this Act

residential property developer means a person who, in trade, does any of the following things in relation to a household unit for the purpose of selling the household unit:

- (a) builds the household unit; or
- (b) arranges for the household unit to be built; or
- (c) acquires the household unit from a person who built it or arranged for it to be built

restricted building work—

- (a) means building work that is—
 - (i) critical to the integrity of a building, for example, its envelope and structure; and
 - (ii) of a kind declared by the Governor-General by Order in Council to be building work that must be carried out or supervised by a licensed build-

ing practitioner who is licensed to carry out or supervise that work; and that Order in Council may relate, without limitation, to certain types or categories of buildings, or parts of buildings specified in the Order in Council; and

- (b) includes design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act; and
- (c) does not include any building work for which, in accordance with section 41, a building consent is not required

rules means any rules made under section 353

scaffolding used in the course of the construction process—

- (a) means a structure, framework, swinging stage, suspended scaffolding, or boatswain's chair, that is of a temporary nature and that is used or intended to be used for—
 - (i) the support or protection of workers engaged in, or in connection with, construction work for the purpose of carrying out the work; or
 - (ii) the support of materials used in connection with the work; and
- (b) includes any plank, coupling, fastening, fitting, or device used in connection with the construction, erection, or use of scaffolding

scope of accreditation, in relation to a building consent authority that is not a territorial authority, means the scope of technical competence for which the building consent authority is accredited by a building consent accreditation body in accordance with section 252

sitework means work on a building site, including earthworks, preparatory to, or associated with, the construction, alteration, demolition, or removal of a building

specialised accommodation means a building that is declared by the Governor-General, by Order in Council, to be specialised accommodation for the purposes of this Act

specified intended life has the meaning given to it by section 113(3)

specified system—

- (a) means a system or feature that—
 - (i) is contained in a building; and
 - (ii) contributes to the proper functioning of the building (for example, an automatic sprinkler system); and
 - (iii) is declared by the Governor-General, by Order in Council, to be a specified system for the purposes of this Act; and
- (b) includes a cable car

statutory authority means an authority or organisation that has the statutory power to classify or register land or buildings for any purpose

supervise, in relation to building work, means provide control or direction and oversight of the building work to an extent that is sufficient to ensure that the building work—

- (a) is performed competently; and
- (b) complies with the building consent under which it is carried out

territorial authority means a city council or district council named in Part 2 of Schedule 2 of the Local Government Act 2002; and—

- (a) in relation to land within the district of a territorial authority, or a building on or proposed to be built on any such land, means that territorial authority; and
- (b) in relation to any part of a coastal marine area (within the meaning of the Resource Management Act 1991) that is not within the district of a territorial authority, or a building on or proposed to be built on any such part, means the territorial authority whose district is adjacent to that part

trade means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to—

- (a) the supply or acquisition of goods or services; or
- (b) the acquisition of household units or any interest in land

unitary authority has the meaning given to it by section 5(1) of the Local Government Act 2002

verification method means a method by which compliance with the building code may be verified

working day means any day except—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day; and
- (b) the day observed in the appropriate area as the anniversary of the province of which the area forms a part; and
- (c) a day in the period beginning on 20 December in any year and ending with the close of 10 January in the following year.

Compare: 1991 No 150 s 2

Section 7 **building work** paragraph (b): substituted, on 14 April 2005, by section 3(1) of the Building Amendment Act 2005 (2005 No 31).

Section 7 **building work** paragraph (c): added, on 14 April 2005, by section 3(1) of the Building Amendment Act 2005 (2005 No 31).

Section 7 **building work** paragraph (d): added, on 14 April 2005, by section 3(1) of the Building Amendment Act 2005 (2005 No 31).

Section 7 **consideration**: inserted, on 15 March 2008, by section 6(5) of the Building Amendment Act 2008 (2008 No 4).

Section 7 **dam** paragraph (a)(iii): repealed, on 15 March 2008, by section 6(1) of the Building Amendment Act 2008 (2008 No 4).

Section 7 **employee** paragraph (a): amended, on 25 January 2005, by section 19(1) of the State Sector Amendment Act (No 2) 2004 (2004 No 114).

Section 7 **estimated value**: amended, on 15 March 2008, by section 6(2) of the Building Amendment Act 2008 (2008 No 4).

Section 7 **gasfitting**: amended, on 1 April 2010, by section 185 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74).

Section 7 **large dam**: inserted, on 15 March 2008, by section 6(5) of the Building Amendment Act 2008 (2008 No 4).

Section 7 **minor customisation**: inserted, on 1 February 2010, by section 5 of the Building Amendment Act 2009 (2009 No 25).

Section 7 **minor variation**: inserted, on 1 February 2010, by section 5 of the Building Amendment Act 2009 (2009 No 25).

Section 7 **national multiple-use approval**: inserted, on 1 February 2010, by section 5 of the Building Amendment Act 2009 (2009 No 25).

Section 7 **network utility operator** paragraph (a): amended, on 1 October 2008, by section 17 of the Energy (Fuels, Levies, and References) Amendment Act 2008 (2008 No 60).

Section 7 **owner** paragraph (b)(ii): substituted, on 15 March 2008, by section 6(3) of the Building Amendment Act 2008 (2008 No 4).

Section 7 **prescribed fee**: inserted, on 15 March 2008, by section 6(5) of the Building Amendment Act 2008 (2008 No 4).

Section 7 **restricted building work**: substituted, on 15 March 2008, by section 6(4) of the Building Amendment Act 2008 (2008 No 4).

Section 7 **territorial authority**: substituted, on 14 April 2005, by section 3(3) of the Building Amendment Act 2005 (2005 No 31).

Meaning of building

8 Building: what it means and includes

- (1) In this Act, unless the context otherwise requires, **building**—
- (a) means a temporary or permanent movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); and
 - (b) includes—
 - (i) a mechanical, electrical, or other system; and
 - (ii) a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987; and
 - (iii) a vehicle or motor vehicle (including a vehicle or motor vehicle as defined in section 2(1) of the Land Transport Act 1998) that is immovable and is occupied by people on a permanent or long-term basis; and
 - (iv) a mast pole or a telecommunication aerial that is on, or forms part of, a building and that is more than 7 m in height above the point of its attachment or base support (except a dish aerial that is less than 2 m wide); and
 - (c) includes any 2 or more buildings that, on completion of building work, are intended to be managed as one building with a common use and a common set of ownership arrangements; and
 - (d) includes the non-moving parts of a cable car attached to or servicing a building; and
 - (e) after 30 March 2008, includes the moving parts of a cable car attached to or servicing a building.
- (2) Subsection (1)(b)(i) only applies if—
- (a) the mechanical, electrical, or other system is attached to the structure referred to in subsection (1)(a); and

- (b) the system—
 - (i) is required by the building code; or
 - (ii) if installed, is required to comply with the building code.
- (3) Subsection (1)(c) only applies in relation to—
 - (a) subpart 2 of Part 2; and
 - (b) a building consent; and
 - (c) a code compliance certificate; and
 - (d) a compliance schedule.

- (4) This section is subject to section 9.

Compare: 1991 No 150 s 3

Section 8(1)(c): substituted, on 14 April 2005, by section 4 of the Building Amendment Act 2005 (2005 No 31).

Section 8(1)(d): added, on 14 April 2005, by section 4 of the Building Amendment Act 2005 (2005 No 31).

Section 8(1)(e): added, on 14 April 2005, by section 4 of the Building Amendment Act 2005 (2005 No 31).

9 **Building: what it does not include**

In this Act, **building** does not include—

- (a) a NUO system, or part of a NUO system, that—
 - (i) is external to the building; and
 - (ii) is connected to, or is intended to be connected to, the building to provide for the successful functioning of the NUO system in accordance with the system's intended design and purpose; and
 - (iii) is not a mast pole or a telecommunication aerial that is on, or forms part of, a building; or
- (ab) a pylon, free-standing communication tower, power pole, or telephone pole that is a NUO system or part of a NUO system; or
- (b) cranes (including any cranes as defined in regulations made under the Health and Safety in Employment Act 1992); or
- (c) any of the following, whether or not incorporated within another structure:
 - (i) ski tows;
 - (ii) other similar stand-alone machinery systems; or
- (d) any description of vessel, boat, ferry, or craft used in navigation—

- (i) whether or not it has a means of propulsion; and
- (ii) regardless of what that means of propulsion is; or
- (e) aircraft (including any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth); or
- (f) any offshore installation (as defined in section 222 of the Maritime Transport Act 1994) to be used for petroleum mining; or
- (g) containers as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996; or
- (h) magazines as defined in section 222 of the Hazardous Substances and New Organisms Act 1996; or
- (i) scaffolding used in the course of the construction process; or
- (j) falsework.

Compare: 1991 No 150 s 3

Section 9(ab): inserted, on 15 March 2008, by section 7 of the Building Amendment Act 2008 (2008 No 4).

Meaning of allotment

10 Meaning of allotment

- (1) In this Act, unless the context otherwise requires, **allotment** means a parcel of land—
 - (a) that is a continuous area of land; and
 - (b) whose boundaries are shown on a survey plan, whether or not as a subdivision—
 - (i) approved by way of a subdivision consent granted under the Resource Management Act 1991; or
 - (ii) allowed or granted under any other Act; and
 - (c) that is—
 - (i) subject to the Land Transfer Act 1952 and comprised in 1 certificate of title or for which 1 certificate of title could be issued under that Act; or
 - (ii) not subject to that Act and was acquired by its owner under 1 instrument of conveyance.
- (2) For the purposes of subsection (1), an allotment is taken—

- (a) to be a continuous area of land even if part of it is physically separated from any other part by a road or in any other manner, unless the division of the allotment into those 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;
- (b) to include the balance of any land from which any allotment is being or has been subdivided.

Compare: 1991 No 150 s 4

Subpart 3—Outline of regulatory roles under this Act

11 Role of chief executive

Under this Act, the chief executive—

- (a) issues compliance documents and reviews those documents; and
- (b) warns against, or bans the use of, particular building methods or products; and
- (ba) determines applications for national multiple-use approvals; and
- (c) specifies the kinds of applications for a building consent that must be copied to the New Zealand Fire Service Commission under section 46; and
- (d) monitors and reports annually to the Minister in accordance with section 169; and
- (e) publishes guidance information on the requirements of this Act and the building code; and
- (f) registers building consent authorities that have been accredited to allow them to perform functions under Parts 2 and 3; and
- (g) makes determinations under subpart 1 of Part 3; and
- (h) reviews the operation of territorial authorities, regional authorities, and building consent authorities in relation to their functions under this Act; and
- (i) grants and revokes accreditation of building consent authorities or appoints a building consent accreditation body to do so; and

- (j) grants and revokes accreditation of dam owners or appoints a dam owner accreditation body to do so; and
- (k) appoints a product certification accreditation body under section 261; and
- (l) disseminates information and provides educational programmes on matters relating to building control; and
- (m) takes enforcement action (including taking proceedings for offences under this Act) if the chief executive considers that it is desirable to do so—
 - (i) to establish or clarify any matter of principle relating to building or the interpretation of this Act; or
 - (ii) in cases where 1 or more territorial authorities are unwilling or unable to take enforcement action; and
- (n) establishes and maintains the registers referred to in section 273; and
- (o) appoints the Registrar under section 310; and
- (p) prepares proposed rules under section 354; and
- (q) carries out any other functions and duties specified in this Act; and
- (r) carries out any functions that are incidental and related to, or consequential upon, the functions set out in paragraphs (a) to (q).

Compare: 1991 No 150 s 12(1)

Section 11(ba): inserted, on 1 February 2010, by section 6 of the Building Amendment Act 2009 (2009 No 25).

Section 11(f): amended, on 14 April 2005, by section 16(2)(a) of the Building Amendment Act 2005 (2005 No 31).

Section 11(h): amended, on 14 April 2005, by section 3(4) of the Building Amendment Act 2005 (2005 No 31).

12 Role of building consent authority and territorial authority

- (1) Under this Act, a building consent authority—
 - (a) issues building consents, but not if a building consent is required to be subject to a waiver or modification of the building code; and
 - (b) inspects building work for which it has granted a building consent; and

- (c) issues notices to fix; and
 - (d) issues code compliance certificates; and
 - (e) issues compliance schedules.
- (2) Under this Act, a territorial authority—
- (a) performs the functions of a building consent authority set out in subsection (1)(a) (including the issue of building consents subject to a waiver or modification of the building code) if—
 - (i) the territorial authority is also a building consent authority; and
 - (ii) an owner applies to the territorial authority for a building consent; and
 - (b) issues project information memoranda; and
 - (c) grants exemptions under Schedule 1; and
 - (d) grants waivers and modifications of the building code; and
 - (e) issues certificates of acceptance; and
 - (f) issues and amends compliance schedules; and
 - (g) administers annual building warrants of fitness; and
 - (h) enforces the provisions relating to annual building warrants of fitness; and
 - (i) decides the extent to which buildings must comply with the building code when—
 - (i) they are altered; or
 - (ii) their use is changed; or
 - (iii) their specified intended life changes; and
 - (j) performs functions relating to dangerous, earthquake-prone, or insanitary buildings; and
 - (k) carries out any other functions and duties specified in this Act; and
 - (l) carries out any functions that are incidental and related to, or consequential upon, the functions set out in paragraphs (a) to (k).

13 Role of regional authority

Under this Act, a regional authority—

- (a) performs the functions of a building consent authority set out in section 12 to the extent that those functions relate to dams (including the issue of building con-

- sents subject to a waiver or modification of the building code); and
- (b) considers and approves dam classifications; and
 - (c) considers and approves dam safety assurance programmes; and
 - (d) administers the provisions of this Act relating to—
 - (i) dam classifications; and
 - (ii) dam safety assurance programmes; and
 - (iii) dam compliance certificates; and
 - (e) enforces the provisions of the building code and this Act and regulations that relate to dams; and
 - (f) adopts a policy on dangerous dams; and
 - (g) carries out any other functions and duties specified in this Act; and
 - (h) carries out any functions that are incidental and related to, or consequential upon, the functions set out in paragraphs (a) to (g).

14 Roles of building consent authorities, territorial authorities, and regional authorities in relation to dams

- (1) The regional authority is responsible for performing functions under this Act relating to a building that is a dam.
- (2) If a building includes a dam,—
 - (a) the regional authority is responsible for performing functions under this Act relating to the dam; and
 - (b) the building consent authority and territorial authority are responsible for performing functions under this Act relating to the parts of the building that are not a dam.
- (3) For the purposes of subsection (1),—
 - (a) sections 31 to 39 apply (with all necessary modifications) as if every reference in them to a building consent authority or territorial authority included a reference to a regional authority; and
 - (b) sections 40 to 116 (except section 114(2)(c)), 216 to 218, 220 to 232, 276 to 281, 363A, and 374 apply (with all necessary modifications) as if every reference in them to a building consent authority or territorial authority were a reference to a regional authority.

- (4) For the purposes of subsection (2), sections 31 to 116 (except section 114(2)(c)), 216 to 218, 220 to 232, 276 to 281, 363A, and 374 apply (with all necessary modifications) as if every reference in them to a building consent authority or territorial authority included a reference to a regional authority.
- (5) The building consent authority and territorial authority must do everything reasonably practicable to liaise with the regional authority in performing functions or duties, or exercising powers, in relation to a building that includes a dam.

Section 14: substituted, on 14 April 2005, by section 5 of the Building Amendment Act 2005 (2005 No 31).

Section 14(3)(b): amended, on 15 March 2008, by section 8(1) of the Building Amendment Act 2008 (2008 No 4).

Section 14(4): amended, on 15 March 2008, by section 8(2) of the Building Amendment Act 2008 (2008 No 4).

Part 2 Building

Subpart 1—Preliminary

15 Outline of this Part

- (1) In general terms, this Part provides—
 - (a) that all building work must comply with the building code to the extent required by this Act:
 - (b) how compliance with the building code is to be established:
 - (ba) the effect of a national multiple-use approval and how to apply for one:
 - (c) when a project information memorandum is required and how to apply for one:
 - (d) when a building consent is required and how to apply for one:
 - (e) that an applicant for a building consent is liable to pay a levy to the chief executive if the application is granted:
 - (f) that restricted building work must be carried out or supervised by 1 or more licensed building practitioners:
 - (g) for a building consent authority to issue a notice requiring building work to be fixed so as to comply with this Act and the building consent:

- (h) that a building consent authority may inspect building work for which it has granted a consent:
 - (i) that all building work under a building consent must have a code compliance certificate issued by the building consent authority that issued the building consent or another building consent authority that agrees to assume responsibility for the building work:
 - (j) that a compliance schedule and annual building warrant of fitness is required for buildings with specified systems:
 - (k) that when a building undergoes alterations it may have to be upgraded to comply with the building code:
 - (l) for requirements that must be met when the use or intended life of a building changes:
 - (m) for access and facilities for persons with disabilities to and within buildings:
 - (n) for territorial authorities to perform functions relating to dangerous, earthquake-prone, or insanitary buildings:
 - (o) for regional authorities to perform functions relating to dams.
- (2) This section is intended only as a guide to the general scheme and effect of this Part.

Section 15(1)(ba): inserted, on 1 February 2010, by section 7(1) of the Building Amendment Act 2009 (2009 No 25).

Section 15(1)(c): substituted, on 1 February 2010, by section 7(2) of the Building Amendment Act 2009 (2009 No 25).

Subpart 2—Building code

Requirement to comply with building code

16 Building code: purpose

The building code prescribes functional requirements for buildings and the performance criteria with which buildings must comply in their intended use.

17 All building work must comply with building code

All building work must 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 work.

Compare: 1991 No 150 s 7(1)

18 Building work not required to achieve performance criteria additional to or more restrictive than building code

- (1) A person who carries out any building work is not required by this Act to—
 - (a) achieve performance criteria that are additional to, or more restrictive than, the performance criteria prescribed in the building code in relation to that building work; or
 - (b) take any action in respect of that building work if it complies with the building code.
- (2) Subsection (1) is subject to any express provision to the contrary in any Act.

Compare: 1991 No 150 s 7(2)

Establishing compliance with building code

19 How compliance with building code is established

- (1) A building consent authority must accept any or all of the following as establishing compliance with the building code:
 - (a) compliance with regulations referred to in section 20:
 - (b) compliance with the provisions of a compliance document:
 - (c) a determination to that effect made by the chief executive under subpart 1 of Part 3:
 - (ca) a current national multiple-use approval issued under section 30F, if every relevant condition in that national multiple-use approval is met:
 - (d) a current product certificate issued under section 269, if every relevant condition in that product certificate is met:
 - (e) to the extent that compliance with a requirement imposed by regulations made under the Electricity Act 1992 or the Gas Act 1992 is compliance with any particular provisions of the building code, a certificate issued under any of those regulations to the effect that any energy work complies with those requirements.
- (2) In considering whether something complies with the building code, a building consent authority or, as the case may be, a regional authority—

- (a) must have regard to any relevant warning issued, and ban declared, under section 26(2); and
- (b) may have regard to any guidance information published by the chief executive under section 175.

Compare: 1991 No 150 s 50

Section 19(1): amended, on 14 April 2005, by section 16(2)(b) of the Building Amendment Act 2005 (2005 No 31).

Section 19(1)(ca): inserted, on 1 February 2010, by section 8(1) of the Building Amendment Act 2009 (2009 No 25).

Section 19(1)(d): amended, on 1 February 2010, by section 8(2) of the Building Amendment Act 2009 (2009 No 25).

*Regulations may specify only 1 means of
complying with building code*

20 Regulations may specify that there is only 1 means of complying with building code

- (1) Regulations may be made under section 401 that specify that there is only 1 means of complying with all or any of the provisions of the building code.
- (2) Without limiting subsection (1), the regulations may specify the means of compliance with the building code by requiring the use in the prescribed circumstances (if any) of all or any of the following:
 - (a) prescribed acceptable solutions:
 - (b) prescribed verification methods:
 - (c) building methods, methods of construction, building design, or building materials (**building methods or products**) that have a current product certificate issued under section 269.

21 What happens if regulations specifying that there is only 1 means of complying with building code are made or not made

- (1) If regulations referred to in section 20 are made, a person who carries out any building work must, in order to comply with the building code, comply with those regulations to the extent that they are relevant to the building work.

- (2) If the regulations are not made, a person may comply with the building code by any means, including by complying with a compliance document.

Compliance documents

22 Compliance document for use in establishing compliance with building code

- (1) The chief executive may, by notice in the *Gazette*, issue a document for use in establishing compliance with the building code (a **compliance document**).
- (2) A person who complies with a compliance document must, for the purposes of this Act, be treated as having complied with the provisions of the building code to which the document relates.
- (3) Subsection (2) is subject to any regulations referred to in section 20.

Compare: 1991 No 150 s 49(1)

23 Effect of compliance documents

A person may comply with a compliance document in order to comply with the provisions of the building code to which the document relates, but doing so is not the only means of complying with those provisions.

Compare: 1991 No 150 s 49(2)

24 Chief executive may amend or revoke compliance documents

- (1) The chief executive may, by notice in the *Gazette*, amend or revoke a compliance document at any time.
- (2) If subsection (1) applies, the amendment or revocation does not have retrospective effect.

Compare: 1991 No 150 s 49(6)

25 Content of compliance document

- (1) A compliance document must state—
- (a) the date on which the document comes into force; and
 - (b) whether the document, or parts of it, applies to building work for which a building consent has been issued be-

fore the date on which the compliance document comes into force.

- (2) A compliance document may contain—
 - (a) acceptable solutions; or
 - (b) verification methods.
- (3) A compliance document must not contain a provision that—
 - (a) relates to contractual or commercial requirements; or
 - (b) relates to regulatory approvals, dispensations, or waivers; or
 - (c) is inconsistent with this Act or the regulations.
- (4) Material may be incorporated by reference in a compliance document in accordance with sections 405 to 413.

Compare: 1991 No 150 s 49(3), (4)

25A Compliance documents to be available on Ministry's website

- (1) The chief executive must ensure that—
 - (a) promptly after a new compliance document is issued, a digital copy is publicly available on the Ministry's website;
 - (b) even after a compliance document has been amended or revoked, a digital copy of it in its original form continues to be publicly available on the website;
 - (c) promptly after a compliance document is amended, there are publicly available on the Ministry's website—
 - (i) a digital copy of the amendment; and
 - (ii) a digital copy of the document in its up-to-date form.
- (2) *[Repealed]*
- (3) *[Repealed]*
- (4) The digital copies must be available free of charge.

Section 25A: inserted, on 14 April 2005, by section 6 of the Building Amendment Act 2005 (2005 No 31).

Section 25A(2): repealed, on 15 March 2008, by section 9 of the Building Amendment Act 2008 (2008 No 4).

Section 25A(3): repealed, on 15 March 2008, by section 9 of the Building Amendment Act 2008 (2008 No 4).

Warnings and bans

26 Chief executive may issue warning about, or ban use of, building methods or products

- (1) This section applies if the chief executive considers on reasonable grounds that the use of a building method or product has resulted, or is likely to result, in a building or building work failing to comply with the building code.
- (2) The chief executive may—
 - (a) issue a warning about the building method or product; or
 - (b) declare a ban on the building method or product.
- (3) The chief executive must publicly notify—
 - (a) the warning or ban; and
 - (b) the date on which the warning or ban comes into force; and
 - (c) in the case of a ban, whether the ban applies to building work for which a building consent has been issued before the date on which the ban comes into force; and
 - (d) whether the procedure in section 29 has been followed in relation to the warning or ban.
- (4) The chief executive—
 - (a) may, at any time, amend or revoke the warning or ban; and
 - (b) must publicly notify—
 - (i) the amendment or revocation; and
 - (ii) the date on which the amendment or revocation comes into force.

27 Offence to use building method or product in breach of ban under section 26

- (1) A person must not use a building method or product if doing so breaches a ban under section 26.
- (2) A person commits an offence if the person fails to comply with subsection (1).
- (3) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.

28 Limits on certain powers of building consent authority in cases involving bans under section 26

- (1) A building consent authority must not exercise any of the powers specified in subsection (2) if doing so results, or could result, in a person breaching a ban under section 26.
- (2) The powers are—
 - (a) to grant a building consent for building work; or
 - (b) to issue a code compliance certificate for building work.
- (3) However, subsection (2)(b) does not apply if the building consent to which the code compliance certificate relates was granted before the ban under section 26 came into force.

Procedural requirements for compliance documents, warnings, and bans

29 Procedural requirements for compliance documents, warnings, and bans

- (1) This section applies if the chief executive proposes to—
 - (a) issue a compliance document; or
 - (b) amend or revoke a compliance document; or
 - (c) issue a warning or declare a ban; or
 - (d) amend or revoke a warning or ban.
- (2) Before doing any of the things referred to in subsection (1), the chief executive must—
 - (a) seek to identify all reasonably practicable options for achieving the objective of the document, warning, or ban; and
 - (b) assess those options by considering—
 - (i) the benefits and costs of each option; and
 - (ii) the extent to which the objective would be promoted or achieved by each option; and
 - (iii) any other matters that, in the chief executive's opinion, are relevant; and
 - (c) publicly notify a statement of proposal; and
 - (d) give persons an opportunity to make submissions on the statement of proposal; and
 - (e) consider those submissions.
- (3) For the purposes of subsection (2)(c), the chief executive must notify—

- (a) where copies of the statement of proposal may be obtained; and
 - (b) that submissions on the statement of proposal may be made to the chief executive by a specified date (which date must not be less than 10 working days after the date of the public notification).
- (4) The statement of proposal must contain—
- (a) a detailed statement of the proposal (which may be a copy of the proposed document, warning, or ban); and
 - (b) a statement of the reasons for the proposal; and
 - (c) an analysis of the reasonably practicable options, including the proposal, identified under subsection (2); and
 - (d) a detailed statement of the proposed transitional changes (if any) for the document, warning, or ban; and
 - (e) the date on which the document, warning, or ban is proposed to come into force; and
 - (f) a statement as to whether the document, warning, or ban will apply to building work for which a building consent has been issued before the date on which the document, warning, or ban comes into force; and
 - (g) any other information that the chief executive considers relevant.
- (5) The chief executive is not required to comply with subsection (2) if the chief executive is satisfied that—
- (a) the document or warning needs to be issued, or the ban needs to be declared, urgently; or
 - (b) the document, warning, or ban needs to be amended urgently; or
 - (c) the document, warning, or ban needs to be revoked urgently; or
 - (d) the effect of the document, warning, or ban is minor and will not adversely affect the substantial interests of any person.

Compare: 1991 No 150 s 49(9)

30 Procedural requirements for urgent compliance documents, warnings, and bans

- (1) If section 29(5) applies, the chief executive must—

- (a) consult on the document, warning, or ban (as the case may be) in accordance with section 29(2) to (4); and
 - (b) after that consultation, publicly notify whether he or she has decided to amend, replace, or revoke the document, warning, or ban.
- (2) The chief executive must comply with subsection (1) within 6 months of issuing, amending, replacing, or revoking the document, warning, or ban concerned.
- (3) In the public notification, the chief executive must—
- (a) explain the reasons for his or her decision; or
 - (b) state where copies of that explanation may be obtained.

National multiple-use approvals

Heading: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30A National multiple-use approval establishes compliance with building code

- (1) A national multiple-use approval establishes that the plans and specifications to which it relates comply with the building code.
- (2) To avoid doubt, a national multiple-use approval does not confer the right to carry out building work that requires a building consent.

Section 30A: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30B How to apply for national multiple-use approval

- (1) An application for a national multiple-use approval must—
- (a) be made in writing; and
 - (b) be given, in the prescribed form and manner (if any), to the chief executive; and
 - (c) contain the prescribed information (if any); and
 - (d) be accompanied by plans and specifications that are—
 - (i) required by regulations made under section 402; or
 - (ii) if the regulations do not so require, required by the chief executive; and

- (e) if the application relates to building work for which a compliance schedule is required, be accompanied by a list of all specified systems for the building; and
 - (f) contain or be accompanied by any other information that the chief executive reasonably requires.
- (2) An application for an amendment to a national multiple-use approval must be made as if it were an application for a national multiple-use approval, and sections 30A to 30H apply with any necessary modifications.

Section 30B: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30C Applications for national multiple-use approval relating to design work that is restricted building work

- (1) This section applies if an application for a national multiple-use approval is accompanied by plans and specifications that contain design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted building work for the purposes of this Act.
- (2) The design work referred to in subsection (1) must be carried out or supervised by 1 or more licensed building practitioners who are licensed to carry out or supervise that work.
- (3) The plans and specifications that contain the design work referred to in subsection (1) must be accompanied by a memorandum—
- (a) provided by 1 or more licensed building practitioners who carried out or supervised that design work; and
 - (b) that identifies that design work; and
 - (c) that states—
 - (i) that the design work complies with the building code; or
 - (ii) whether waivers or modifications of the building code are required and, if so, what those waivers or modifications are.

Section 30C: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30D Chief executive must decide whether to accept, for processing, application for national multiple-use approval

- (1) The chief executive must, as soon as practicable after receiving an application for a national multiple-use approval,—
 - (a) decide whether to accept that application for processing; and
 - (b) give written notice of his or her decision to the applicant; and
 - (c) if the chief executive decides to refuse to accept the application for processing, state the reasons for the refusal in the notice given under paragraph (b).
- (2) The chief executive may require further reasonable information in respect of the application.
- (3) The chief executive may refuse to accept for processing an application for a national multiple-use approval only if the chief executive is satisfied, on reasonable grounds, that the application—
 - (a) does not meet the requirements of this Act; or
 - (b) includes a building method or product in relation to which the chief executive has publicly notified a ban under section 26; or
 - (c) does not meet the prescribed eligibility criteria (if any) for a national multiple-use approval.

Section 30D: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30E Processing application for national multiple-use approval

- (1) The chief executive must, after accepting for processing an application for a national multiple-use approval, decide whether to—
 - (a) issue the national multiple-use approval; or
 - (b) refuse to issue the national multiple-use approval.
- (2) If regulations made under section 402(1)(kb) are in force, the chief executive must make the decision referred to in subsection (1) within the period of time prescribed in those regulations.
- (3) The chief executive may require further reasonable information in respect of an application for a national multiple-use approval before making the decision referred to in subsection (1),

and any prescribed period of time within which that decision must be made is suspended until the chief executive receives that information.

Section 30E: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30F Issue of national multiple-use approval

- (1) The chief executive must issue a national multiple-use approval if he or she is satisfied, on reasonable grounds, that—
 - (a) the application meets the requirements of section 30B; and
 - (b) the applicant has paid the prescribed fee (if any); and
 - (c) the application meets the prescribed eligibility criteria for a national multiple-use approval (if any); and
 - (d) the application does not involve the use of a building method or product in relation to which the chief executive has publicly notified a ban under section 26; and
 - (e) if building work were properly completed in accordance with the plans and specifications that accompanied the application, that building work would comply with the building code.
- (2) A national multiple-use approval may be issued subject to—
 - (a) a waiver or modification of the building code; and
 - (b) 1 or more conditions, including, but not limited to, conditions that the approval applies only—
 - (i) in specified regions; or
 - (ii) in specified climates or conditions; or
 - (iii) to specified aspects of the building work; or
 - (iv) if the building work complies with specified requirements.

Section 30F: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30G Refusal to issue national multiple-use approval

If the chief executive is not satisfied of the matters in section 30F, the chief executive must refuse to issue a national multiple-use approval and must give the applicant written notice of—

- (a) the refusal; and

- (b) the reasons for the refusal.

Section 30G: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

30H Suspension or revocation of national multiple-use approval

- (1) The chief executive may, at any time, suspend or revoke a national multiple-use approval, if the chief executive is satisfied that—
- (a) the approval was obtained by fraud, misrepresentation, or the concealment of facts; or
 - (b) the approval no longer meets the prescribed eligibility criteria for a national multiple-use approval; or
 - (c) building work properly completed in accordance with the approval will no longer comply with the building code because of an amendment to the code.
- (2) Before revoking or suspending a national multiple-use approval the chief executive must give the holder of the approval a reasonable opportunity to be heard.
- (3) When suspending a national multiple-use approval, the chief executive must—
- (a) give the holder of the approval a reasonable period to rectify the matter that led to the suspension of the national multiple-use approval; and
 - (b) lift the suspension if the chief executive is satisfied that the holder of the approval has rectified the matter within that period.
- (4) Despite subsections (1) and (3), the chief executive must not suspend or revoke a national multiple-use approval if—
- (a) amendments are made to—
 - (i) the prescribed eligibility criteria for a national multiple-use approval; or
 - (ii) the building code; and
 - (b) the national multiple-use approval no longer meets the eligibility criteria, or complies with the building code, solely as a result of those amendments.
- (5) The limit in subsection (4) applies only during the period of 3 months after the date on which the amendments referred to in that subsection come into force.

- (6) The chief executive must record the suspension or revocation of a national multiple-use approval in the register of national multiple-use approvals.

Section 30H: inserted, on 1 February 2010, by section 9 of the Building Amendment Act 2009 (2009 No 25).

Subpart 3—Building work—Project information memoranda and building consents

Project information memoranda

31 Building consent authority must apply for project information memorandum

- (1) A building consent authority must,—
- (a) on receiving an application for a building consent, apply for a project information memorandum to the territorial authority for the district in which the proposed building work is to be situated; and
 - (b) on receiving the project information memorandum from the territorial authority, provide a copy of the memorandum to the owner.
- (2) Subsection (1) does not apply if—
- (a) the building consent authority is the territorial authority for the district in which the proposed building work is to be situated; or
 - (b) a project information memorandum has been issued before the application for a building consent is made.

Section 31(2)(a): amended, on 1 February 2010, by section 10 of the Building Amendment Act 2009 (2009 No 25).

32 Owner may apply for project information memorandum

An owner may apply to a territorial authority for a project information memorandum for building work if—

- (a) the owner is considering carrying out building work; and
- (b) a building consent is required for that work.

Compare: 1991 No 150 s 30(1)

33 Content of application

- (1) An application for a project information memorandum must be in the prescribed form and be accompanied by—
 - (a) the application charge fixed by the territorial authority; and
 - (b) any information that the territorial authority reasonably requires in relation to authorisations or requirements (if any) that—
 - (i) the territorial authority is authorised to refuse or impose under any Act (except this Act); and
 - (ii) are likely to be relevant to the design and construction of the proposed building; and
 - (c) any other information that the territorial authority (acting as agent for a network utility operator by prior agreement with that network utility operator) requires in respect of proposed connections to public utilities from the proposed building work.
- (2) The territorial authority may not make a requirement under subsection (1)(b) if more than 10 working days have elapsed since the date on which the territorial authority received the application.
- (3) For the purposes of subsection (1)(b), the authorisations and requirements referred to in that subsection include, without limitation, authorisations and requirements in respect of—
 - (a) the intended use of the proposed building; and
 - (b) the location and external dimensions of the proposed building; and
 - (c) provisions to be made—
 - (i) for access for vehicles; and
 - (ii) in building over or adjacent to any road or public place; and
 - (iii) for disposing of stormwater and wastewater; and
 - (d) precautions to be taken if building work is carried out over any existing drains or sewers or in close proximity to wells or water mains.

Compare: 1991 No 150 s 30(3)

34 Issue of project information memorandum

- (1) A territorial authority must issue a project information memorandum within 20 working days after receiving an application under section 31(1)(a) or section 32.
- (2) However, if the territorial authority requires any information under section 33(1)(b) or (c), the period specified in subsection (1) is suspended until it receives the information.
- (3) The territorial authority must issue the project information memorandum within 10 working days after receiving that information.
- (4) A territorial authority may, within the period specified in subsection (1) or, if applicable, in subsection (3), reissue a project information memorandum if the territorial authority—
 - (a) considers, on reasonable grounds, that the project information memorandum contains an error or omission; or
 - (b) receives information that affects the project information memorandum.

Compare: 1991 No 150 s 31(1)

35 Content of project information memorandum

- (1AA) A project information memorandum must be issued in the prescribed form (if any).
- (1) A project information memorandum must include—
 - (a) information likely to be relevant to the proposed building work that identifies—
 - (i) the heritage status of the building (if any); and
 - (ii) each special feature of the land concerned (if any); and
 - (b) information likely to be relevant to the proposed building work that, in terms of any other Act, has been notified to the territorial authority by a statutory authority; and
 - (c) details of any existing stormwater or wastewater utility systems that—
 - (i) relate to the proposed building work; or
 - (ii) are on, or adjacent to, the site of the proposed building work; and
 - (d) details of any authorisation in respect of the proposed building work that the territorial authority, on its own

behalf and on behalf of any network utility operator (if the territorial authority is acting as agent for a network utility operator by prior agreement with the network utility operator), is authorised to refuse or require under any Act, except this Act, and, in respect of each authorisation,—

- (i) a statement of the requirements to be met in order for the authorisation to be granted or imposed; and
 - (ii) the conditions to which an authorisation will be subject; and
- (e) if the territorial authority considers that the owner of the building or proposed building to which the project information memorandum relates is likely to be required, under section 21A of the Fire Service Act 1975, to make provision for a scheme that provides for evacuation from the scene of a fire, a statement to that effect; and
- (f) if the territorial authority considers that notification to the New Zealand Historic Places Trust is likely to be required under section 39, a statement to that effect; and
- (g) either—
- (i) confirmation, subject to this Act, that building work may be carried out subject to the requirements of a building consent and subject also to all other necessary authorisations being obtained; or
 - (ii) notification that building work may not be carried out because any necessary authorisation has been refused, despite the issue of any building consent; and
- (h) if section 75 applies, the statement referred to in section 75(2); and
- (i) if the building is one that is intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2, a statement that the building must comply with—
- (i) section 118 (relating to access and facilities for persons with disabilities to and within buildings); and

- (ii) the provisions of the building code that relate to providing for persons with disabilities to have access to buildings and to facilities within buildings.
- (2) In this section,—
- land concerned**—
- (a) means the land on which the proposed building work is to be carried out; and
 - (b) includes any other land likely to affect or be affected by the building work
- special feature of the land concerned** includes, without limitation, potential natural hazards, or the likely presence of hazardous contaminants, that—
- (a) is likely to be relevant to the design and construction or alteration of the building or proposed building; and
 - (b) is known to the territorial authority; and
 - (c) is not apparent from the district plan under the Resource Management Act 1991.

Compare: 1991 No 150 s 31(2)–(4)

Section 35(1AA): inserted, on 1 February 2010, by section 11 of the Building Amendment Act 2009 (2009 No 25).

Section 35(1)(h): amended, on 15 March 2008, by section 10 of the Building Amendment Act 2008 (2008 No 4).

Section 35(1)(i): added, on 15 March 2008, by section 10 of the Building Amendment Act 2008 (2008 No 4).

36 Territorial authority may issue development contribution notice

- (1) This section applies if a territorial authority considers that a development contribution under the Local Government Act 2002 is payable by the owner.
- (2) The territorial authority must issue a notice, in the prescribed form, to the effect that a code compliance certificate for the building work will not be issued unless the development contribution is paid (**development contribution notice**).
- (3) The development contribution notice must be—
 - (a) attached to the project information memorandum; or
 - (b) if no project information memorandum has been applied for, provided to the building consent authority.

Section 36: substituted, on 1 February 2010, by section 12 of the Building Amendment Act 2009 (2009 No 25).

37 Territorial authority must issue certificate if resource consent required

- (1) This section applies if a territorial authority considers that—
 - (a) a resource consent under the Resource Management Act 1991 has not yet been obtained; and
 - (b) the resource consent will or may materially affect building work to which a project information memorandum or an application for a building consent relates.
- (2) The territorial authority must issue a certificate, in the prescribed form, to the effect that until the resource consent has been obtained—
 - (a) no building work may proceed; or
 - (b) building work may only proceed to the extent stated in the certificate.
- (3) The certificate must be—
 - (a) attached to the project information memorandum; or
 - (b) if no project information memorandum has been applied for, provided to the building consent authority.

Compare: 1991 No 150 s 35(1A)

Section 37 heading: substituted, on 1 February 2010, by section 13(1) of the Building Amendment Act 2009 (2009 No 25).

Section 37(1)(b): amended, on 1 February 2010, by section 13(2) of the Building Amendment Act 2009 (2009 No 25).

Section 37(2): amended, on 1 February 2010, by section 13(3) of the Building Amendment Act 2009 (2009 No 25).

Section 37(3): added, on 1 February 2010, by section 13(4) of the Building Amendment Act 2009 (2009 No 25).

38 Territorial authority must give copy of project information memorandum in certain circumstances

If a project information memorandum contains information previously supplied to a territorial authority by a network utility operator or a statutory authority, the territorial authority must give a copy of the project information memorandum to that operator or that authority.

Compare: 1991 No 150 s 31(5)

39 Territorial authority must advise New Zealand Historic Places Trust in certain circumstances

- (1) This section applies if—
- (a) an application for a project information memorandum, or for a building consent, affects a registered historic place, historic area, wāhi tapu, or wāhi tapu area; and
 - (b) the territorial authority has not previously advised the New Zealand Historic Places Trust about the building work to which that application relates.
- (2) The territorial authority must advise the New Zealand Historic Places Trust within 5 days after receiving the application.

Compare: 1991 No 150 s 30(4)

Section 39: substituted, on 1 February 2010, by section 14 of the Building Amendment Act 2009 (2009 No 25).

Building consents

40 Buildings not to be constructed, altered, demolished, or removed without consent

- (1) A person must not carry out any building work except in accordance with a building consent.
- (2) A person commits an offence if the person fails to comply with this section.
- (3) A person who commits an offence under this section is liable 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.

Compare: 1991 No 150 s 32(1)

41 Building consent not required in certain cases

- (1) Despite section 40, a building consent is not required in relation to—
- (a) a Crown building or Crown building work to which, under section 6, this Act does not apply; or
 - (b) any building work described in Schedule 1; or
 - (c) any building work in respect of which a building consent cannot practicably be obtained in advance because the building work has to be carried out urgently—

- (i) for the purpose of saving or protecting life or health or preventing serious damage to property; or
 - (ii) in order to ensure that a specified system in a building that is covered by a compliance schedule, or would be covered if a compliance schedule were issued in respect of the building, is maintained in a safe condition or is made safe; or
 - (d) any energy work that, under section 43, does not require a building consent; or
 - (e) any building work that a territorial authority is authorised to carry out under this Act.
- (2) The Governor-General may, by Order in Council, add any building work or class of building works to Schedule 1 as being building work for which a building consent is not required.
Compare: 1991 No 150 s 32(2), (3)

42 Owner must apply for certificate of acceptance if building work carried out urgently

- (1) If, in reliance on section 41(1)(c), building work is carried out without a building consent having been obtained in respect of that work, the owner must, as soon as practicable after completion of the building work, apply for a certificate of acceptance under section 96.
- (2) A person commits an offence if the person fails to apply for a certificate of acceptance in accordance with subsection (1).
- (3) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

43 Building consent not required for energy work

- (1) Energy work does not require a building consent.
- (2) However, the following energy work requires a building consent:
- (a) energy work that relates to any specified system that is contained in, or proposed to be contained in, any building (whether existing or proposed) and that,—

- (i) in the case of an existing specified system, is covered by a compliance schedule, or would be covered if a compliance schedule were issued in respect of the building; or
 - (ii) in the case of a proposed specified system, will be required to be covered by a compliance schedule; and
 - (b) energy work in any case where, if that work required a building consent, a consent could not be granted unless it was granted subject to a waiver or modification of the building code.
- (3) An owner who wishes to obtain a building consent for energy work that does not require a building consent may apply for a building consent for that work (whether or not the application also relates to any other building work), and in that case this Act applies as if the energy work required a building consent.
- Compare: 1991 No 150 s 32A

44 When to apply for building consent

- (1) An owner intending to carry out building work must, before the building work begins, apply for a building consent to a building consent authority that is authorised, within the scope of its accreditation, to grant a building consent for the proposed building work.
- (2) An owner may make a series of applications for building consents for stages of the proposed building work.
- Compare: 1991 No 150 s 33(1), (3)

45 How to apply for building consent

- (1) An application for a building consent must—
- (a) be in the prescribed form; and
 - (b) be accompanied by plans and specifications that are—
 - (i) required by regulations made under section 402; or
 - (ii) if the regulations do not so require, required by a building consent authority; and
 - (ba) if a national multiple-use approval has been issued in relation to some or all of the plans and specifications required under paragraph (b), be accompanied by—

- (i) a copy of that national multiple-use approval; and
 - (ii) details of any proposed minor customisations; and
 - (c) contain or be accompanied by any other information that the building consent authority reasonably requires; and
 - (d) be accompanied by the charge fixed by the building consent authority; and
 - (e) in the case of an application for a building consent that relates to restricted building work, state the name of each licensed building practitioner who, as far as the applicant is aware at the time the application is made, will be involved in carrying out or supervising the restricted building work that is the subject of the application; and
 - (f) if the owner applies for a project information memorandum for the building work under section 32 and the project information memorandum is then issued, be accompanied by—
 - (i) the project information memorandum; and
 - (ii) a development contribution notice under section 36 (if any); and
 - (iii) a certificate issued under section 37 (if any); and
 - (g) be accompanied by either one of the following:
 - (i) if a compliance schedule is required as a result of the building work, a list of all specified systems for the building; or
 - (ii) if an amendment to an existing compliance schedule is required as a result of the building work, a list of all specified systems that are being—
 - (A) altered in the course of the building work;
 - (B) added to the building in the course of the building work;
 - (C) removed from the building in the course of the building work.
- (2) If an application for a building consent is accompanied by plans and specifications that contain design work (relating to building work) that is design work of a kind declared by the Governor-General by Order in Council to be restricted build-

- ing work for the purposes of this Act, that design work must be carried out or supervised by 1 or more licensed building practitioners who are licensed to carry out or supervise that work.
- (3) The plans and specifications that contain the design work referred to in subsection (2) must be accompanied by a memorandum—
- (a) provided by 1 or more licensed building practitioners who carried out or supervised that design work; and
 - (b) that identifies that design work; and
 - (c) that states—
 - (i) that the design work complies with the building code; or
 - (ii) whether waivers or modifications of the building code are required and, if so, what those waivers or modifications are.
- (4) An application for an amendment to a building consent must,—
- (a) in the case of a minor variation, be made in accordance with section 45A; and
 - (b) in all other cases, be made as if it were an application for a building consent, and this section, and sections 48 to 51 apply with any necessary modifications.
- (5) *[Repealed]*

Compare: 1991 No 150 s 33(2), (4)

Section 45(1)(ba): inserted, on 1 February 2010, by section 15(1) of the Building Amendment Act 2009 (2009 No 25).

Section 45(2): substituted, on 1 February 2010, by section 15(2) of the Building Amendment Act 2009 (2009 No 25).

Section 45(3): substituted, on 1 February 2010, by section 15(2) of the Building Amendment Act 2009 (2009 No 25).

Section 45(4): substituted, on 1 February 2010, by section 15(2) of the Building Amendment Act 2009 (2009 No 25).

Section 45(5): repealed, on 1 February 2010, by section 15(2) of the Building Amendment Act 2009 (2009 No 25).

45A Minor variations to building consents

- (1) An application for a minor variation to a building consent—
- (a) is not required to be made in the prescribed form; but
 - (b) must comply with all other applicable requirements of section 45.

- (2) Sections 48 to 50 apply, with all necessary modifications, to an application for a minor variation.
- (3) A building consent authority that grants a minor variation—
 - (a) must record the minor variation in writing; but
 - (b) is not required to issue an amended building consent.

Section 45A: inserted, on 1 February 2010, by section 16 of the Building Amendment Act 2009 (2009 No 25).

45B Changes to plans and specifications that have national multiple-use approval

- (1) When applying for a building consent in reliance on plans and specifications for which a national multiple-use approval has been issued, or for an amendment to such a building consent under section 45(4), changes may be made to those plans and specifications if—
 - (a) the changes are permitted under the terms of the national multiple-use approval; or
 - (b) the changes are minor customisations permitted by regulations made under section 402(1)(kc).
- (2) If any other changes are made to the plans and specifications referred to in subsection (1), the national multiple-use approval does not apply.

Section 45B: inserted, on 1 February 2010, by section 16 of the Building Amendment Act 2009 (2009 No 25).

46 Copy of certain applications for building consent must be provided to New Zealand Fire Service Commission

- (1) This section applies to an application for a building consent that is of a kind specified by the chief executive by notice published in the *Gazette*.
- (2) A copy of the notice must be given by the chief executive to every building consent authority as soon as practicable after it is so published.
- (3) A building consent authority must, on receipt of an application to which this section applies, provide a copy of the application to the New Zealand Fire Service Commission.

47 New Zealand Fire Service Commission may give advice on applications under section 46

- (1) The New Zealand Fire Service Commission may, within 10 working days after receiving a copy of an application for a building consent under section 46, provide the building consent authority concerned with a memorandum that sets out advice on the following matters in respect of the building to which the application relates:
 - (a) provisions for means of escape from fire;
 - (b) the needs of persons who are authorised by law to enter the building to undertake fire-fighting.
- (2) The New Zealand Fire Service Commission must not, in the memorandum referred to in subsection (1), set out advice that provides for the building to meet performance criteria that exceed the requirements of the building code.
- (3) If the New Zealand Fire Service Commission does not provide a memorandum within the period specified in subsection (1), the building consent authority may proceed to determine the application without the memorandum.

48 Processing application for building consent

- (1) After receiving an application for a building consent that complies with section 45, a building consent authority must, within the time limit specified in subsection (1A),—
 - (a) grant the application; or
 - (b) refuse the application.
- (1A) The time limit is—
 - (a) if the application includes plans and specifications in relation to which a national multiple-use approval has been issued, within 10 working days after receipt by the building consent authority of the application; and
 - (b) in all other cases, within 20 working days after receipt by the building consent authority of the application.
- (2) A building consent authority may, within the period specified in subsection (1A), require further reasonable information in respect of the application, and, if it does so, the period is suspended until it receives that information.

- (3) In deciding whether to grant or refuse an application for a building consent, the building consent authority must have regard to—
- (a) a memorandum provided by the New Zealand Fire Service Commission under section 47 (if any); and
 - (b) whether a building method or product to which a current warning or ban under section 26(2) relates will, or may, be used or applied in the building work to which the building consent relates.
- (4) Subsection (3) does not limit section 49(1).
- Compare: 1991 No 150 s 34(1), (2)
- Section 48(1): substituted, on 1 February 2010, by section 17(1) of the Building Amendment Act 2009 (2009 No 25).
- Section 48(1A): inserted, on 1 February 2010, by section 17(1) of the Building Amendment Act 2009 (2009 No 25).
- Section 48(2): amended, on 1 February 2010, by section 17(2) of the Building Amendment Act 2009 (2009 No 25).

49 Grant of building consent

- (1) A building consent authority must grant a building consent if it is satisfied on reasonable grounds that the provisions of the building code would be met if the building work were properly completed in accordance with the plans and specifications that accompanied the application.
- (2) However, a building consent authority is not required to grant a building consent until it receives—
- (a) any charge fixed by it in relation to the consent; and
 - (b) any levy payable under section 53.
 - (c) *[Repealed]*

Compare: 1991 No 150 s 34(3)

Section 49(2)(b): amended, on 6 August 2010, by section 4(2)(a) of the Affordable Housing: Enabling Territorial Authorities Act Repeal Act 2010 (2010 No 101).

Section 49(2)(c): repealed, on 6 August 2010, by section 4(2)(b) of the Affordable Housing: Enabling Territorial Authorities Act Repeal Act 2010 (2010 No 101).

50 Refusal of application for building consent

If a building consent authority refuses to grant an application for a building consent, the building consent authority must give the applicant written notice of—

- (a) the refusal; and
- (b) the reasons for the refusal.

Compare: 1991 No 150 s 35(2)

51 Issue of building consent

(1) A building consent must—

- (a) be issued in the prescribed form; and
- (b) have attached to it a copy of—
 - (i) the project information memorandum (if any) for the building work to which the building consent relates; and
 - (ii) a development contribution notice under section 36 (if any); and
 - (iii) a certificate issued under section 37 (if any); and
- (ba) contain confirmation that the New Zealand Historic Places Trust has been notified under section 39 (if applicable); and
- (c) if a compliance schedule is required as a result of the building work, state—
 - (i) the specified systems that must be covered by the compliance schedule; and
 - (ii) the performance standards for the specified systems that are required by the building code; and
- (d) if an amendment to an existing compliance schedule is required as a result of the building work, state—
 - (i) the specified systems that must be covered by the compliance schedule; and
 - (ii) the performance standards for the specified systems that are required by the building code.

(2) The issue of a building consent does 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, alteration, demolition, or removal of the building or proposed building if that construction, alteration, demolition, or removal would be in breach of any other Act.
- (3) If a building consent authority does not, within the time limit for granting the building consent, receive from the territorial authority any document or information required for compliance with subsection (1)(b) or (ba), the building consent authority may grant the building consent despite that subsection.
- (4) However, the building consent authority must, on receiving the document or information referred to in subsection (3), provide the owner with the document or information.

Compare: 1991 No 150 s 35(1), (3)

Section 51(1)(b)(i): amended, on 1 February 2010, by section 18(1) of the Building Amendment Act 2009 (2009 No 25).

Section 51(1)(ba): inserted, on 1 February 2010, by section 18(2) of the Building Amendment Act 2009 (2009 No 25).

Section 51(3): substituted, on 1 February 2010, by section 18(3) of the Building Amendment Act 2009 (2009 No 25).

Section 51(4): substituted, on 1 February 2010, by section 18(3) of the Building Amendment Act 2009 (2009 No 25).

52 Lapse of building consent

A building consent lapses and is of no effect if the building work to which it relates does not commence within—

- (a) 12 months after the date of issue of the building consent;
- or
- (b) any further period that the building consent authority may allow.

Compare: 1991 No 150 s 41(1)

Building levy

53 Applicant for building consent liable to pay levy

- (1) An applicant for a building consent is liable to pay to the chief executive a levy for, or in connection with, the performance of the chief executive's functions under this Act if the building consent is granted.
- (2) The levy—
 - (a) must be calculated—

- (i) in relation to the estimated value of the building work to which the building consent relates; and
 - (ii) at the prescribed rate; and
- (b) must be paid—
 - (i) to the building consent authority as the agent of the chief executive; and
 - (ii) at the time the building consent is granted.
- (3) Subsection (2)(a)(ii) is subject to section 431.
Compare: 1991 No 150 s 23B(1), (2)
Section 53(1): substituted, on 14 April 2005, by section 7(1) Building Amendment Act 2005 (2005 No 31).
Section 53(2)(b)(ii): amended, on 14 April 2005, by section 7(2)(a) of the Building Amendment Act 2005 (2005 No 31).

54 Building consent authority must advise applicant of amount of levy payable

A building consent authority must, before it grants a building consent, advise the applicant of the amount of levy for which the applicant may be liable under section 53.

55 Exemption from levy

Despite section 53, an applicant for a building consent is not liable to pay a levy if the building work for which the building consent is issued has an estimated value of less than the prescribed minimum estimated value (if any).

Compare: 1991 No 150 s 23B(1)

56 Payment of levy sufficient unless estimated value of building work changes

If a levy has already been paid for building work for which a building consent is granted, no further levy is payable for that building work unless its estimated value changes.

Section 56: amended, on 14 April 2005, by section 7(2)(a) of the Building Amendment Act 2005 (2005 No 31).

57 Payment of levy if building work completed in stages

- (1) If building work is, or is proposed to be, completed in stages, the estimated value of the building work must be taken, for the purpose of assessing the levy payable for the building work, to

include the estimated value of the preceding stage (if that preceding stage had an estimated value of less than the prescribed minimum estimated value).

- (2) For the purposes of subsection (1), any new building work in connection with a building must be treated as a further stage of any previous building work in connection with that building if—
- (a) a building consent was, or ought to have been, obtained for that previous building work; and
 - (b) the code compliance certificate for that building work has not been issued as at the date of the application for a building consent for the new building work.

Compare: 1991 No 150 s 23B(3), (4)

58 Liability to pay levy: building consent authority

- (1) A building consent authority, on the grant of a building consent, becomes liable to the territorial authority for the levy payable under section 53 in relation to the building work to which the building consent relates.
- (2) A building consent authority must pay the levy to the territorial authority at the same time that it provides, under section 238(2)(d), copies of information about the collection of that levy.
- (3) A person commits an offence if the person fails to pay the levy in accordance with this section.
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 23C(1)

Section 58(1): amended, on 14 April 2005, by section 7(2)(b) of the Building Amendment Act 2005 (2005 No 31).

59 Liability to pay levy: territorial authority

- (1) A territorial authority, on granting a building consent or on receiving all or any of the information specified in section 238(1)(c), becomes liable to the chief executive for the levy payable under section 53 in relation to the building work to which the building consent relates.
- (2) The total amount of the levy for which a territorial authority becomes liable is due and payable to the chief executive by

the 20th day of the month following the month in which the relevant building consent was granted.

- (3) Every payment of the levy must be accompanied by a certificate of the territorial authority, or of an officer or agent of the territorial authority, that states that the payment is correct—
- (a) according to the financial records of the territorial authority; and
 - (b) to the best of that person's knowledge and belief.

Compare: 1991 No 150 s 23C(1), (2), (3)

Section 59(1): amended, on 14 April 2005, by section 7(2)(c) of the Building Amendment Act 2005 (2005 No 31).

Section 59(2): amended, on 14 April 2005, by section 7(2)(a) of the Building Amendment Act 2005 (2005 No 31).

60 Territorial authority may retain part of levy

- (1) A territorial authority may retain 3% of the levies for which the territorial authority is liable, under section 59, in any month.
- (2) Subsection (1) is subject to section 61.

Compare: 1991 No 150 s 23C(4)

61 Chief executive may recover unpaid levies from territorial authority

- (1) The consequences specified in subsection (2) apply if a territorial authority that is liable to pay levies to the chief executive under section 59(1) fails to pay the levies by the date referred to in section 59(2).
- (2) The consequences are that—
- (a) section 60(1) does not apply; and
 - (b) the chief executive may recover, as a debt due from the territorial authority, the amount of those levies and any interest on that amount calculated—
 - (i) in monthly instalments at the monthly basic lending rate of the Ministry's bank; and
 - (ii) for the period of each month, or part of a month, starting on the date payment is due and ending on the date payment is made.

Compare: 1991 No 150 s 23C(5), (6)

62 Territorial authority may recover unpaid levies from applicant for building consent

- (1) The consequence specified in subsection (2) applies if an applicant for a building consent fails to pay a levy or part of a levy under section 53 by the time referred to in section 53(2)(b)(ii).
- (2) The consequence is that the territorial authority may recover, as a debt due from the applicant, the amount of those levies and any interest on that amount calculated—
 - (a) in monthly instalments at the monthly basic lending rate of the territorial authority's bank; and
 - (b) for the period of each month, or part of a month, starting on the date payment is due and ending on the date payment is made.

Compare: 1991 No 150 s 23C(8)

63 Chief executive may obtain information in order to assess amount of levy payable

- (1) The chief executive may require any or all of the persons referred to in subsection (2) to provide any information about the estimated value of building work specified in a building consent that may be necessary to enable the chief executive to assess the amount of levy that is payable under section 53.
- (2) The persons are—
 - (a) an applicant for a building consent;
 - (b) the relevant building consent authority;
 - (c) if applicable, the relevant territorial authority.
- (3) An applicant who provides information to the chief executive under subsection (1) may request the chief executive to treat the information as confidential, and, except if compliance with the request would be contrary to any other law, the chief executive must comply with the request to the fullest extent possible.
- (4) A person commits an offence if the person fails to comply with a requirement to provide information under subsection (1).
- (5) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 23F

64 Audit of issue of building consents for purpose of ascertaining payment of levy

- (1) A territorial authority must, at all times, keep in safe custody all records of building consents granted within its district, including—
 - (a) the estimated value of the building work to which each consent relates; and
 - (b) the amount of any levy payable under section 53; and
 - (c) the date of payment of the levy to the territorial authority.
- (2) The chief executive or the chief executive's authorised officers or agents may, for the purpose of ascertaining whether the levy for which a territorial authority is liable has been paid, and whether this section has been complied with,—
 - (a) require a territorial authority to make available for examination the following records of the territorial authority:
 - (i) records of building consents; and
 - (ii) financial records; and
 - (b) examine those records; and
 - (c) make copies of those records.
- (3) A territorial authority must, on being advised of a requirement under subsection (2)(a), comply immediately with that requirement.
- (4) The chief executive's authorised officers or agents must report to the chief executive the result of any examination that they have conducted under subsection (2).

Compare: 1991 No 150 s 23E

Section 64(1): amended, on 14 April 2005, by section 7(2)(a) of the Building Amendment Act 2005 (2005 No 31).

65 Chief executive may enter into agreements for auditing certain information

- (1) The chief executive may enter into an agreement with any person for the purpose of enabling the person to act as agent for the chief executive in determining whether payment of the levy has been made in accordance with sections 53 to 62.
- (2) A person with whom the chief executive enters into an agreement referred to in subsection (1) may, while the agreement is

in force, access any information that the chief executive may access under sections 63 and 64.

Compare: 1991 No 150 s 23G

66 Chief executive must review levy

As soon as practicable after the expiry of 3 years beginning on the commencement of this section, and then at intervals of not more than 3 years, the chief executive must—

- (a) review whether the levy is set at a rate that is appropriate for meeting the costs of the chief executive in performing his or her functions under this Act; and
- (b) report to the Minister on the findings of the review.

Compare: 1991 No 150 s 23I

Waivers and modifications

67 Territorial authority may grant building consent subject to waivers or modifications of building code

- (1) A building consent authority that is a territorial authority may grant an application for a building consent subject to a waiver or modification of the building code.
- (2) A waiver or modification of the building code under subsection (1) may be subject to any conditions that the territorial authority considers appropriate.
- (3) The territorial authority cannot grant an application for a building consent subject to a waiver or modification of the building code relating to access and facilities for people with disabilities.

Section 67(3): substituted, on 14 April 2005, by section 8 of the Building Amendment Act 2005 (2005 No 31).

68 Territorial authority must notify chief executive if waiver or modification granted

If a territorial authority grants a building consent subject to a waiver or modification of the building code, the territorial authority must notify the chief executive of the waiver or modification.

69 Waiver or modification may only be granted by chief executive in certain cases

- (1) This section applies to a waiver or modification of the building code that relates to—
 - (a) an existing building to which section 118 applies; and
 - (b) access and facilities for use by persons with disabilities.
- (2) If this section applies, the chief executive may grant a waiver or modification only in a determination issued under subpart 1 of Part 3.
- (3) This section does not apply to a waiver or modification of the building code that relates to a new building or that is contained in a national multiple-use approval.

Section 69(1)(b): amended, on 15 March 2008, by section 12 of the Building Amendment Act 2008 (2008 No 4).

Section 69(3): amended, on 1 February 2010, by section 19 of the Building Amendment Act 2009 (2009 No 25).

70 Applications relating to energy work

- (1) This section applies if any part of an application for a building consent—
 - (a) relates to energy work; and
 - (b) involves the grant or refusal of a waiver or modification of the building code in relation to that energy work.
- (2) If this section applies,—
 - (a) the application must be made to a territorial authority; and
 - (b) the territorial authority must refer the part of the application that relates to energy work to the chief executive.
- (3) If any part of the application is referred to the chief executive under subsection (2)(b), the chief executive must—
 - (a) consult with the chief executive of the department of State responsible for the administration of the Gas Act 1992 and the Electricity Act 1992; and
 - (b) decide—
 - (i) whether to grant the waiver or modification in relation to the energy work; and
 - (ii) if he or she decides to grant the waiver or modification, whether any conditions should be im-

- posed in respect of the waiver or modification;
and
- (iii) if so, what the conditions should be.
- (4) An application referred to in subsection (1) must be treated, for the purposes of section 177, as an application by the applicant for the building consent to which the referral relates, and, accordingly, subpart 1 of Part 3 applies to the application—
- (a) to the extent that it is applicable; and
- (b) with all necessary modifications.
- Compare: 1991 No 150 s 34A(1), (2)

Limitations and restrictions on building consents: Construction of building on land subject to natural hazards

71 Building on land subject to natural hazards

- (1) A building consent authority must refuse to grant a building consent for construction of a building, or major alterations to a building, if—
- (a) the land on which the building work is to be carried out is subject or is likely to be subject to 1 or more natural hazards; or
- (b) the building work is likely to accelerate, worsen, or result in a natural hazard on that land or any other property.
- (2) Subsection (1) does not apply if the building consent authority is satisfied that adequate provision has been or will be made to—
- (a) protect the land, building work, or other property referred to in that subsection from the natural hazard or hazards; or
- (b) restore any damage to that land or other property as a result of the building work.
- (3) In this section and sections 72 to 74, **natural hazard** means any of the following:
- (a) erosion (including coastal erosion, bank erosion, and sheet erosion):
- (b) falling debris (including soil, rock, snow, and ice):
- (c) subsidence:

- (d) inundation (including flooding, overland flow, storm surge, tidal effects, and ponding):
- (e) slippage.

Compare: 1991 No 150 s 36(1)

72 Building consent for building on land subject to natural hazards must be granted in certain cases

Despite section 71, a building consent authority that is a territorial authority must grant a building consent if the building consent authority considers that—

- (a) the building work to which an application for a building consent relates will not accelerate, worsen, or result in a natural hazard on the land on which the building work is to be carried out or any other property; and
- (b) the land is subject or is likely to be subject to 1 or more natural hazards; and
- (c) it is reasonable to grant a waiver or modification of the building code in respect of the natural hazard concerned.

Compare: 1991 No 150 s 36(2)

Section 72: amended, on 15 March 2008, by section 13 of the Building Amendment Act 2008 (2008 No 4).

73 Conditions on building consents granted under section 72

- (1) A building consent authority that is a territorial authority that grants a building consent under section 72 must include, as a condition of the consent, that the building consent authority will, on issuing the consent, notify the consent to,—
 - (a) in the case of an application made by, or on behalf of, the Crown, the appropriate Minister and the Surveyor-General; and
 - (b) in the case of an application made by, or on behalf of, the owners of Māori land, the Registrar of the Maori Land Court; and
 - (c) in any other case, the Registrar-General of Land.
- (2) The notification under subsection (1)(a) or (b) must be accompanied by a copy of any project information memorandum that has been issued and that relates to the building consent in question.

- (3) The notification under subsection (1)(c) must identify the natural hazard concerned.

Compare: 1991 No 150 s 36(2), (3)

Section 73(1): amended, on 15 March 2008, by section 14 of the Building Amendment Act 2008 (2008 No 4).

Section 73(2): amended, on 1 February 2010, by section 20 of the Building Amendment Act 2009 (2009 No 25).

74 Steps after notification

- (1) On receiving a notification under section 73,—
- (a) the Surveyor-General or the Registrar of the Maori Land Court, as the case may be, must enter in his or her records the particulars of the notification together with a copy of any project information memorandum that accompanied the notification:
 - (b) the Registrar-General of Land must record, as an entry on the certificate of title to the land on which the building work is carried out,—
 - (i) that a building consent has been granted under section 72; and
 - (ii) particulars that identify the natural hazard concerned.
- (2) If an entry has been recorded on a duplicate of the certificate of title referred to in subsection (1)(b) under section 641A of the Local Government Act 1974 or section 36 of the former Act, the Registrar-General of Land does not need to record another entry on the duplicate.
- (3) Subsection (4) applies if a building consent authority determines that any of the following entries is no longer required:
- (a) an entry referred to in subsection (1)(b):
 - (b) an entry under section 641A of the Local Government Act 1974:
 - (c) an entry under section 36 of the former Act.
- (4) The building consent authority must notify the Surveyor-General, the Registrar of the Maori Land Court, or the Registrar-General of Land, as the case may be, who must amend his or her records or remove the entry from the certificate of title.

Compare: 1991 No 150 s 36(5), (6), (7)

Section 74(1)(a): amended, on 1 February 2010, by section 21 of the Building Amendment Act 2009 (2009 No 25).

Limitations and restrictions on building consents: Construction of building on 2 or more allotments

75 Construction of building on 2 or more allotments

- (1) This section applies if—
- (a) an application for a project information memorandum or for a building consent relates to the construction of a building on land that is comprised, or partly comprised, of 2 or more allotments of 1 or more existing subdivisions (whether comprised in the same certificate of title or not); and
 - (b) those allotments are held by the owner in fee simple.
- (2) The territorial authority must issue a certificate that states that, as a condition of the grant of a building consent for the building work to which the application relates, 1 or more of those allotments specified by the territorial authority (the **specified allotments**) must not be transferred or leased except in conjunction with any specified other or others of those allotments.

Compare: 1991 No 150 s 37(1), (2)

Section 75(1)(a): amended, on 1 February 2010, by section 22(1) of the Building Amendment Act 2009 (2009 No 25).

Section 75(2): substituted, on 1 February 2010, by section 22(2) of the Building Amendment Act 2009 (2009 No 25).

76 Exemption from section 75

- (1) Section 75 does not apply if—
- (a) the owner proposes to construct a building with party walls that will be on the boundaries of the allotments referred to in that section; or
 - (b) the owner has applied to the Registrar-General of Land under section 82 for the Registrar's consent to the preparation of a plan (as defined by that section).
- (2) Section 82 applies if subsection (1)(b) applies.

Compare: 1991 No 150 s 37(11)

77 Building consent must not be granted until condition is imposed under section 75

- (1) A building consent authority must not grant a building consent for building work to which section 75 applies until the territorial authority has issued the certificate under section 75(2).
- (2) The territorial authority must impose that condition if the building consent authority requests it to do so.
- (3) The certificate must be—
 - (a) authenticated by the territorial authority; and
 - (b) signed by the owner.
- (4) The territorial authority must lodge a copy of the certificate with the Registrar-General of Land.
- (5) The building consent authority must note, on the building consent, the condition imposed in the certificate.

Section 77(1): amended, on 1 February 2010, by section 23(1) of the Building Amendment Act 2009 (2009 No 25).

Section 77(5): added, on 1 February 2010, by section 23(2) of the Building Amendment Act 2009 (2009 No 25).

78 Registrar-General of Land must record entry on certificate of title when certificate is lodged under section 77

- (1) If a certificate referred to in section 77(1) is lodged with the Registrar-General of Land, he or she must record, as an entry on each certificate of title for the specified allotments, that the certificate of title is subject to the condition referred to in that certificate.
- (2) The Registrar-General of Land does not need to record the entry on the duplicate of the certificates of title.
- (3) Subsection (1) is subject to section 82.

Compare: 1991 No 150 s 37(2)

Section 78(1): amended, on 1 February 2010, by section 24 of the Building Amendment Act 2009 (2009 No 25).

79 Effect of entry recorded on certificate of title

If an entry referred to in section 78(1) is recorded on the certificates of title for the specified allotments, none of those al-

lotments may be transferred or leased except in conjunction with the specified other or others of those allotments.

Compare: 1991 No 150 s 37(3)

80 Certificates of title for 2 or more allotments subject to registered instrument

- (1) This section applies if—
 - (a) an entry referred to in section 78(1) is made on 2 or more certificates of title; and
 - (b) any of the land less than the whole of the land comprised in all those certificates of title is, at the time the entry is recorded, 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
 - (c) that power, right, or obligation referred to in paragraph (b) becomes exercisable but is not able to be exercised or fully exercised because of section 79.
- (2) The whole of the land comprised in all those certificates of title is taken to be subject to the registered instrument and all the powers, rights, and obligations under the instrument, as if the instrument had been registered against the land at the time the entry is recorded.

Compare: 1991 No 150 s 37(4)

81 Mortgage, charge, or lien has priority over registered instrument

- (1) This section applies if—
 - (a) the registered instrument referred to in section 80(2) is a mortgage, charge, or lien; and
 - (b) any of the land to which that mortgage, charge, or lien is extended is already subject to a registered mortgage, charge, or lien.
- (2) The registered mortgage, charge, or lien has priority over any mortgage, charge, or lien extended over land under section 80(2).
- (3) If a registered mortgage, charge, or lien is extended over the land comprised in a certificate of title by section 80, it has priority over any mortgage, charge, or lien against the land that

is registered after the entry is recorded against the certificate of title to that land under that section.

Compare: 1991 No 150 s 37(5), (6)

82 Registrar-General of Land may require preparation of plan

- (1) If a certificate referred to in section 77 is lodged with the Registrar-General of Land, but the Registrar-General is satisfied that it is not practicable or desirable to record the entry on the certificates of title specified in section 78, the Registrar-General may require that—
 - (a) a plan be deposited under the Land Transfer Act 1952; and
 - (b) 1 or more certificates of title under that Act be issued for the land in terms of the plan.
- (2) In subsection (1), **plan** means a plan prepared in accordance with section 167 of the Land Transfer Act 1952 that amalgamates all the allotments—
 - (a) into 1 allotment; or
 - (b) if the circumstances render it expedient or desirable, into 2 or more allotments.

Compare: 1991 No 150 s 37(7)

83 Owner may apply for entry to be removed

- (1) This section applies if—
 - (a) the requirements of sections 75 to 81 or the requirements of section 643(1) to (6) of the Local Government Act 1974 or any previous enactments were met to enable a building to be built on 2 or more allotments; and
 - (b) any of the following applies:
 - (i) the building is removed, demolished, or destroyed; or
 - (ii) the boundaries of the allotments are adjusted in a manner that results in the building being contained entirely within the boundaries of 1 allotment; or
 - (iii) circumstances have otherwise changed.
- (2) The owner may apply to a territorial authority for approval for the entry under section 78 to be removed.

- (3) If the territorial authority decides to approve the removal of the entry,—
 - (a) the decision of the territorial authority must be set out in a certificate that is—
 - (i) authenticated by the territorial authority; and
 - (ii) signed by the owner; and
 - (b) the certificate must be lodged with the Registrar-General of Land.
- (4) If a certificate referred to in subsection (3)(b) is lodged with the Registrar-General of Land, he or she must record an appropriate entry on—
 - (a) the certificate of title for each allotment or part of the allotment; and
 - (b) any mortgage, charge, or lien whose application was extended to additional land under section 80.
- (5) If subsection (4)(b) applies, any mortgage, charge, or lien whose application was extended to additional land under section 80 ceases to apply to that additional land.
- (6) The Registrar-General of Land does not need to record the entry on the duplicate certificate of title unless that duplicate has had an entry recorded on it under—
 - (a) section 78; or
 - (b) section 643 of the Local Government Act 1974; or
 - (c) the corresponding provisions of any previous enactment.
- (7) Subsections (2) and (3) apply, with any necessary modifications, to any request by an owner of land if the requirements of section 643(1) to (6) of the Local Government Act 1974 or any previous enactment or sections 75 to 81 were applied in error.

Compare: 1991 No 150 s 37(8), (9), (10)

Subpart 4—Requirements for building work

Restricted building work must be carried out or supervised by licensed building practitioners

84 Licensed building practitioner must carry out or supervise restricted building work

All restricted building work must be carried out or supervised by a licensed building practitioner who is licensed to carry out or supervise the work.

Section 84: amended, on 15 March 2008, by section 15 of the Building Amendment Act 2008 (2008 No 4).

85 Offences relating to carrying out or supervising restricted building work

- (1) A person who is not a licensed building practitioner commits an offence if he or she carries out restricted building work while not supervised by a licensed building practitioner who is licensed to carry out or supervise the carrying out of restricted building work of that kind.
- (1A) A licensed building practitioner commits an offence if he or she—
- (a) carries out restricted building work of a kind that he or she is not licensed to carry out or supervise the carrying out of; or
 - (b) supervises the carrying out of restricted building work of a kind that he or she is not licensed to carry out or supervise the carrying out of.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$20,000.

Section 85 heading: substituted, on 14 April 2005, by section 9(1) of the Building Amendment Act 2005 (2005 No 31).

Section 85(1): substituted, on 14 April 2005, by section 9(2) of the Building Amendment Act 2005 (2005 No 31).

Section 85(1): amended, on 15 March 2008, by section 16(1) of the Building Amendment Act 2008 (2008 No 4).

Section 85(1A): inserted, on 14 April 2005, by section 9(2) of the Building Amendment Act 2005 (2005 No 31).

Section 85(1A)(a): amended, on 15 March 2008, by section 16(2) of the Building Amendment Act 2008 (2008 No 4).

Section 85(1A)(b): amended, on 15 March 2008, by section 16(2) of the Building Amendment Act 2008 (2008 No 4).

86 Offence to engage another person to carry out or supervise restricted building work if person is not licensed building practitioner

- (1) A person commits an offence if the person—
 - (a) engages another person to carry out or supervise restricted building work; and
 - (b) knows that the other person is not—
 - (i) a licensed building practitioner; or
 - (ii) a licensed building practitioner who is licensed to carry out or supervise the restricted building work.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$20,000.

Section 86(1)(b)(ii): amended, on 15 March 2008, by section 17 of the Building Amendment Act 2008 (2008 No 4).

87 Owner must notify names of licensed building practitioners engaged in restricted building work

- (1) Before restricted building work commences under a building consent, the owner must give the building consent authority written notice of the name of every licensed building practitioner who—
 - (a) is engaged to carry out, or supervise, the restricted building work under the building consent; and
 - (b) was not stated in the application for the building consent under section 45(1)(e).
- (2) After any restricted building work commences under a building consent, the owner must give the building consent authority a written notice if—
 - (a) a licensed building practitioner ceases to be engaged to carry out, or supervise, the restricted building work under the building consent; or
 - (b) another licensed building practitioner is engaged to carry out, or supervise, the restricted building work.
- (3) The notice under subsection (2) must—
 - (a) state that 1 or both of the circumstances specified in subsection (2)(a) and (b) apply; and
 - (b) be given as soon as practicable; and

- (c) name the other licensed building practitioner concerned (if any).

88 Licensed building practitioner to certify or provide memorandum about restricted building work

- (1) Each licensed building practitioner who carries out or supervises restricted building work under a building consent must, on completion of the restricted building work,—
 - (a) provide the persons specified in subsection (2) with a memorandum, in the prescribed form, stating what restricted building work the licensed building practitioner carried out or supervised; and
 - (b) if applicable, give to the persons specified in subsection (2) a certificate, in the prescribed form, stating that any specified systems in the building to which the restricted building work relates are capable of performing to the performance standards set out in the building consent.
- (2) The persons are—
 - (a) the owner; and
 - (b) the territorial authority for the district in which the restricted building work is situated.
- (3) A licensed building practitioner who carries out or supervises restricted building work that relates only to part of a specified system may give a certificate under subsection (1) that is qualified to the effect that the restricted building work on the other parts of the specified system must meet the requirements in subsection (1)(a) and (b).
- (4) A memorandum provided or certificate given under subsection (1) does not, of itself,—
 - (a) create any liability in relation to any matter to which the memorandum or certificate relates; or
 - (b) give rise to any civil liability to the owner that would not otherwise exist if the licensed building practitioner was not required to provide the memorandum or certificate.
- (5) Subsection (4) does not limit section 397(c).

Section 88 heading: amended, on 15 March 2008, by section 18(1) of the Building Amendment Act 2008 (2008 No 4).

Section 88(1): substituted, on 15 March 2008, by section 18(2) of the Building Amendment Act 2008 (2008 No 4).

Section 88(4): amended, on 15 March 2008, by section 18(3)(a) of the Building Amendment Act 2008 (2008 No 4).

Section 88(4)(a): amended, on 15 March 2008, by section 18(3)(b) of the Building Amendment Act 2008 (2008 No 4).

Section 88(4)(b): amended, on 15 March 2008, by section 18(3)(b) of the Building Amendment Act 2008 (2008 No 4).

*Other provisions relating to building work
generally*

89 Licensed building practitioner must notify building consent authority of breaches of building consent

- (1) A licensed building practitioner must, if he or she is of the view that any building work carried out under a building consent does not comply with that consent, notify—
 - (a) the territorial authority in whose district the building is situated; and
 - (b) the owner.
- (2) The notification must—
 - (a) state that the licensed building practitioner is of the view that building work carried out under the building consent does not comply with that consent; and
 - (b) state how the building work does not so comply; and
 - (c) be given as soon as practicable after the licensed building practitioner forms that view.

90 Inspections by building consent authorities

- (1) Every building consent is subject to the condition that agents authorised by the building consent authority for the purposes of this section are entitled, at all times during normal working hours or while building work is being done, to inspect—
 - (a) land on which building work is being or is proposed to be carried out; and
 - (b) building work that has been or is being carried out on or off the building site; and
 - (c) any building.
- (2) The provisions (if any) that are endorsed on a building consent in relation to inspection during the carrying out of building work must be taken to include the provisions of this section.

- (3) In this section, **inspection** means the taking of all reasonable steps to ensure that building work is being carried out in accordance with a building consent.

Compare: 1991 No 150 s 76(1), (2), (3)

Subpart 5—Code compliance certificates, certificates of acceptance, and compliance schedules

Code compliance certificates

91 Building consent authority that grants building consent to issue code compliance certificate

- (1) A building consent authority that granted the building consent for building work to which a code compliance certificate relates is the only person who may issue that certificate.
- (2) However, another building consent authority may issue a code compliance certificate if the following persons agree:
- (a) the owner of the building to which the building work relates; and
 - (b) the building consent authority that it is proposed will issue the code compliance certificate.
- (3) Subsection (4) applies if—
- (a) a building consent authority that is not a territorial authority or a regional authority is unable or refuses to issue a code compliance certificate in relation to building work for which it granted a building consent; and
 - (b) no other building consent authority will agree to issue a code compliance certificate for the building work under subsection (2).
- (4) The owner of the building to which the building work relates must apply for a certificate of acceptance under section 96.

Section 91(3)(a): amended, on 14 April 2005, by section 3(5) of the Building Amendment Act 2005 (2005 No 31).

92 Application for code compliance certificate

- (1) An owner must apply to a building consent authority for a code compliance certificate after all building work to be carried out under a building consent granted to that owner is completed.
- (2) The application must be made—

- (a) as soon as practicable after the building work is completed; and
 - (b) in the prescribed form; and
 - (c) either—
 - (i) to the building consent authority that granted the building consent for the building work; or
 - (ii) if section 91(2) applies, to the building consent authority that it is proposed will issue the code compliance certificate.
- (2A) If applicable, the owner must include with the application any memoranda provided by licensed building practitioners under section 88(1)(a).
- (3) If applicable, the owner must include with the application all certificates issued by licensed building practitioners under section 88 that state, when those certificates are considered together, that—
- (a) in a case where a compliance schedule is required as a result of restricted building work, the specified systems in the building are capable of performing to the performance standards set out in the building consent; or
 - (b) in a case where an amendment to an existing compliance schedule is required as a result of the building work, the specified systems that are being altered in, or added to, the building in the course of the restricted building work are capable of performing to the performance standards set out in the building consent.
- (4) If the building work comprises or includes energy work in respect of which a building consent has been granted, the owner must also include with the application any energy work certificate that relates to the energy work.

Compare: 1991 No 150 s 43(1), (2), (2A)

Section 92(2A): inserted, on 15 March 2008, by section 19 of the Building Amendment Act 2008 (2008 No 4).

93 Time in which building consent authority must decide whether to issue code compliance certificate

- (1) A building consent authority must decide whether to issue a code compliance certificate for building work to which a building consent relates within—
 - (a) 20 working days after the date specified in subsection (2); or
 - (b) any further period after the date specified in subsection (2) that may be agreed between the owner and the building consent authority concerned.
- (2) The date referred to in subsection (1)(a) and (b) is—
 - (a) the date on which an application for a code compliance certificate is made under section 92; or
 - (b) if no application is made, the expiry of—
 - (i) 2 years after the date on which the building consent for the building work was granted; or
 - (ii) any further period that may be agreed between the owner and the building consent authority concerned.
- (3) Subsection (1) applies whether or not an application for a code compliance certificate is made under section 92.
- (4) A building consent authority may, within the period specified in subsection (1), require further reasonable information in respect of the application for a code compliance certificate, and, if it does so, the period is suspended until it receives the information.

94 Matters for consideration by building consent authority in deciding issue of code compliance certificate

- (1) A building consent authority must issue a code compliance certificate if it is satisfied, on reasonable grounds,—
 - (a) that the building work complies with the building consent; and
 - (b) that,—
 - (i) in a case where a compliance schedule is required as a result of the building work, the specified systems in the building are capable of performing to the performance standards set out in the building consent; or

- (ii) in a case where an amendment to an existing compliance schedule is required as a result of the building work, the specified systems that are being altered in, or added to, the building in the course of the building work are capable of performing to the performance standards set out in the building consent.
- (2) In deciding whether to issue a code compliance certificate, a building consent authority must have regard to whether a building method or product to which a current warning or ban under section 26(2) relates has, or may have, been used or applied in the building work to which the certificate would relate.
- (3) If the owner fails to provide to a building consent authority an energy work certificate in relation to energy work in respect of which a building consent has been granted, the failure is a sufficient reason for the building consent authority to refuse to issue a code compliance certificate in respect of the energy work.
- (4) If a development contribution has been required to be paid or made under section 198 of the Local Government Act 2002, a building consent authority that is other than the territorial authority that made the requirement must refuse to issue a code compliance certificate in respect of the relevant building work until the building consent authority has received—
 - (a) evidence that the development contribution has been paid or made by the owner concerned to the territorial authority; or
 - (b) a copy of a written agreement between the owner and the territorial authority that the code compliance certificate may be issued.
- (5) Subsection (1) is subject to subsection (4).
Compare: 1991 No 150 s 43(3), (3A)

95 Issue of code compliance certificate

A code compliance certificate must be issued—

- (a) by a building consent authority; and
- (b) in the prescribed form; and

- (c) on payment of any charge fixed by the building consent authority.

Compare: 1991 No 150 s 43(3)

95A Refusal to issue code compliance certificate

If a building consent authority refuses to issue a code compliance certificate, the building consent authority must give the applicant written notice of—

- (a) the refusal; and
- (b) the reasons for the refusal.

Section 95A: inserted, on 15 March 2008, by section 20 of the Building Amendment Act 2008 (2008 No 4).

Certificates of acceptance

96 Territorial authority may issue certificate of acceptance in certain circumstances

- (1) A territorial authority may, on application, issue a certificate of acceptance for building work already done—
 - (a) if—
 - (i) the work was done by the owner or any predecessor in title of the owner; and
 - (ii) a building consent was required for the work but not obtained; or
 - (b) if section 42 (which relates to building work that had to be carried out urgently) applies; or
 - (c) if subsections (3) and (4) of section 91 (which apply if a building consent authority that is not a territorial authority or a regional authority is unable or refuses to issue a code compliance certificate in relation to building work for which it granted a building consent) apply; or
 - (d) if—
 - (i) the work affects premises to which section 362A applies; and
 - (ii) a building consent for the work was obtained before 31 March 2005; and
 - (iii) the territorial authority is unable or refuses to issue a code compliance certificate for the work; and

- (iv) the application for the certificate of acceptance was made before 31 March 2010.
- (2) A territorial authority may issue a certificate of acceptance only if it is satisfied, to the best of its knowledge and belief and on reasonable grounds, that, insofar as it could ascertain, the building work complies with the building code.
- (3) This section—
 - (a) does not limit section 40 (which provides that a person must not carry out any building work except in accordance with a building consent); and
 - (b) accordingly, does not relieve a person from the requirement to obtain a building consent for building work.

Section 96(1): substituted, on 14 April 2005, by section 10 of the Building Amendment Act 2005 (2005 No 31).

97 How to apply for certificate of acceptance

An application for a certificate of acceptance must—

- (a) be in the prescribed form; and
- (b) if available, be accompanied by plans and specifications that are—
 - (i) required by regulations made under section 402; or
 - (ii) if the regulations do not so require, required by the territorial authority; and
- (c) contain or be accompanied by any other information that the territorial authority reasonably requires; and
- (d) be accompanied by the charge fixed by the territorial authority; and
- (e) in the case of an application under section 96(1)(a), be accompanied by any fees, charges, or levies that would have been payable had the owner, or the owner's predecessor in title, applied for a building consent before carrying out the building work; and
- (f) if a project information memorandum for the building work has been issued under section 34, be accompanied by the project information memorandum; and
- (g) if a compliance schedule is required as a result of the building work, have attached to it a list of all specified systems for the building; or

- (h) if an amendment to an existing compliance schedule is required as a result of the building work, have attached to it a list of all specified systems that are being—
 - (i) altered in the course of the building work;
 - (ii) added to the building in the course of the building work;
 - (iii) removed from the building in the course of the building work.

98 Processing application for certificate of acceptance

- (1) A territorial authority must, within 20 working days after receiving an application for a certificate of acceptance,—
 - (a) grant the application; or
 - (b) refuse the application.
- (2) A territorial authority may, within the period specified in subsection (1), require further reasonable information in respect of the application, and, if it does so, the period is suspended until it receives the information.

99 Issue of certificate of acceptance

- (1) A certificate of acceptance must—
 - (a) be issued in the prescribed form; and
 - (b) have attached to it,—
 - (i) if a compliance schedule is required as a result of the building work, the compliance schedule for the building; or
 - (ii) if an amendment to an existing compliance schedule is required as a result of the building work, the amended compliance schedule for the building.
- (2) A certificate of acceptance may, if a territorial authority inspected the building work, be qualified to the effect that only parts of the building work were able to be inspected.
- (3) A territorial authority's liability for the issue of a certificate of acceptance is limited to the same extent that the territorial authority was able to inspect the building work in question.

99A Refusal of application for certificate of acceptance

If a territorial authority refuses to grant an application for a certificate of acceptance, the territorial authority must give the applicant written notice of—

- (a) the refusal; and
- (b) the reasons for the refusal.

Section 99A: inserted, on 15 March 2008, by section 21 of the Building Amendment Act 2008 (2008 No 4).

Compliance schedules

100 Requirement for compliance schedule

- (1) A building not used wholly as a single household unit—
 - (a) requires a compliance schedule if—
 - (i) it has a specified system; or
 - (ii) it has a cable car attached to it or servicing it; and
 - (b) requires the schedule for all specified systems it has and any cable car it has attached to it or servicing it.
- (2) A building used wholly as a single household unit—
 - (a) requires a compliance schedule only if it has a cable car attached to it or servicing it; and
 - (b) requires the schedule only for the cable car.
- (3) Before 31 March 2008,—
 - (a) a building not used wholly as a single household unit—
 - (i) requires a compliance schedule only if it has a specified system other than a cable car; and
 - (ii) does not require a compliance schedule for any cable car attached to it or servicing it; and
 - (b) a building used wholly as a single household unit does not require a compliance schedule.

Section 100: substituted, on 14 April 2005, by section 11 of the Building Amendment Act 2005 (2005 No 31).

101 Owner must comply with requirement for compliance schedule

- (1) An owner of a building for which a compliance schedule is required under section 100 must obtain the compliance schedule.
- (2) A person commits an offence if the person fails to comply with subsection (1).

- (3) A person who commits an offence under this section is liable to a fine not exceeding \$20,000 and, in the case of a continuing offence, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence has continued.

102 Compliance schedule must be issued with code compliance certificate in certain cases

- (1) A building consent authority must issue a compliance schedule with a code compliance certificate if the compliance schedule, or an amended compliance schedule, is required as a result of building work.
- (2) A building consent authority may charge a fee for the issue of a compliance schedule.

Compare: 1991 No 150 s 43(3)

103 Content of compliance schedule

- (1) A compliance schedule must state—
- (a) the specified systems that are covered by the compliance schedule; and
 - (b) the performance standards for the specified systems; and
 - (c) the inspection, maintenance, and reporting procedures to be followed by licensed building practitioners or other persons in respect of the specified systems to ensure that those systems are capable of, and are, performing to the performance standards; and
 - (d) if applicable, the specified systems that relate to—
 - (i) means of escape from fire; and
 - (ii) safety barriers; and
 - (iii) means of access, and facilities for use, by persons with disabilities that meet the requirements of section 118; and
 - (iv) handheld hose reels for fire-fighting; and
 - (v) any signs that are required by the building code or by section 120.
- (2) For the purposes of subsection (1)(c), the inspection, maintenance, and reporting procedures of the compliance schedule may be identified—
- (a) by description in the compliance schedule; or

- (b) by reference to—
 - (i) a prescribed acceptable solution or prescribed verification method in a regulation referred to in section 20; or
 - (ii) a compliance document; or
 - (iii) a building method or product.

Compare: 1991 No 150 s 44(2), (3), (5)

Section 103(1)(c): amended, on 15 March 2008, by section 22 of the Building Amendment Act 2008 (2008 No 4).

104 Building consent authority must notify territorial authority of issue of compliance schedule

If a building consent authority issues a compliance schedule under section 102, the building consent authority must, within 5 working days after issuing the compliance schedule, provide a copy of it to the territorial authority in whose district the building is situated.

104A Territorial authority must issue statement in relation to compliance schedule

A territorial authority that receives a copy under section 104 of a compliance schedule must, within 5 working days after receiving the compliance schedule, provide the owner of the building for which the compliance schedule was issued with the statement in relation to the compliance schedule described in section 105(e).

Section 104A: inserted, on 15 March 2008, by section 23 of the Building Amendment Act 2008 (2008 No 4).

105 Obligations of owner if compliance schedule is issued

An owner of a building for which a compliance schedule has been issued must ensure—

- (a) that each of the specified systems stated in the compliance schedule is performing, and will continue to perform, to the performance standards for that system; and
- (b) that the owner provides to the territorial authority an annual building warrant of fitness in accordance with section 108; and
- (c) that the compliance schedule is kept—

- (i) in the building; or
 - (ii) in another building in the district of the territorial authority; or
 - (iii) in some other place agreed on by the owner and the territorial authority; and
- (d) that the compliance schedule is available for inspection by any person or organisation who or that has a right to inspect the building under any Act; and
- (e) that, for the first 12 months of the period of the compliance schedule, there is displayed publicly in a place in the building so that users of the building can have access to it a statement by the territorial authority in the prescribed form stating—
- (i) the specified systems covered by the compliance schedule; and
 - (ii) the place where the compliance schedule is held.

Compare: 1991 No 150 s 44(4)

106 Application by owner for amendment to compliance schedule

- (1) An owner of a building that has 1 or more specified systems may, at any time and entirely at the owner's discretion, apply to the territorial authority of the district in which the building is situated for an amendment to a compliance schedule for the building.
- (2) However, the owner must apply to the territorial authority for an amendment to a compliance schedule for the building if the owner considers that the amendment is required to ensure that the specified systems are performing, and will continue to perform, to the performance standards for those systems.
- (3) The owner must—
 - (a) apply for the amendment in the prescribed form; and
 - (b) provide any information that the territorial authority reasonably requires in relation to the application; and
 - (c) pay any charge fixed by the territorial authority in relation to the application.
- (4) The territorial authority must, as soon as practicable after receiving the application, decide whether to amend the compliance schedule.

- (5) If the territorial authority decides to amend the compliance schedule, the territorial authority must—
 - (a) give written notice of the amendment to the owner; and
 - (b) attach a copy of the amended compliance schedule to the notice.
- (6) If the territorial authority refuses to amend the compliance schedule, the territorial authority must give written notice of, and the reasons for, the refusal to the owner.

107 Territorial authority may amend compliance schedule on own initiative

- (1) This section applies if a territorial authority considers that an amendment to a compliance schedule is required to ensure that a specified system stated in the compliance schedule is performing, and will continue to perform, to the performance standards for that system.
- (2) If this section applies, the territorial authority may amend the compliance schedule—
 - (a) on its own initiative; and
 - (b) without an application for an amendment to the compliance schedule being made under section 106.
- (3) However, before making an amendment to a compliance schedule under this section, the territorial authority must—
 - (a) advise the owner of its intention to do so; and
 - (b) give the owner a reasonable opportunity to make submissions on the matter; and
 - (c) consider those submissions.
- (4) If the territorial authority amends a compliance schedule under this section, the territorial authority must—
 - (a) give written notice of the amendment to the owner; and
 - (b) attach a copy of the amended compliance schedule to the notice.
- (5) The territorial authority may charge a fee for the issue of an amended compliance schedule under this section.

*Annual building warrant of fitness***108 Annual building warrant of fitness**

- (1) An owner of a building for which a compliance schedule has been issued must supply to the territorial authority a building warrant of fitness in accordance with subsection (3).
- (2) The purpose of a building warrant of fitness is to ensure that the specified systems stated in the compliance schedule are performing, and will continue to perform, to the performance standards for those systems that are set out in the relevant building consent.
- (3) The building warrant of fitness must—
 - (a) be supplied on each anniversary of the issue of the compliance schedule; and
 - (b) state that the inspection, maintenance, and reporting procedures of the compliance schedule have been fully complied with during the previous 12 months; and
 - (c) have attached to it all certificates, in the prescribed form, issued by a licensed building practitioner that, when those certificates are considered together, certify that the inspection, maintenance, and reporting procedures stated in the compliance schedule have been fully complied with during the previous 12 months; and
 - (d) have attached to it any recommendation made by a licensed building practitioner that the compliance schedule should be amended to ensure that the specified systems stated in the compliance schedule are performing, and will continue to perform, to the performance standards for those systems; and
 - (e) be in the prescribed form; and
 - (f) contain the prescribed information.
- (4) The owner must publicly display a copy of the building warrant of fitness in a place in the building to which users of the building have ready access.
- (5) A person commits an offence if the person—
 - (aa) fails to supply to the territorial authority the building warrant of fitness in accordance with subsection (1); or
 - (a) fails to display a building warrant of fitness that is required to be displayed under this section; or

- (b) displays a false or misleading building warrant of fitness; or
 - (c) displays a building warrant of fitness otherwise than in accordance with this section.
- (6) A person who commits an offence under this section is liable to a fine not exceeding \$20,000.
- (7) In subsection (3)(d), a reference to a licensed building practitioner is a reference to the licensed building practitioner or licensed building practitioners who carried out the inspection, maintenance, and reporting procedures stated in a compliance schedule during the previous 12 months.

Compare: 1991 No 150 s 45(1), (2)

Section 108(5)(aa): inserted, on 15 March 2008, by section 24 of the Building Amendment Act 2008 (2008 No 4).

109 Territorial authority must consider recommendation to amend compliance schedule

A territorial authority must, in relation to a recommendation made by a licensed building practitioner under section 108(3)(d) for a compliance schedule to be amended,—

- (a) give the owner of the building concerned a reasonable opportunity to make written submissions on the recommendation; and
- (b) consider those submissions (if any); and
- (c) decide whether to—
 - (i) accept the recommendation; or
 - (ii) refuse to accept the recommendation; and
- (d) if it decides to accept the recommendation, amend the compliance schedule and give written notice to the owner accordingly.

110 Owner must obtain reports on compliance schedule

An owner of a building for which a compliance schedule has been issued must—

- (a) obtain annual written reports relating to the inspection, maintenance, and reporting procedures of the compliance schedule signed by each licensed building practitioner or other person who carried out 1 or more of those procedures; and

- (b) keep those reports, together with the compliance schedule, for a period of 2 years; and
- (c) produce those reports for inspection, when required, by—
 - (i) the territorial authority; and
 - (ii) any person or organisation who or that has the right to inspect the building under any Act; and
- (d) show the location of those reports and the compliance schedule on the building warrant of fitness displayed in accordance with section 108(4).

Compare: 1991 No 150 s 45(3)

Section 110(a): amended, on 15 March 2008, by section 25 of the Building Amendment Act 2008 (2008 No 4).

111 Inspections by territorial authority

- (1) An agent of a territorial authority authorised for the purposes of this section is entitled, at all times during normal working hours, to inspect—
 - (a) a building for which a compliance schedule has been issued; and
 - (b) the specified systems in the building.
- (2) The territorial authority may charge a fee for an inspection under this section.
- (3) In this section, **inspection** means the taking of all reasonable steps to ensure that—
 - (a) an annual building warrant of fitness supplied under section 108 is correct; and
 - (b) every report under section 110 is correct.

Alterations to existing buildings

112 Alterations to existing buildings

- (1) A building consent authority must not grant a building consent for the alteration of an existing building, or part of an existing building, unless the building consent authority is satisfied that, after the alteration, the building will—
 - (a) comply, as nearly as is reasonably practicable, with the provisions of the building code that relate to—
 - (i) means of escape from fire; and

- (ii) access and facilities for persons with disabilities (if this is a requirement in terms of section 118); and
 - (b) continue to comply with the other provisions of the building code to at least the same extent as before the alteration.
- (2) Despite subsection (1), a territorial authority may, by written notice to the owner of a building, allow the alteration of an existing building, or part of an existing building, without the building complying with provisions of the building code specified by the territorial authority if the territorial authority is satisfied that,—
 - (a) if the building were required to comply with the relevant provisions of the building code, the alteration would not take place; and
 - (b) the alteration will result in improvements to attributes of the building that relate to—
 - (i) means of escape from fire; or
 - (ii) access and facilities for persons with disabilities; and
 - (c) the improvements referred to in paragraph (b) outweigh any detriment that is likely to arise as a result of the building not complying with the relevant provisions of the building code.

Compare: 1991 No 150 s 38

Section 112(1)(a): amended, on 14 April 2005, by section 12 of the Building Amendment Act 2005 (2005 No 31).

113 Buildings with specified intended lives

- (1) This section applies if a proposed building, or an existing building proposed to be altered, is intended to have a life of less than 50 years.
- (2) A territorial authority may grant a building consent only if the consent is subject to—
 - (a) the condition that the building must be altered, removed, or demolished on or before the end of the specified intended life; and
 - (b) any other conditions that the territorial authority considers necessary.

- (3) In subsection (2), **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.

Compare: 1991 No 150 s 39

Section 113(1): amended, on 15 March 2008, by section 26 of the Building Amendment Act 2008 (2008 No 4).

*Change of use, extension of life, and subdivision
of buildings*

114 Owner must give notice of change of use, extension of life, or subdivision of buildings

- (1) In this section and section 115, **change the use**, in relation to a building, means to change the use of the building in a manner described in the regulations.
- (2) An owner of a building must give written notice to the territorial authority if the owner proposes—
- (a) to change the use of a building; or
 - (b) to extend the life of a building that has a specified intended life; or
 - (c) to subdivide land in a manner that affects a building.
- (3) A person commits an offence if the person fails to comply with subsection (2).
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 46(1)

115 Code compliance requirements: change of use

An owner of a building must not change the use of the building,—

- (a) in a case where the change involves the incorporation in the building of 1 or more household units where household units did not exist before, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, will comply, as nearly as is reasonably practicable, with the building code in all respects; and

- (b) in any other case, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, will—
 - (i) comply, as nearly as is reasonably practicable, with every provision of the building code that relates to either or both of the following matters:
 - (A) means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance;
 - (B) access and facilities for people with disabilities (if this is a requirement under section 118); and
 - (ii) continue to comply with the other provisions of the building code to at least the same extent as before the change of use.

Compare: 1991 No 150 s 46(2)

Section 115(b)(i): substituted, on 14 April 2005, by section 13 of the Building Amendment Act 2005 (2005 No 31).

116 Code compliance requirements: extension of life

- (1) The owner of a building with a specified intended life must not extend its life without the written consent of the territorial authority.
- (2) This subsection applies to a building with a specified intended life if—
 - (a) under section 113(2), a building consent for its building or alteration was issued subject to the condition that it must be altered on or before the end of the specified intended life; or
 - (b) under section 39(1) of the Building Act 1991, a building consent for its building or alteration was issued subject to the condition that it shall be altered on or before the end of the specified intended life.
- (3) The territorial authority must not give its consent to the extension of the life of a building to which subsection (2) applies unless satisfied, on reasonable grounds, that the building—
 - (a) has been altered in accordance with the condition; and

- (b) complies with section 112.

Section 116: substituted, on 14 April 2005, by section 14(1) of the Building Amendment Act 2005 (2005 No 31).

116A Code compliance requirements: subdivision

A territorial authority must not issue a certificate under section 224(f) of the Resource Management Act 1991 for the purpose of giving effect to a subdivision affecting a building or part of a building unless satisfied, on reasonable grounds, that the building—

- (a) will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to 1 or more of the following matters:
- (i) means of escape from fire;
 - (ii) access and facilities for persons with disabilities (if this is a requirement under section 118);
 - (iii) protection of other property; and
- (b) will continue to comply with the other provisions of the building code to at least the same extent as it did before the application for a subdivision was made.

Section 116A: inserted, on 14 April 2005, by section 14(1) of the Building Amendment Act 2005 (2005 No 31).

116B Offence to use building for use for which it is not safe or not sanitary, or if it has inadequate means of escape from fire

- (1) No person may—
- (a) use a building, or knowingly permit another person to use a building, for a use for which the building is not safe or not sanitary; or
 - (b) use a building, or knowingly permit another person to use a building, that has inadequate means of escape from fire.
- (2) A person who fails to comply with subsection (1) commits an offence.
- (3) A person who commits an offence under this section is liable 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.

Section 116B: inserted, on 14 April 2005, by section 14(1) of the Building Amendment Act 2005 (2005 No 31).

Access to buildings by persons with disabilities

117 Definition for sections 118 to 120

In sections 118 to 120, unless the context otherwise requires, **building** includes—

- (a) parts of a building (including driveways, access ways, passages within and between complexes and developments, and associated landscaping (if any)); and
- (b) any premises or facilities.

118 Access and facilities for persons with disabilities to and within buildings

- (1) If provision is being made for the construction or alteration of any building to which members of the public are to be admitted, whether for free or on payment of a charge, reasonable and adequate provision by way of access, parking provisions, and sanitary facilities must be made for persons with disabilities who may be expected to—
 - (a) visit or work in that building; and
 - (b) carry out normal activities and processes in that building.
- (2) This section applies, but is not limited, to buildings that are intended to be used for, or associated with, 1 or more of the purposes specified in Schedule 2.

Compare: 1991 No 150 s 47A(1)

119 Compliance document for requirements of persons with disabilities

- (1) This section applies to—
 - (a) the New Zealand Standard Specification No 4121 (the code of practice for design for access and use of buildings by persons with disabilities), together with any modifications to that standard specification in force immediately before the commencement of this section; or
 - (b) if an Order in Council is made under subsection (3),—

- (i) the standard specification referred to in paragraph (a) incorporating an amendment that is adopted by the order; or
 - (ii) a standard specification that is in substitution for the standard specification referred to in paragraph (a) that is adopted by the order.
- (2) A standard specification to which this section applies is to be taken as a compliance document.
- (3) The Governor-General may, by Order in Council made on the recommendation of the Minister, adopt—
 - (a) an amendment to the standard specification referred to in subsection (1)(a); or
 - (b) a standard specification that is in substitution for the standard specification referred to in that subsection.
- (4) The Minister must, no later than 6 months after the date on which an amendment or a standard specification is promulgated by the Standards Council,—
 - (a) make a recommendation under subsection (3) in relation to the amendment or standard specification; or
 - (b) decide not to make a recommendation.
- (5) In this section, **Standards Council** means the Standards Council continued in existence under section 3 of the Standards Act 1988.

Compare: 1991 No 150 s 47A(3)

120 Symbols of access must be displayed

If any provision required by section 118 is made at a building in compliance with that section, a notice or sign that indicates in accordance with the international symbols of access that provision is made for the needs of persons with disabilities must be displayed outside the building or so as to be visible from outside it.

Compare: 1991 No 150 s 47A(5)

Section 120 heading: amended, on 15 March 2008, by section 27(1) of the Building Amendment Act 2008 (2008 No 4).

Section 120: amended, on 15 March 2008, by section 27(2) of the Building Amendment Act 2008 (2008 No 4).

Subpart 6—Special provisions for certain categories of buildings

Definitions of dangerous, earthquake-prone, and insanitary buildings

121 Meaning of dangerous building

- (1) A building is **dangerous** for the purposes of this Act if,—
- (a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause—
 - (i) injury or death (whether by collapse or otherwise) to any persons in it or to persons on other property; or
 - (ii) damage to other property; or
 - (b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building.
- (2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority—
- (a) may seek advice from members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and
 - (b) if the advice is sought, must have due regard to the advice.

Compare: 1991 No 150 s 64(1), (2), (3)

122 Meaning of earthquake-prone building

- (1) A building is **earthquake prone** for the purposes of this Act if, having regard to its condition and to the ground on which it is built, and because of its construction, the building—
- (a) will have its ultimate capacity exceeded in a moderate earthquake (as defined in the regulations); and
 - (b) would be likely to collapse causing—
 - (i) injury or death to persons in the building or to persons on any other property; or
 - (ii) damage to any other property.
- (2) Subsection (1) does not apply to a building that is used wholly or mainly for residential purposes unless the building—
- (a) comprises 2 or more storeys; and

- (b) contains 3 or more household units.

Compare: 1991 No 150 s 66

123 Meaning of insanitary building

A building is **insanitary** for the purposes of this Act if the building—

- (a) is offensive or likely to be injurious to health because—
 - (i) of how it is situated or constructed; or
 - (ii) it is in a state of disrepair; or
- (b) has insufficient or defective provisions against moisture penetration so as to cause dampness in the building or in any adjoining building; or
- (c) does not have a supply of potable water that is adequate for its intended use; or
- (d) does not have sanitary facilities that are adequate for its intended use.

Compare: 1991 No 150 s 64(4)

*Powers of territorial authorities in respect of
dangerous, earthquake-prone, or insanitary
buildings*

124 Powers of territorial authorities in respect of dangerous, earthquake-prone, or insanitary buildings

- (1) If a territorial authority is satisfied that a building is dangerous, earthquake prone, or insanitary, the territorial authority may—
 - (a) put up a hoarding or fence to prevent people from approaching the building nearer than is safe;
 - (b) attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building;
 - (c) give written notice requiring work to be carried out on the building, within a time stated in the notice (which must not be less than 10 days after the notice is given under section 125), to—
 - (i) reduce or remove the danger; or
 - (ii) prevent the building from remaining insanitary.
- (2) This section does not limit the powers of a territorial authority under this Part.

- (3) A person commits an offence if the person fails to comply with a notice given under subsection (1)(c).
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.
Compare: 1991 No 150 s 65(1), (2)

125 Requirements for notice given under section 124

- (1) A notice given under section 124(1)(c) must—
 - (a) be fixed to the building concerned; and
 - (b) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.
- (2) A copy of the notice must be given to—
 - (a) the owner of the building; and
 - (b) an occupier of the building; and
 - (c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
 - (e) any statutory authority, if the land or building has been classified; and
 - (f) the New Zealand Historic Places Trust, if the building is a heritage building.
- (3) However, the notice, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).
Compare: 1991 No 150 s 71

126 Territorial authority may carry out work

- (1) A territorial authority may apply to a District Court for an order authorising the territorial authority to carry out building work if any work required under a notice given by the territorial authority under section 124(1)(c) is not completed, or not proceeding with reasonable speed, within—
 - (a) the time stated in the notice; or
 - (b) any further time that the territorial authority may allow.

- (2) Before the territorial authority applies to a District Court under subsection (1), the territorial authority must give the owner of the building not less than 10 days' written notice of its intention to do so.
- (3) If a territorial authority carries out building work under the authority of an order made under subsection (1),—
 - (a) the owner of the building is liable for the costs of the work; and
 - (b) the territorial authority may recover those costs from the owner; and
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.

Compare: 1991 No 150 s 65(4), (5)

127 Building work includes demolition of building

Any work required or authorised to be done under section 124(1)(c) or section 126 may include the demolition of all or part of a building.

Compare: 1991 No 150 s 65(6)

128 Prohibition on using dangerous, earthquake-prone, or insanitary building

- (1) If a territorial authority has put up a hoarding or fence in relation to a building or attached a notice warning people not to approach a building under section 124(1), no person may—
 - (a) use or occupy the building; or
 - (b) permit another person to use or occupy the building.
- (2) A person commits an offence if the person fails to comply with this section.
- (3) A person who commits an offence under this section is liable to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

129 Measures to avoid immediate danger or to fix insanitary conditions

- (1) This section applies if, because of the state of a building,—

- (a) immediate danger to the safety of people is likely in terms of section 121 or section 122 or section 123; or
 - (b) immediate action is necessary to fix insanitary conditions.
- (2) The chief executive of a territorial authority may, by warrant issued under his or her signature, cause any action to be taken that is necessary in his or her judgment to—
 - (a) remove that danger; or
 - (b) fix those insanitary conditions.
- (3) If the territorial authority takes action under subsection (2),—
 - (a) the owner of the building is liable for the costs of the action; and
 - (b) the territorial authority may recover those costs from the owner; and
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the building is situated.
- (4) The chief executive of the territorial authority and the territorial authority are not under any liability arising from the issue, in good faith, of a warrant under subsection (2).

Compare: 1991 No 150 s 70(1), (4)

130 Territorial authority must apply to District Court for confirmation of warrant

- (1) If the chief executive of a territorial authority issues a warrant under section 129(2), the territorial authority, on completion of the action stated in the warrant, must apply to a District Court for confirmation of the warrant.
- (2) On hearing the application, the District Court may—
 - (a) confirm the warrant without modification; or
 - (b) confirm the warrant subject to modification; or
 - (c) set the warrant aside.
- (3) Subsection (1) does not apply if—
 - (a) the owner of the building concerned notifies the territorial authority that—
 - (i) the owner does not dispute the entry into the owner's land; and

- (ii) confirmation of the warrant by a District Court is not required; and
 - (b) the owner pays the costs referred to in section 129(3)(a).
- Compare: 1991 No 150 s 70(2), (3)

*Policy on dangerous, earthquake-prone, and
insanitary buildings*

131 Territorial authority must adopt policy on dangerous, earthquake-prone, and insanitary buildings

- (1) A territorial authority must, within 18 months after the commencement of this section, adopt a policy on dangerous, earthquake-prone, and insanitary buildings within its district.
- (2) The policy must state—
 - (a) the approach that the territorial authority will take in performing its functions under this Part; and
 - (b) the territorial authority's priorities in performing those functions; and
 - (c) how the policy will apply to heritage buildings.

132 Adoption and review of policy

- (1) A policy under section 131 must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.
- (2) A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.
- (3) A territorial authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.
- (4) A territorial authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.
- (5) A policy does not cease to have effect because it is due for review or being reviewed.

Application of subpart to dams

133 Application of this subpart to dams

This subpart does not apply to—

- (a) a building that is a dam; or
- (b) a part of a building that is a dam.

Subpart 7—Safety of dams

Dams to which provisions of this subpart apply

Heading: inserted, on 15 March 2008, by section 28 of the Building Amendment Act 2008 (2008 No 4).

133A Dams to which subpart 7 provisions apply

- (1) Sections 157 to 159 apply to all dams.
- (2) The other provisions in this subpart apply only to large dams.

Section 133A: inserted, on 15 March 2008, by section 28 of the Building Amendment Act 2008 (2008 No 4).

Classification of dams

134 Owner must classify dam

- (1) An owner of a dam must classify the dam according to the potential impact of a failure of the dam on persons, property, and the environment.
- (2) In classifying a dam, the owner must—
 - (a) apply the prescribed criteria and standards for dam safety; and
 - (b) give the dam 1 of the following classifications:
 - (i) low potential impact; or
 - (ii) medium potential impact; or
 - (iii) high potential impact; and
 - (c) submit the classification of the dam to a recognised engineer for audit.
- (3) A person commits an offence if the person fails to classify a dam in accordance with this section.
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$20,000.
- (5) For the purposes of this section, the prescribed criteria and standards for dam safety may incorporate, in accordance with

sections 405 to 413, the standards, requirements, or recommended practices of national or international organisations that are concerned with the operation and safety of dams.

135 Owner must provide classification of, and certificate for, dam to regional authority

- (1) An owner of a dam must provide the regional authority in whose region the dam is situated with—
 - (a) the classification given by the owner to the dam; and
 - (b) a certificate from an engineer that—
 - (i) states that the classification of the dam accords with the prescribed criteria and standards for dam safety; and
 - (ii) states that the engineer is a recognised engineer; and
 - (iii) has attached to it evidence that the engineer is a recognised engineer.
- (2) The owner must comply with subsection (1) no later than,—
 - (a) if the dam was commissioned before the commencement of this Part, 3 months after the regulations prescribing the criteria and standards for dam safety come into force; or
 - (b) if the dam is commissioned after the commencement of this Part, 3 months after the date on which the dam was commissioned.

136 Regional authority must decide whether to approve or refuse dam classification

- (1) A regional authority must, as soon as practicable after receiving a classification given by an owner to a dam under section 135, give written notice to the owner as to whether the regional authority—
 - (a) approves the classification; or
 - (b) refuses to approve the classification.
- (2) A regional authority may refuse to approve a classification only if the regional authority is satisfied, on reasonable grounds, that the engineer who provided the certificate referred to in section 135(1)(b) is not a recognised engineer.

137 Dam classification provided to regional authority by accredited dam owner deemed to have been approved

Despite sections 134 to 136,—

- (a) an accredited dam owner is not required to—
 - (i) submit a classification given to a dam by the accredited dam owner for audit; and
 - (ii) provide the regional authority with the certificate referred to in section 135(1)(b); and
- (b) the classification given to a dam by the accredited dam owner is deemed, on receipt of the classification by the regional authority, to have been approved by that regional authority under section 136.

138 Regional authority must require re-audit of dam classification that it refuses to approve

- (1) If a regional authority refuses to approve the classification given by an owner to a dam,—
 - (a) the regional authority must direct the owner to have the classification audited by a recognised engineer; and
 - (b) the owner must, within the time required by subsection (2), submit to the regional authority—
 - (i) a re-audited classification; and
 - (ii) a certificate from the recognised engineer that meets the requirements in section 135(1)(b).
- (2) The time required is—
 - (a) 15 working days after the date on which the regional authority refused to approve the classification; or
 - (b) any later date that the regional authority in any particular case may allow.
- (3) Subsection (1) and section 136 apply, with all necessary modifications, to a re-audited classification.
- (4) A person commits an offence if the person fails to comply with a regional authority's direction under subsection (1)(a).
- (5) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

139 Owner must review dam classification

- (1) An owner of a dam must review the dam's classification—

- (a) within 5 years after the regional authority approves, or is deemed to approve, the classification; and
 - (b) after the first review, at intervals of not more than 5 years.
- (2) The owner must also review the dam's classification if, at any time,—
- (a) any building work that requires a building consent is carried out on the dam; and
 - (b) the building work results, or could result, in a change to the potential impact of a failure of the dam on persons, property, or the environment.
- (3) Sections 135 to 138 apply, with all necessary modifications, to a classification that is given to a dam following a review under this section.

Dam safety assurance programmes

140 Requirement for dam safety assurance programme

- (1) This section applies to an owner of a dam that has been classified under section 134, or reclassified under section 139, as—
- (a) a medium potential impact dam; or
 - (b) a high potential impact dam.
- (2) An owner to whom this section applies must—
- (a) prepare, or arrange for the preparation of, a dam safety assurance programme for the dam; and
 - (b) submit the dam safety assurance programme to a recognised engineer for audit.
- (3) A person commits an offence if the person fails to comply with subsection (2).
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$20,000.
- (5) To avoid doubt, a person may do both of the following in respect of the same dam if the person is a recognised engineer:
- (a) prepare the dam safety assurance programme for that dam; and
 - (b) audit the dam safety assurance programme for that dam.

141 Content of dam safety assurance programme

A dam safety assurance programme must—

- (a) be in the prescribed form; and
- (b) meet the prescribed criteria and standards for dam safety.

142 Owner must provide dam safety assurance programme to regional authority

- (1) An owner of a dam to whom section 140 applies must provide the regional authority in whose region the dam is situated with—
 - (a) the owner's dam safety assurance programme; and
 - (b) a certificate from an engineer that—
 - (i) states that the dam safety assurance programme meets the prescribed criteria and standards for dam safety; and
 - (ii) states that the engineer is a recognised engineer; and
 - (iii) has attached to it evidence that the engineer is a recognised engineer.
- (2) The owner must comply with subsection (1) no later than,—
 - (a) if the dam has been classified as a high potential impact dam, 1 year after the date on which the regional authority approves, or is deemed to approve, that classification; or
 - (b) if the dam has been classified as a medium potential impact dam, 2 years after the date on which the regional authority approves, or is deemed to approve, that classification.

143 Regional authority must decide whether to approve or refuse dam safety assurance programme

- (1) A regional authority must, as soon as practicable after receiving a dam safety assurance programme, give written notice to the relevant owner as to whether the regional authority—
 - (a) approves the dam safety assurance programme; or
 - (b) refuses to approve the dam safety assurance programme.

- (2) A regional authority may refuse to approve a dam safety assurance programme only if the regional authority is satisfied, on reasonable grounds, that the engineer who provided the certificate referred to in section 142(1)(b) is not a recognised engineer.

144 Dam safety assurance programme provided to regional authority by accredited dam owner deemed to have been approved

Despite sections 140 to 143,—

- (a) an accredited dam owner is not required to—
- (i) submit the owner's dam safety assurance programme for audit; and
 - (ii) provide the regional authority with the certificate referred to in section 142(1)(b); and
- (b) the dam safety assurance programme provided to the regional authority by the accredited dam owner is deemed, on its receipt by the regional authority, to have been approved by that regional authority under section 143.

145 Regional authority must require re-audit of dam safety assurance programme that it refuses to approve

- (1) If a regional authority refuses to approve a dam safety assurance programme,—
- (a) the regional authority must direct the owner of the dam concerned to have the dam safety assurance programme audited by a recognised engineer; and
 - (b) the owner must, within the time required by subsection (2), submit to the regional authority—
 - (i) a re-audited dam safety assurance programme; and
 - (ii) a certificate from the recognised engineer that meets the requirements of section 142(1)(b).
- (2) The time required is—
- (a) 15 working days after the date on which the regional authority refused to approve the dam safety assurance programme; or

- (b) any later date that the regional authority in any particular case may allow.
- (3) Subsection (1) and section 143 apply, with all necessary modifications, to a re-audited dam safety assurance programme.
- (4) A person commits an offence if the person fails to comply with a direction under subsection (1)(a).
- (5) A person who commits an offence under this section is liable to a fine not exceeding \$10,000.

146 Review of dam safety assurance programme

- (1) An owner of a dam to whom section 140 applies must review the dam safety assurance programme of a dam,—
 - (a) in the case of a dam that has been classified as a high potential impact dam,—
 - (i) within 5 years after the date on which the regional authority approves, or is deemed to approve, the dam safety assurance programme; and
 - (ii) after the first review, at intervals of not more than 5 years; and
 - (b) in the case of a dam that has been classified as a medium potential impact dam,—
 - (i) within 10 years after the date on which the regional authority approves, or is deemed to approve, the dam safety assurance programme; and
 - (ii) after the first review, at intervals of not more than 5 years.
- (2) The owner must also review the dam safety assurance programme—
 - (a) if, at any time,—
 - (i) building work that requires a building consent is carried out on the dam; and
 - (ii) the building work results, or could result, in a change to the potential impact of the dam on persons, property, or the environment; or
 - (b) when requested by the regional authority to do so, if the dam is an earthquake-prone dam or a flood-prone dam.
- (3) Sections 142 and 143 apply, with all necessary modifications, to a reviewed dam safety assurance programme.

Section 146(2): substituted, on 15 March 2008, by section 29 of the Building Amendment Act 2008 (2008 No 4).

147 Requirements of sections 140 to 142 relate to amendments to dam safety assurance programme

The requirements of sections 140 to 142 that apply to preparing a dam safety assurance programme apply also to an amendment to that programme.

148 Obligations of owner in relation to dam safety assurance programme

An owner of a dam for which a dam safety assurance programme has been approved, or is deemed to have been approved, must ensure—

- (a) that the dam safety assurance programme is kept—
 - (i) on the dam; or
 - (ii) in another building in the region of the regional authority; or
 - (iii) in some other place agreed on by the owner and the regional authority; and
- (b) that the dam safety assurance programme is available for inspection by—
 - (i) the regional authority; or
 - (ii) any person or organisation who or that has a right to inspect the dam under any Act.

Compare: 1991 No 150 s 44(2), (3), (4)

Who is recognised engineer

149 Who is recognised engineer

- (1) A recognised engineer is an engineer who—
 - (a) has no financial interest in the dam concerned; and
 - (b) is registered under the Chartered Professional Engineers of New Zealand Act 2002; and
 - (c) has—
 - (i) the prescribed qualifications; and
 - (ii) the prescribed competencies.
- (2) In subsection (1)(a), **financial interest** does not include—
 - (a) involvement in the construction of the dam as a fully paid engineer; or

- (b) entitlement to a fee for undertaking an audit.

Dam compliance certificate

150 Owner of dam must supply annual dam compliance certificate

- (1) An owner of a dam for which a dam safety assurance programme has been approved, or is deemed to have been approved, must supply to the regional authority a dam compliance certificate in accordance with subsection (2).
- (2) The dam compliance certificate must—
 - (a) be supplied on each anniversary of the approval, or deemed approval, of the dam safety assurance programme; and
 - (b) state that all procedures in the dam safety assurance programme have been fully complied with during the previous 12 months; and
 - (c) be signed by,—
 - (i) if the owner is an individual, that individual; or
 - (ii) if the owner is a body corporate, the chief executive of that body corporate or, if there is no chief executive, a person with an equivalent position in the body corporate; and
 - (d) be in the prescribed form; and
 - (e) contain the prescribed information; and
 - (f) have attached to it a certificate from an engineer that—
 - (i) confirms that—
 - (A) the engineer has reviewed the owner's reports and other documents relating to the procedures in the dam safety assurance programme that the owner has followed in the previous 12 months; and
 - (B) all procedures in the dam safety assurance programme have been complied with during the previous 12 months; and
 - (ii) states that the engineer is a recognised engineer; and
 - (iii) has attached to it evidence that the engineer is a recognised engineer.

- (3) The owner must publicly display a copy of the dam compliance certificate in a prominent place on the dam.
- (4) A person commits an offence if the person knowingly—
 - (a) fails to display a dam compliance certificate that is required to be displayed under this section; or
 - (b) displays a false or misleading dam compliance certificate; or
 - (c) displays a dam compliance certificate otherwise than in accordance with this section.
- (5) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.
Compare: 1991 No 150 s 45(1), (2)

150A Annual dam compliance certificate requirements not to apply to accredited dam owner

Section 150 does not apply to an accredited dam owner.

Section 150A: inserted, on 15 March 2008, by section 30 of the Building Amendment Act 2008 (2008 No 4).

151 Register of dams

Each regional authority must establish and maintain a register of dams in its district.

152 Information to be provided to chief executive

Each regional authority and each owner of a dam must provide information to the chief executive in accordance with the regulations.

Dangerous dams

153 Meaning of dangerous dam

A dam is **dangerous** for the purposes of this Act if the dam—

- (a) is a high potential impact dam or a medium potential impact dam; and
- (b) is likely to fail—
 - (i) in the ordinary course of events; or
 - (ii) in a moderate earthquake (as defined in the regulations); or

(iii) in a moderate flood (as defined in the regulations).

(c) *[Repealed]*

Section 153(b): substituted, on 15 March 2008, by section 31(1) of the Building Amendment Act 2008 (2008 No 4).

Section 153(c): repealed, on 15 March 2008, by section 31(2) of the Building Amendment Act 2008 (2008 No 4).

153A Meaning of earthquake-prone dam and flood-prone dam

- (1) A dam is an earthquake-prone dam for the purposes of this Act if the dam—
- (a) is a high potential impact dam or a medium potential impact dam; and
 - (b) is likely to fail in an earthquake threshold event (as defined in the regulations).
- (2) A dam is a flood-prone dam for the purposes of this Act if the dam—
- (a) is a high potential impact dam or a medium potential impact dam; and
 - (b) is likely to fail in a flood threshold event (as defined in the regulations).

Section 153A: inserted, on 15 March 2008, by section 32 of the Building Amendment Act 2008 (2008 No 4).

154 Powers of regional authorities in respect of dangerous dams

- (1) If a regional authority is satisfied that a dam is dangerous, the regional authority may—
- (a) put up a hoarding or fence to prevent people from approaching the dam nearer than is safe;
 - (b) attach in a prominent place on, or adjacent to, the dam a notice that warns people not to approach the dam;
 - (c) give written notice requiring work to be carried out on the dam, within a time stated in the notice (which must not be less than 10 days after the notice is given under section 155), to reduce or remove the danger.
- (2) This section does not limit the powers of a regional authority under this Part.

- (3) A person commits an offence if the person fails to comply with a notice given under subsection (1)(c).
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.

155 Requirements for notice given under section 154

- (1) A notice given under section 154(1)(c) must—
 - (a) be fixed to the dam concerned; and
 - (b) state whether the owner of the dam must obtain a building consent in order to carry out the work required by the notice.
- (2) A copy of the notice must be given to—
 - (a) the owner of the dam; and
 - (b) an occupier of the dam; and
 - (c) every person who has an interest in the land on which the dam is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and
 - (e) any statutory authority, if the land or dam has been classified; and
 - (f) the New Zealand Historic Places Trust, if the dam is a heritage dam.
- (3) However, the notice, if fixed on the dam, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).

156 Regional authority may carry out work

- (1) A regional authority may apply to a District Court for an order authorising the regional authority to carry out building work if any work required under a notice given by the regional authority under section 154(1)(c) is not completed, or not proceeding with reasonable speed, within—
 - (a) the time stated in the notice; or
 - (b) any further time that the regional authority may allow.

- (2) Before the regional authority applies to a District Court under subsection (1), the regional authority must give the owner of the dam not less than 10 days' written notice of its intention to do so.
- (3) If a regional authority carries out building work under the authority of an order made under subsection (1),—
 - (a) the owner of the dam is liable for the costs of the work; and
 - (b) the regional authority may recover those costs from the owner; and
 - (c) the amount recoverable by the regional authority becomes a charge on the land on which the dam is situated.

157 Measures to avoid immediate danger

- (1) This section applies if, because of the state of a dam, immediate danger to the safety of persons, property, or the environment is likely.
- (2) The chief executive of a regional authority may, by warrant issued under his or her signature, cause any action to be taken that is necessary in his or her judgment to remove that danger.
- (3) If the regional authority takes action under subsection (2),—
 - (a) the owner of the dam is liable for the costs of the action; and
 - (b) the regional authority may recover those costs from the owner; and
 - (c) the amount recoverable by the regional authority becomes a charge on the land on which the dam is situated.
- (4) The chief executive of the regional authority and the regional authority are not under any liability arising from the issue, in good faith, of a warrant under subsection (2).

Compare: 1991 No 150 s 70(1), (2), (4)

158 Regional authority must apply to District Court for confirmation of warrant

- (1) If the chief executive of a regional authority issues a warrant under section 157(2), the regional authority, on completion of

the action stated in the warrant, must apply to a District Court for confirmation of the warrant.

- (2) On hearing the application, the District Court may—
 - (a) confirm the warrant without modification; or
 - (b) confirm the warrant subject to modification; or
 - (c) set the warrant aside.
- (3) Subsection (1) does not apply if—
 - (a) the owner of the dam concerned notifies the regional authority that—
 - (i) the owner does not dispute the entry into the owner's land; and
 - (ii) confirmation of the warrant by a District Court is not required; and
 - (b) the owner pays the costs referred to in section 157(3)(a).

Compare: 1991 No 150 s 70(3)

159 Building work includes decommissioning and demolition of dam

Any work required or authorised to be carried out under section 154(1)(c), or action taken under section 157, may include the decommissioning and demolition of a dam.

160 Power of regional authority not limited

The provisions of sections 154 to 159 are in addition to, and do not limit, the powers of a regional authority under section 157.

Policy on dangerous dams

161 Regional authority must adopt policy on dangerous dams, earthquake-prone dams, and flood-prone dams

- (1) A regional authority must, within 18 months after the commencement of this Part, adopt a policy on dangerous dams, earthquake-prone dams, and flood-prone dams within its region.
- (2) The policy must state—
 - (a) the approach that the regional authority will take in performing its functions under this Part; and

- (b) the regional authority's priorities in performing those functions; and
- (c) how the policy will apply to heritage dams.

Section 161 heading: amended, on 15 March 2008, by section 33(1) of the Building Amendment Act 2008 (2008 No 4).

Section 161(1): amended, on 15 March 2008, by section 33(2) of the Building Amendment Act 2008 (2008 No 4).

162 Adoption and review of policy

- (1) A policy under section 161 must be adopted in accordance with the special consultative procedure in section 83 of the Local Government Act 2002.
- (2) A policy may be amended or replaced only in accordance with the special consultative procedure, and this section applies to that amendment or replacement.
- (3) A regional authority must, as soon as practicable after adopting or amending a policy, provide a copy of the policy to the chief executive.
- (4) A regional authority must complete a review of a policy within 5 years after the policy is adopted and then at intervals of not more than 5 years.
- (5) A policy does not cease to have effect because it is due for review or being reviewed.

Subpart 8—Notices to fix

163 Definitions for this subpart

In this subpart, unless the context otherwise requires,—

responsible authority means, as the context requires,—

- (a) a building consent authority; or
- (b) a territorial authority; or
- (c) a regional authority

specified person means—

- (a) the owner of a building; and
- (b) if the notice to fix relates to building work being carried out,—
 - (i) the person carrying out the building work; or
 - (ii) if applicable, any other person supervising the building work.

164 Issue of notice to fix

- (1) This section applies if a responsible authority considers on reasonable grounds that—
 - (a) a specified person is contravening or failing to comply with this Act or the regulations (for example, the requirement to obtain a building consent); or
 - (b) a building warrant of fitness or dam warrant of fitness is not correct; or
 - (c) the inspection, maintenance, or reporting procedures stated in a compliance schedule are not being, or have not been, properly complied with.
- (2) A responsible authority must issue to the specified person concerned a notice (a **notice to fix**) requiring the person—
 - (a) to remedy the contravention of, or to comply with, this Act or the regulations; or
 - (b) to correct the warrant of fitness; or
 - (c) to properly comply with the inspection, maintenance, or reporting procedures stated in the compliance schedule.
- (3) However, if a responsible authority considers that it is more appropriate for another responsible authority to issue the notice to fix, it must—
 - (a) notify the other authority that it holds that view; and
 - (b) give the other authority the reasons for that view.
- (4) The other responsible authority referred to in subsection (3) must issue the notice to fix if it considers that this section applies.

Compare: 1991 No 150 s 42(1)

165 Form and content of notice to fix

- (1) The following provisions apply to a notice to fix:
 - (a) it must be in the prescribed form;
 - (b) it must state a reasonable timeframe within which it must be complied with;
 - (c) if it relates to building work that is being or has been carried out without a building consent, it may require the making of an application for a certificate of acceptance for the work;
 - (d) if it requires building work to be carried out, it may require the making of an application for a building con-

sent, or for an amendment to an existing building consent, for the work:

- (e) if it requires building work to be carried out, it must require the territorial authority, the regional authority, or both to be contacted when the work is completed:
 - (f) if it relates to building work, it may direct that the site be made safe immediately and that all or any building work cease immediately (except any building work necessary to make the site safe) until the responsible authority is satisfied that the person carrying out the work is able and willing to resume operations in compliance with this Act and the regulations.
- (2) Nothing in subsection (1) limits or affects the generality of section 164.

Section 165: substituted, on 14 April 2005, by section 15(1) of the Building Amendment Act 2005 (2005 No 31).

Section 165(1)(f): substituted, on 15 March 2008, by section 34 of the Building Amendment Act 2008 (2008 No 4).

166 Special provisions for notices to fix from building consent authority

- (1) If section 164 applies because a building consent authority that granted a building consent for building work considers that the building work has not been, or is not being, carried out in accordance with this Act or the building consent, a notice to fix applies only—
- (a) to building work required during the period in which a building consent is operative; or
 - (b) in respect of building work for which a building consent should have been obtained; or
 - (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.
- (2) A building consent authority that is not a territorial authority or a regional authority that issues a notice to fix must, within 5 working days after issuing it, give a copy of it to—
- (a) the territorial authority; or
 - (b) if the territorial authority has transferred, under section 233, any of its functions, duties, or powers under this

Act to another territorial authority, the territorial authority to whom the functions, duties, or powers have been transferred.

Compare: 1991 No 150 s 42(3)

Section 166(1): amended, on 15 March 2008, by section 35(1) of the Building Amendment Act 2008 (2008 No 4).

Section 166(2): amended, on 15 March 2008, by section 35(2) of the Building Amendment Act 2008 (2008 No 4).

Section 166(2): amended, on 14 April 2005, by section 3(6)(b) of the Building Amendment Act 2005 (2005 No 31).

Section 166(2)(a): amended, on 14 April 2005, by section 3(6)(c) of the Building Amendment Act 2005 (2005 No 31).

167 Inspection of building work under notice to fix

- (1) If a specified person to whom a notice to fix was issued is required to notify a territorial authority or, as the case may be, a regional authority that the relevant building work has been completed, the territorial authority or regional authority must, on receipt of the notice from the specified person concerned, inspect, or arrange for its authorised agent to inspect, the building work to which the notice to fix relates.
- (2) After the building work has been inspected under subsection (1), the territorial authority or regional authority must, by written notice to the specified person concerned, either—
 - (a) confirm that the notice to fix has been complied with; or
 - (b) refuse to confirm that the notice to fix has been complied with.
- (3) The territorial authority or regional authority must, on giving the confirmation under subsection (2)(a), forward a copy of the confirmation to the responsible authority that issued the notice to fix (if that responsible authority is different from the territorial authority or regional authority).
- (4) If the territorial authority or regional authority refuses, under subsection (2)(b), to confirm that a notice to fix has been complied with, the territorial authority or regional authority must—
 - (a) give the specified person concerned written notice of—
 - (i) the refusal; and
 - (ii) the reasons for the refusal; and

- (b) issue a further notice to fix in respect of the building work.
- (5) Section 164 applies to a notice to fix issued under subsection (4)(b).

168 Offence not to comply with notice to fix

- (1) A person commits an offence if the person fails to comply with a notice to fix.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

Part 3
**Regulatory responsibilities and
accreditation**

Subpart 1—Responsibilities of chief
executive

*Functions, duties, and powers of chief executive
generally*

169 Chief executive must monitor current and emerging trends in building design, etc, and must report annually to Minister

- (1) The chief executive must monitor current and emerging trends in building design, building technologies, and other factors that may affect—
 - (a) the building code and compliance documents:
 - (b) any warnings issued, and bans declared, under section 26 in relation to any building method or product:
 - (c) any guidance information published by the chief executive under section 175:
 - (d) any other functions and duties of the chief executive under this Act.
- (2) The chief executive must, in each year, make a report to the Minister on the performance of his or her functions under subsection (1).

170 Chief executive must consult in performing certain functions

The chief executive must, in performing his or her functions, consult with,—

- (a) in the case of functions that involve advice, approval, and determinations about fire safety and fire-engineering practice, the New Zealand Fire Service Commission;
- (b) in the case of disability issues, the chief executive of the department of State responsible for disability issues.

Compare: 1991 No 150 s 12(2)

171 Chief executive may seek advice from building advisory panel

- (1) The chief executive may, at any time, seek advice from a building advisory panel appointed under section 172 on—
 - (a) current and emerging trends in building design, building technologies, and other factors that may affect—
 - (i) the building code and compliance documents;
 - (ii) any warnings issued, or bans declared, under section 26 in relation to any building method or product;
 - (iii) any guidance information published by the chief executive under section 175;
 - (b) whether this Act or the regulations are achieving their purpose;
 - (c) building issues that are not covered by this Act, but which the panel considers should be dealt with by legislation;
 - (d) any other matter that the chief executive considers appropriate for the panel to advise on.
- (2) The chief executive must consider, but is not bound by, any advice given by the panel.

172 Appointment of building advisory panel

- (1) The chief executive must appoint a building advisory panel that—
 - (a) consists of experts in the building sector; and
 - (b) has the following members:

- (i) 1 person to convene and chair the panel:
 - (ii) no less than 5 other members.
- (2) The chief executive must,—
 - (a) before appointing a member, publicly notify a vacancy in a manner that enables suitably qualified individuals to apply for appointment; and
 - (b) in appointing a member,—
 - (i) take into account the need for members of the panel to have among them a breadth of experience and expertise, and knowledge of, or experience in, matters that come within the panel's function (including, without limitation, matters that relate to consumer, cultural, disability, energy efficiency, health and safety, heritage, or sustainable development issues); and
 - (ii) ensure that there is an appropriate balance in the membership of the panel so that the members represent a broad range of interests, rather than the interests of a particular group; and
 - (iii) consult, as the chief executive considers appropriate, persons who have an expertise or interest in matters that come within the panel's function.
- (3) The chief executive may, at any time, co-opt suitable persons onto the panel if doing so is necessary for the purposes of subsection (2)(b)(i) and (ii).
- (4) The terms on which a member of the panel is appointed are the terms set by the chief executive when appointing the member.
- (5) A member must not be appointed for a term that exceeds 3 years, but may be reappointed for 1 more term.
- (6) A member of the panel may resign by written notice to the chief executive.
- (7) The panel is a statutory board for the purposes of the Fees and Travelling Allowances Act 1951.
- (8) There may be paid, out of public money to the members of the panel, remuneration by way of fees, salaries, or allowances, and travelling allowances and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly.

173 Function of panel

- (1) The function of the panel is to provide independent and specialist advice to the chief executive on any of the matters referred to in section 171(1).
- (2) It is not the panel's function to advise the chief executive on the performance of the chief executive's functions or duties, or the exercise of the chief executive's powers, under this Act.
- (3) Subsection (2) does not apply if the chief executive seeks the panel's advice on the matters referred to in that subsection.

174 Chief executive must report on panel's operation

- (1) The chief executive must ensure that information about the operation of the panel is, in each year, included in the annual report of the Ministry.
- (2) For the purposes of subsection (1), the chief executive must, without limitation, include information about—
 - (a) who the members of the panel are; and
 - (b) the number of times that the panel met; and
 - (c) the fees and other expenses paid to members of the panel; and
 - (d) a summary of the matters considered by the panel and whether the chief executive followed the advice of the panel on those matters.

175 Chief executive may publish guidance information

- (1) The chief executive may publish information for the guidance of—
 - (a) any of the following persons to assist them in complying with this Act:
 - (i) territorial authorities;
 - (ii) building consent authorities;
 - (iii) owners;
 - (iv) persons who carry out building work; and
 - (b) any of the following persons to assist them in the performance of their functions and duties, and in the exercise of their powers (if any), in relation to dams:
 - (i) regional authorities;
 - (ii) owners of dams;
 - (iii) licensed building practitioners.

- (2) Any information published by the chief executive under this section—
- (a) is only a guide; and
 - (b) if used, does not relieve any person of the obligation to consider any matter to which that information relates according to the circumstances of the particular case.

Power of chief executive to make determinations

176 Meaning of party

In sections 177 to 190, **party**, in relation to a determination, means any or all of the following persons affected by the determination:

- (a) the territorial authority;
- (b) the building consent authority;
- (c) the owner;
- (d) the licensed building practitioner concerned with the relevant building work;
- (e) if the matter for determination relates to—
 - (i) a provision in the building code that has the purpose of protecting other property, the owner of the other property;
 - (ii) a dam, the regional authority;
- (f) if the matter for determination relates to the provision of access and facilities for persons with disabilities to, and within, a building, any person who—
 - (i) has a direct interest in the matter; and
 - (ii) applies to the chief executive for a determination under section 177;
- (g) any person or organisation who or that has a right or an obligation under any other Act to give written notice to a territorial authority in respect of matters to which this Act relates.

Compare: 1991 No 150 s 16

177 Application for determination

- (1) A party may apply to the chief executive for a determination in relation to either or both of the following:
- (a) whether particular matters comply with the building code:

- (b) the exercise, failure or refusal to exercise, or proposed or purported exercise by an authority in subsection (2), (3), or (4) of a power of decision to which this paragraph applies by virtue of that subsection.
- (2) Subsection (1)(b) applies to any power of decision of a building consent authority in respect of all or any of the following:
- (a) a building consent:
 - (b) an extension under section 52(b) of the period during which building work must be commenced before a building consent lapses:
 - (c) an extension under section 93(2)(b)(ii) of the period during which the authority must decide whether to issue a code compliance certificate:
 - (d) a code compliance certificate:
 - (e) a compliance schedule:
 - (f) a notice to fix.
- (3) Subsection (1)(b) applies to any power of decision of a territorial authority in respect of, or under, all or any of the following:
- (a) any waiver or modification of the building code under section 67:
 - (b) a certificate of acceptance under section 96:
 - (c) an exemption from building consent requirements under paragraph (k) of Schedule 1:
 - (d) an amendment to a compliance schedule under section 106, 107, or 109:
 - (e) a notice to fix:
 - (f) sections 112, 113, 115, and 116 (which relate to alterations to, or changes in the use of, a building) and 124 and 129 (which relate to dangerous, earthquake-prone, and insanitary buildings):
 - (g) a certificate for public use under section 363A:
 - (h) a certificate under section 224(f) of the Resource Management Act 1991.
- (4) Subsection (1)(b) applies to any power of decision under this Act of a regional authority in respect of a dam.
- (5) Nothing in this section limits or affects section 70(4) or 446(1)(c).

Section 177: substituted, on 7 July 2010, by section 4 of the Building Amendment Act 2010 (2010 No 50).

178 Requirements for application for determination

- (1) An application for a determination must—
 - (a) be made in writing; and
 - (b) be given, in the prescribed form and manner (if any), to the chief executive; and
 - (c) contain the prescribed information (if any); and
 - (d) be accompanied by the prescribed fee (if any).
- (2) The applicant must give a copy of the application for a determination to every other party named in, or affected by, the application, either before or immediately after the application is given to the chief executive.

179 Chief executive may refuse application for determination

- (1) The chief executive may—
 - (a) refuse an application for a determination; and
 - (b) return the application to the applicant (and do no more in relation to the application).
- (2) Subsection (1) applies only if, in the chief executive's opinion,—
 - (a) the application is not genuine or is vexatious or frivolous; or
 - (b) the applicant is not a party; or
 - (c) the chief executive has made a determination, or is currently considering an application for a determination, on the same matter.

180 Application for determination may be withdrawn

- (1) An applicant for a determination may, at any time, withdraw the application by written notice to the chief executive.
- (2) If the chief executive receives the notice, the chief executive—
 - (a) must notify the parties in relation to the application about the withdrawal of the application; and
 - (b) may apportion costs under section 190; and
 - (c) must do no more in relation to the application.

181 Chief executive may make determination on own initiative

- (1) The chief executive may, if he or she considers it necessary for achieving the purposes of this Act, direct that he or she

will make a determination on a matter referred to in section 177—

- (a) on his or her own initiative; and
 - (b) without an application for a determination being made under that section.
- (2) The chief executive—
- (a) may give a direction under subsection (1) either before or after a decision or a power that relates to the matter is made or, as the case may be, is exercised by any person referred to in section 177; and
 - (b) must,—
 - (i) in a case where a direction is given after the decision is made, or the power is exercised, confirm, reverse, or modify the decision or the exercise of the power in his or her determination; or
 - (ii) in a case where a direction is given before the decision is made, or the power is exercised, determine the matter in his or her determination.
- (3) The chief executive must, as soon as practicable after giving a direction under subsection (1),—
- (a) send a copy of the direction to every party in relation to the matter to which it relates; and
 - (b) publicly notify the direction.

182 No proceedings until determination made

- (1) A person may not commence proceedings in a District Court or the High Court if the matter that gives rise to those proceedings can be the subject of a determination.
- (2) However, a person may commence those proceedings if that person, or any other person, has already applied for a determination of the matter and the chief executive has—
 - (a) made a determination on the application; or
 - (b) refused to make a determination.
- (3) This section—
 - (a) does not affect injunctive proceedings; and
 - (b) is subject to section 381.

Compare: 1991 No 150 s 17(3)

183 Decision or exercise of power suspended until determination made

- (1) Until the chief executive makes a determination on a matter, any decision or exercise of a power by any person referred to in section 177 that relates to that matter is suspended unless and to the extent that the chief executive directs otherwise.
- (2) However, a requirement in a notice to fix issued under section 164 to cease building work for safety reasons remains in force until the determination is made.

Compare: 1991 No 150 s 17(4)

184 Chief executive must decide whether to make determination

The chief executive must, within 10 working days after the date on which he or she receives an application for a determination,—

- (a) decide whether or not to make the determination; and
- (b) give written notice of his or her decision to the parties concerned.

185 When determination must be completed

- (1) If the chief executive decides to make a determination, he or she must, within the time required under subsection (2),—
 - (a) make the determination; and
 - (b) give a copy of the determination to the parties concerned.
- (2) The time required is—
 - (a) 60 working days after the date on which the chief executive receives the application; or
 - (b) any further time that the chief executive and the parties may agree.
- (3) If the chief executive requires a party to provide documents under section 186(3)(a), the period specified in subsection (2)(a) does not include the period that—
 - (a) starts on the day on which the chief executive makes that requirement; and
 - (b) ends on the earlier of—
 - (i) the day on which the party complies with that requirement; or

- (ii) the date specified by the chief executive as the date by which the party must provide those documents.

186 Procedure for determination

- (1) In making a determination, the chief executive must—
 - (a) avoid unnecessary delay and formality; and
 - (b) recognise tikanga Māori, and receive evidence, written or spoken, in Māori; and
 - (c) receive any relevant evidence, whether or not it would be admissible in a court of law; and
 - (d) comply with the principles of natural justice.
- (2) The chief executive may consider related applications together.
- (3) The chief executive—
 - (a) may require the applicant or another party to provide documents relating to the application within any reasonable period that the chief executive may, from time to time, specify; and
 - (b) must require—
 - (i) the applicant to provide each of the other parties (if any) with copies of the application and any documents accompanying the application; and
 - (ii) the applicant or another party to provide each of the other parties with copies of any documents provided under paragraph (a).
- (4) If the applicant or another party fails to comply with a requirement to provide documents under subsection (3)(a) within the period specified by the chief executive, the chief executive may, at the expiry of that period, make the determination without receiving the documents.
- (5) A submission in respect of an application for a determination received by the chief executive before the chief executive has determined the matter must be considered by the chief executive.

Compare: 1991 No 150 ss 17(2), 19(1)

187 Chief executive may engage persons to assist with determination

- (1) The chief executive may engage a suitable person to assist the chief executive in relation to—
 - (a) any application for a determination; and
 - (b) matters to which a direction under section 181 relates.
- (2) The person may do anything the chief executive may do under sections 177, 179, 180, 183 to 186, and 188 to 190, but the chief executive alone makes a determination.
- (3) The chief executive may, in making a determination, rely on a report from the person.
- (4) The failure of the person to perform his or her functions does not prevent the chief executive from making a determination.
Compare: 1991 No 150 s 21

188 Determination by chief executive

- (1) A determination by the chief executive must—
 - (a) confirm, reverse, or modify the decision or exercise of a power to which it relates; or
 - (b) determine the matter to which it relates.
- (2) A determination is binding on the parties concerned.
- (3) A determination may incorporate—
 - (a) waivers or modifications of the building code; and
 - (b) conditions that a territorial authority or regional authority, as the case may be, is able to grant or impose.
- (4) Subsection (1) is subject to section 181(2)(b).
Compare: 1991 No 150 s 20

189 Clarification of determination

- The chief executive may, within 20 working days after making a determination, amend the determination to clarify it if—
- (a) the chief executive, on his or her own initiative or on the application of a party to the determination, considers that the determination requires clarification; and
 - (b) the clarification is either—
 - (i) not material to any person affected by the determination; or
 - (ii) agreed to by the parties to the determination; and

- (c) no appeal against the determination is pending.

190 Parties' costs

- (1) The parties in relation to an application for a determination bear their own costs.
- (2) However, the chief executive may, by written direction to the applicant or another party, require that person to meet some or all of the other party's costs in respect of the determination or application if, in the chief executive's opinion, the party has contributed unreasonably to costs or delays.
- (3) A party in whose favour a direction under subsection (2) is given may enforce that direction by filing it in the prescribed form (if any) in a District Court.
- (4) A direction that is filed in the District Court under subsection (3) is enforceable as a judgment of the District Court in its civil jurisdiction.

*Power of chief executive to register persons as
building consent authorities for purposes of this
Act*

Heading: amended, on 15 March 2008, by section 37 of the Building Amendment Act 2008 (2008 No 4).

191 Chief executive may enter person's name in register of building consent authorities

The chief executive may, on the application of a person made in accordance with section 194, enter the person's name in the register of building consent authorities kept under section 273(1)(a).

Section 191: substituted, on 14 April 2005, by section 16(1) of the Building Amendment Act 2005 (2005 No 31).

192 Criteria for registration

- (1) Before entering a person's name in the register of building consent authorities, the chief executive must be satisfied that—
 - (a) the person holds a current accreditation from a building consent accreditation body appointed under section 248; and

- (b) the person meets the prescribed criteria and standards for registration; and
 - (c) in the case of a person who wishes to be registered as a building consent authority but who is not a territorial authority or a regional authority, the person has adequate means to cover any civil liabilities that may arise in the performance of the functions of a building consent authority.
- (2) In considering whether a person has adequate means to cover any civil liabilities under subsection (1)(c), the chief executive may have regard to whether the person—
- (a) holds an insurance policy that meets the minimum terms and conditions prescribed by regulations made under section 402; or
 - (b) holds an insurance policy under a scheme of insurance approved by regulations made under section 402; or
 - (c) has put in place any arrangements that provide for effective consumer protection (for example, by giving a bond or having a guarantor).

Section 192(1): amended, on 14 April 2005, by section 16(2)(c) of the Building Amendment Act 2005 (2005 No 31).

Section 192(1)(c): amended, on 14 April 2005, by section 3(5) of the Building Amendment Act 2005 (2005 No 31).

193 Effect of registration

- (1) A person whose name is entered in the register of building consent authorities may perform the functions of a building consent authority under this Part and Part 2.
- (2) However, a person whose name is entered in the register of building consent authorities but who is not a territorial authority or a regional authority may perform only those functions that correspond with, or are within, the person's scope of accreditation.

Section 193(1): amended, on 14 April 2005, by section 16(2)(d) of the Building Amendment Act 2005 (2005 No 31).

Section 193(2): amended, on 14 April 2005, by section 3(5) of the Building Amendment Act 2005 (2005 No 31).

194 Application for registration

An application for registration under section 191 must—

- (a) be made in writing to the chief executive; and
- (b) be given in the prescribed manner (if any); and
- (c) contain the prescribed information (if any); and
- (d) be accompanied by the prescribed fee (if any).

195 Chief executive must decide application for registration

The chief executive must, as soon as practicable after receiving an application for registration that complies with section 194,—

- (a) decide whether to register the applicant; and
- (b) give the applicant written notice of his or her decision; and
- (c) if the chief executive decides to refuse the application, state the reasons for the refusal in the notice given under paragraph (b).

196 Registration continuous so long as person meets criteria for registration

- (1) The chief executive must assess at least once every 3 years, and may assess at any other time, whether a building consent authority whose name is entered in the register of building consent authorities continues to meet the criteria for registration specified in section 192.
- (2) A building consent authority that continues to meet those criteria is entitled to the continuation of its registration, subject to section 203.

Section 196(1): amended, on 14 April 2005, by section 16(2)(e) of the Building Amendment Act 2005 (2005 No 31).

Section 196(2): amended, on 14 April 2005, by section 16(2)(f) of the Building Amendment Act 2005 (2005 No 31).

197 Consequences of failure to meet criteria for registration

- (1) Subsection (2) or subsection (3) applies if, after making an assessment under section 196, the chief executive determines that a building consent authority no longer meets the criteria for registration.
- (2) In the case of a building consent authority that is not a territorial authority or a regional authority,—
 - (a) the chief executive must—

- (i) suspend the authority's registration until the authority satisfies the chief executive that the authority meets those criteria; and
 - (ii) record the suspension in the register of building consent authorities; and
 - (b) if the authority does not so satisfy the chief executive within 12 months after the suspension, or any further period that the chief executive may determine, the chief executive must—
 - (i) revoke the authority's registration; and
 - (ii) remove the authority's name from the register of building consent authorities.
- (3) In the case of a territorial authority or a regional authority, the chief executive must recommend to the Minister that the Minister appoint 1 or more persons to act in the place of the territorial authority or, as the case may be, the regional authority in relation to all or any of its functions.
- (4) If subsection (3) applies, sections 277 to 281 apply with all necessary modifications.

Section 197(1): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2): amended, on 14 April 2005, by section 3(5) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2)(a)(i): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2)(a)(i): amended, on 14 April 2005, by section 16(2)(k) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2)(a)(ii): amended, on 14 April 2005, by section 16(2)(c) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2)(b): amended, on 14 April 2005, by section 16(2)(k) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2)(b)(i): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2)(b)(ii): amended, on 14 April 2005, by section 16(2)(c) of the Building Amendment Act 2005 (2005 No 31).

Section 197(2)(b)(ii): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

198 Effect of suspension

- (1) A building consent authority is not registered, for the purposes of this Part and Part 2, for the period for which the authority's registration is suspended under section 197(2).
- (2) At the end of the period of suspension, the authority's registration is immediately revived (unless there is some other ground to suspend or revoke that authority's registration).
- (3) Despite subsection (1), the chief executive may authorise a building consent authority to perform limited functions as a building consent authority during the period of suspension if the chief executive is satisfied that doing so is necessary in the public interest (for example, to enable code compliance certificates to be issued by the authority in respect of building consents that were granted before the date of suspension).
- (4) An authority given under subsection (3) may—
 - (a) be subject to any conditions that the chief executive thinks fit; and
 - (b) be revoked by the chief executive at any time.

Section 198(1): amended, on 15 March 2008, by section 38(1) of the Building Amendment Act 2008 (2008 No 4).

Section 198(1): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 198(2): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 198(3): amended, on 15 March 2008, by section 38(2)(a) of the Building Amendment Act 2008 (2008 No 4).

Section 198(3): amended, on 15 March 2008, by section 38(2)(b) of the Building Amendment Act 2008 (2008 No 4).

199 Offence for person to perform functions of building consent authority or regional authority if person not registered, etc

- (1) A person commits an offence if the person performs any of the functions of a building consent authority without being registered under section 191.
- (2) A person commits an offence if the person—
 - (a) is a building consent authority that is not a territorial authority or a regional authority; and

- (b) performs any of the functions of a building consent authority that do not correspond with, or are not within, the person's scope of accreditation.
- (3) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.

Section 199(1): amended, on 14 April 2005, by section 16(2)(h) of the Building Amendment Act 2005 (2005 No 31).

Section 199(2)(a): amended, on 14 April 2005, by section 3(5) of the Building Amendment Act 2005 (2005 No 31).

200 Complaints about building consent authorities

- (1) The chief executive may receive complaints alleging that a building consent authority—
 - (a) has failed, or is failing, without good reason to properly perform any of the authority's functions under this Part or Part 2;
 - (b) has been, or is, negligent in performing those functions.
- (2) As soon as practicable after receiving a complaint, the chief executive must—
 - (a) inform the building consent authority concerned of the complaint; and
 - (b) decide whether to accept or decline the complaint.
- (3) The chief executive must, immediately after making a decision under subsection (2),—
 - (a) give written notice of the decision to the person who made the complaint and the building consent authority concerned; and
 - (b) if the chief executive decides to accept the complaint, proceed to investigate the complaint.
- (4) The chief executive may decline to accept, and is not required to investigate, a complaint that he or she considers vexatious or frivolous.

Section 200 heading: amended, on 14 April 2005, by section 16(2)(i) of the Building Amendment Act 2005 (2005 No 31).

Section 200(1): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 200(1)(a): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 200(2)(a): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 200(3)(a): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

201 Chief executive may conduct investigation on own initiative

- (1) If the chief executive considers that there are reasonable grounds for believing that any of the matters specified in section 200(1) applies, the chief executive may decide to investigate the matter—
 - (a) on his or her own initiative; and
 - (b) without a complaint under section 200 being made.
- (2) The chief executive must, immediately after making a decision under subsection (1),—
 - (a) give written notice of the decision to the building consent authority concerned; and
 - (b) proceed to investigate the matter.
- (3) To avoid doubt, this section does not affect the chief executive's power to conduct a review of a territorial authority or regional authority under section 276.

Section 201(2)(a): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

202 Procedure if chief executive proceeds to investigate complaint or matter

- (1) This section applies if the chief executive proceeds to investigate—
 - (a) a complaint under section 200; or
 - (b) a matter on his or her own initiative under section 201.
- (2) The chief executive must, in the notice to the building consent authority concerned given under section 200(3) or, as the case may be, section 201(2),—
 - (a) state that the chief executive has reason to believe that 1 or more grounds exist entitling him or her to exercise the disciplinary powers under section 203; and
 - (b) provide particulars that will clearly inform the building consent authority of the ground or grounds; and
 - (c) give the building consent authority a reasonable opportunity to make written submissions on the matter; and
 - (d) consider those submissions (if any).

Section 202(2): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 202(2)(b): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 202(2)(c): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

203 Disciplinary powers of chief executive

- (1) This section applies if the chief executive, after conducting an investigation and considering the submissions made by a building consent authority (if any), is satisfied that the building consent authority—
 - (a) has failed without good reason to properly perform any of the authority's functions under this Part or Part 2:
 - (b) has been negligent in performing those functions.
- (2) The chief executive may do 1 or more of the following:
 - (a) issue a warning to the building consent authority:
 - (b) require the building consent authority to take remedial action—
 - (i) within a specified time; and
 - (ii) that is subject to any conditions that the chief executive thinks fit (if any):
 - (c) limit the functions that the building consent authority may perform under this Part or Part 2 and record the limitation in the appropriate register accordingly:
 - (d) in the case of a building consent authority that is not a territorial authority or a regional authority,—
 - (i) suspend the authority's registration and record the suspension in the appropriate register accordingly; or
 - (ii) if the chief executive considers that the circumstances warrant it, revoke the authority's registration and remove the authority's name from the register of building consent authorities:
 - (e) in the case of a territorial authority or regional authority, recommend to the Minister that the Minister appoint 1 or more persons to act in the place of the territorial authority or, as the case may be, the regional authority in relation to all or any of its functions.

- (3) If subsection (2)(e) applies, sections 277 to 281 apply with all necessary modifications.
- (4) If the chief executive takes any action referred to in subsection (2), he or she must give written notice of the action to the building consent authority and the reasons for the action.

Section 203(1): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 203(1)(a): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 203(2)(a): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 203(2)(b): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 203(2)(c): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Section 203(2)(d): amended, on 14 April 2005, by section 3(5) of the Building Amendment Act 2005 (2005 No 31).

Section 203(2)(d)(i): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 203(2)(d)(ii): amended, on 14 April 2005, by section 16(2)(c) of the Building Amendment Act 2005 (2005 No 31).

Section 203(2)(d)(ii): amended, on 14 April 2005, by section 16(2)(j) of the Building Amendment Act 2005 (2005 No 31).

Section 203(4): amended, on 14 April 2005, by section 16(2)(g) of the Building Amendment Act 2005 (2005 No 31).

Further powers of chief executive

204 Special powers of chief executive for monitoring performance of functions under this Act

- (1) The purpose of this section is to enable the chief executive to—
- (a) monitor the performance by territorial authorities, building consent authorities, or regional authorities of their functions under this Act; and
 - (b) carry out the review of territorial authorities under section 276; and
 - (c) assist the Minister in determining whether to exercise the Minister's power under section 277 (which relates to the non-performance of functions by a territorial authority).
- (2) For the purpose of this section, the chief executive—
- (a) must have full access at all reasonable times to—

- (i) all relevant information that is in the possession or control of any territorial authority, building consent authority, or regional authority; and
 - (ii) any place where that information is kept:
 - (b) may require any territorial authority, building consent authority, or regional authority to—
 - (i) supply any relevant information; or
 - (ii) answer any question that relates to the performance of functions under this Act:
 - (c) may, by written notice, require any person having possession or control of any relevant information to supply to the chief executive, in a manner specified in the notice, all or any of the information:
 - (d) may enter and re-enter any land or building, with any appliances, machinery, and equipment that are reasonably necessary, to—
 - (i) make any surveys, investigations, tests, and measurements that are reasonably necessary for the purposes of this section; and
 - (ii) generally do any other things that are reasonably necessary to enable the surveys, investigations, tests, and measurements to be carried out.
- (3) Subsection (2) does not—
 - (a) limit any Act that imposes a prohibition or restriction on the availability of any information; or
 - (b) authorise the chief executive, or any person acting on behalf of the chief executive, to enter any household unit being used as such without the permission of the occupier of the household unit.
- (4) In this section, **relevant information**—
 - (a) means any information of any description that relates to the performance by a territorial authority, building consent authority, or regional authority of its functions under this Act; and
 - (b) includes information that is kept in any form (whether in electronic form or otherwise).

Compare: 1991 No 150 s 79(1), (2)

205 Limits on power to enter land or building

The power to enter land or buildings under section 204(2) is subject to the following conditions:

- (a) the person entering must, if requested on entry or at any subsequent time, produce to the owner or occupier of that land or building the written warrant referred to in section 206;
- (b) entry may be made only at reasonable times.

Compare: 1991 No 150 s 79(3)

206 Chief executive must supply warrant

- (1) The chief executive must supply to a person authorised to enter land or buildings on behalf of the chief executive a written warrant that contains—
 - (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.
- (2) A person who does not have a warrant supplied under this section must not represent himself or herself to be the holder of a warrant.
- (3) A person commits an offence if the person—
 - (a) fails to comply with subsection (2); or
 - (b) impersonates or falsely pretends to be a person named in a warrant supplied under this section.
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 79(4), (6)

207 Duties of person supplied with warrant

An authorised person supplied with a warrant under section 206—

- (a) must, on the termination of his or her authority, surrender the warrant to the chief executive; and
- (b) must not purport to act under a warrant after the termination of his or her authority to act on behalf of the chief executive.

Compare: 1991 No 150 s 79(5)

Appeal from chief executive's decisions

208 Appeals to District Court

- (1) The persons referred to in subsection (2) may appeal to a District Court against—
- (a) a determination by the chief executive under section 188; or
 - (aa) a written direction given by the chief executive under section 190 to the applicant or another party, and requiring that person to meet some or all of the other party's costs in respect of, or in respect of an application for, a determination against which all or any of the persons referred to in subsection (2) have made an appeal under paragraph (a) (whether or not that appeal has been determined); or
 - (b) the chief executive's decision to—
 - (i) decline to register the person as a building consent authority; or
 - (ii) take any action referred to in section 203; or
 - (iii) refuse to issue a national multiple-use approval.
- (2) The persons are,—
- (a) in the case of an appeal under subsection (1)(a) or (aa),—
 - (i) the applicant for the determination; or
 - (ii) any other party; or
 - (b) in the case of an appeal under subsection (1)(b)(i), the applicant for registration; or
 - (c) in the case of an appeal under subsection (1)(b)(ii), the building consent authority concerned; or
 - (d) in the case of an appeal under subsection (1)(b)(iii), the applicant for the national multiple-use approval.

Section 208(1)(aa): inserted, on 7 July 2010, by section 5(1) of the Building Amendment Act 2010 (2010 No 50).

Section 208(1)(b)(i): amended, on 15 March 2008, by section 39(1) of the Building Amendment Act 2008 (2008 No 4).

Section 208(1)(b)(ii): amended, on 1 February 2010, by section 25(1) of the Building Amendment Act 2009 (2009 No 25).

Section 208(1)(b)(iii): added, on 1 February 2010, by section 25(1) of the Building Amendment Act 2009 (2009 No 25).

Section 208(2)(a): amended, on 7 July 2010, by section 5(2) of the Building Amendment Act 2010 (2010 No 50).

Section 208(2)(c): amended, on 1 February 2010, by section 25(2) of the Building Amendment Act 2009 (2009 No 25).

Section 208(2)(c): amended, on 15 March 2008, by section 39(2) of the Building Amendment Act 2008 (2008 No 4).

Section 208(2)(d): added, on 1 February 2010, by section 25(2) of the Building Amendment Act 2009 (2009 No 25).

209 Procedure for commencing appeal

- (1) An appeal under section 208 must be made—
 - (a) by the appellant filing a notice of appeal with the Registrar of the District Court within 15 working days after,—
 - (i) in the case of an appeal under section 208(1)(a), the date of the determination or the date on which the chief executive amends the determination by way of clarification under section 189; or
 - (ia) in the case of an appeal under section 208(1)(aa), the date of the written direction given by the chief executive under section 190; or
 - (ii) in the case of an appeal under section 208(1)(b), the date of the relevant decision of the chief executive; and
 - (b) otherwise in accordance with the District Courts Rules (except to any extent that those rules are inconsistent with this section).
- (2) The Registrar of the District Court may extend the time for making an appeal under section 208(1)(a) if the chief executive amends the determination by way of clarification under section 189.

Section 209(1)(a)(ia): inserted, on 7 July 2010, by section 6 of the Building Amendment Act 2010 (2010 No 50).

210 Steps after appeal is commenced

- (1) Either before or immediately after an appeal under section 208 is made, the appellant must serve a copy of the notice of appeal on—
 - (a) the chief executive; and
 - (b) in the case of an appeal under section 208(1)(a) or (aa), any other party.

- (2) A person served with the notice under subsection (1) who wishes to appear on the appeal must give notice of the person's intention to appear to—
 - (a) the appellant; and
 - (b) the Registrar of the District Court; and
 - (c) any other person to whom the appellant is required to serve notice under subsection (1).
- (3) The notice to appear under subsection (2) must be served within 10 working days after the party was served with the notice of appeal.

Section 210(1)(b): amended, on 7 July 2010, by section 7 of the Building Amendment Act 2010 (2010 No 50).

211 Powers of District Court on appeal

- (1) On the hearing of an appeal under section 208, a District Court may—
 - (a) confirm, reverse, or modify the determination, direction, or decision of the chief executive; or
 - (b) refer the matter back to the chief executive in accordance with the rules of court; or
 - (c) make or give any determination, direction, or decision that the chief executive could have made or given in respect of the matter.
- (2) This section does not give the District Court power to review any part of the chief executive's determination, direction, or decision other than the part against which the appellant has appealed.
- (3) Subject to any order of the District Court, every determination, direction, and decision of the chief executive against which an appeal is made continues in force and has effect according to its tenor pending the determination of the appeal.
- (4) The decision of the District Court on an appeal is final.

Section 211(1)(a): amended, on 7 July 2010, by section 8(1) of the Building Amendment Act 2010 (2010 No 50).

Section 211(1)(c): amended, on 7 July 2010, by section 8(2) of the Building Amendment Act 2010 (2010 No 50).

Section 211(2): amended, on 7 July 2010, by section 8(3) of the Building Amendment Act 2010 (2010 No 50).

Section 211(3): amended, on 7 July 2010, by section 8(4) of the Building Amendment Act 2010 (2010 No 50).

Subpart 2—Responsibilities of territorial authorities

Functions, duties, and powers of territorial authorities generally

212 Territorial authority must act as building consent authority for its district

- (1) A territorial authority must perform the functions of a building consent authority within its district, and for any coastal marine area (within the meaning of the Resource Management Act 1991) adjacent to its district that is not within the district of another territorial authority, in relation to—
 - (a) any application for a building consent made to the territorial authority; and
 - (b) any building consent granted under that application.
- (2) Subsection (1) does not apply in the case of dams.
- (3) A territorial authority must, in performing its functions as a building consent authority, provide to the New Zealand Fire Service Commission a copy of every application for a building consent of a kind specified by notice under section 46.
- (4) Subsection (1)—
 - (a) is subject to the territorial authority's power to transfer, under section 233, any or all of its functions, duties, or powers under this Act to another territorial authority; and
 - (b) does not apply to any function so transferred by the territorial authority.

Section 212 heading: amended, on 14 April 2005, by section 17(1) of the Building Amendment Act 2005 (2005 No 31).

Section 212(1): amended, on 14 April 2005, by section 17(2) of the Building Amendment Act 2005 (2005 No 31).

Section 212(3): substituted, on 1 February 2010, by section 26 of the Building Amendment Act 2009 (2009 No 25).

213 Territorial authority may make arrangements relating to functions of building consent authority

- (1) A territorial authority may comply with section 212(1) by—
 - (a) performing the functions of a building consent authority itself; or

- (b) making arrangements for 1 or more other building consent authorities to perform those functions on its behalf; or
 - (c) a combination of the methods described in paragraphs (a) and (b).
- (2) An arrangement under subsection (1) may be made—
- (a) by contract; or
 - (b) by any other means.

214 How liability apportioned if territorial authority makes arrangements relating to functions of building consent authority

If a territorial authority makes an arrangement under section 213(1) for another building consent authority to perform all or any of the territorial authority's functions on its behalf,—

- (a) the territorial authority is liable for the acts and omissions of the other building consent authority when the other building consent authority is acting in that capacity; but
- (b) the territorial authority and building consent authority may apportion the liability—
 - (i) as between themselves; and
 - (ii) as they see fit.

215 Territorial authority must gain accreditation and be registered

A territorial authority must, for the purpose of ensuring that it complies with section 212(1),—

- (a) apply for, and gain, accreditation under this Part; and
- (b) apply to be, and be registered as, a building consent authority under this Part; and
- (c) maintain that accreditation and registration at all times.

216 Territorial authority must keep information about buildings

- (1) A territorial authority must keep reasonably available any information that is relevant to the administration of this Act to enable members of the public to—
- (a) be informed of their obligations under this Act; and

- (b) participate effectively under this Act.
- (2) The information that must be kept by a territorial authority under subsection (1) includes—
 - (a) all plans and specifications submitted to the territorial authority in relation to an application for a building consent; and
 - (b) any of the following information issued or received by the territorial authority in respect of a building:
 - (i) project information memoranda:
 - (ii) building consents:
 - (iii) if applicable, the specified intended life of the building:
 - (iv) code compliance certificates:
 - (iva) memoranda provided by licensed building practitioners under section 45(2) or 88(1)(a):
 - (v) compliance schedules:
 - (vi) building warrants of fitness:
 - (vii) energy work certificates relating to building work:
 - (viii) any other records that relate to the information referred to in subparagraphs (i) to (vii); and
 - (c) any orders issued by the District Court under section 126 in respect of a building; and
 - (d) any records of any information on any land or building received by the territorial authority from a statutory authority; and
 - (e) a summary of written complaints received by the territorial authority concerning alleged breaches of this Act or the former Act; and
 - (f) information on how the territorial authority dealt with each of the complaints referred to in paragraph (e); and
 - (g) all information provided to the territorial authority by a building consent authority under section 238.
- (3) A territorial authority must keep the information referred to in—
 - (a) subsections (1) and (2)(a) to (d) and (g), at least for the life of the building to which the information relates; and

- (b) subsection (2)(e) and (f), at least for 10 years from when each complaint was received by the territorial authority.

Compare: 1991 No 150 s 27(1), (2)

Section 216(2)(b)(iva): inserted, on 15 March 2008, by section 40 of the Building Amendment Act 2008 (2008 No 4).

217 Access to certain information kept by territorial authority

- (1) A person—
 - (a) has a right to access the information referred to in section 216(1) and (2); and
 - (b) must, on request, be given access to that information by the territorial authority during ordinary office hours.
- (2) The right conferred by subsection (1)—
 - (a) is subject to the provisions of the Local Government Official Information and Meetings Act 1987; and
 - (b) does not extend to a plan or specification that is marked confidential by any or all of the following persons for the reason set out in subsection (3):
 - (i) the person who submitted the plan or specification;
 - (ii) the owner of the building to which the plan or specification relates;
 - (iii) any subsequent owner of that building; and
 - (c) is subject to any prescribed limits.
- (3) The reason referred to in subsection (2)(b) is any requirement of the owner of the building relating to the security of the building.
- (4) A territorial authority—
 - (a) must make photocopying facilities available to persons who wish to access information under subsection (1); and
 - (b) may charge a reasonable fee for the use of those facilities.
- (5) Subsection (4) is subject to section 44A of the Local Government Official Information and Meetings Act 1987.

Compare: 1991 No 150 s 27(3), (4)

218 Territorial authority must provide information to chief executive for purpose of facilitating performance of chief executive's function under section 169

- (1) For the purpose of facilitating the performance of the chief executive's function under section 169 (which relates to monitoring current and emerging trends in building design, etc), a territorial authority must provide information to the chief executive in accordance with the regulations.
- (2) However, a territorial authority is only required to provide information under subsection (1) about its functions, duties, and powers under this Act.

219 Territorial authority may impose fee or charge and must collect levy

- (1) A territorial authority—
 - (a) may impose a fee or charge—
 - (i) in relation to a building consent; and
 - (ii) for the performance of any other function or service under this Act; and
 - (b) must collect the levy which an applicant is liable to pay to the chief executive under section 53.
- (2) If a fee, charge, or levy is payable to a territorial authority for the performance of a function or service under this Act, the territorial authority may refuse to perform the function or service, unless the fee, charge, or levy is paid.

*Power of territorial authority to carry out
building work on default*

220 Territorial authority may carry out building work on default

- (1) This section applies if—
 - (a) a person is required, under this Act, by a building consent authority, territorial authority, or regional authority to carry out any building work on, or in connection with, any building; and
 - (b) either—
 - (i) that person, after being given notice of the requirement, fails to commence to comply with the

- notice within the time stated in the notice or, if the time is not so stated, within a reasonable time; or
- (ii) that person, after a certificate from any officer of the territorial authority that the work is of an urgent nature is communicated to him or her, defaults for 24 hours from the time of that communication; and
 - (c) that person does not immediately proceed with the work with all reasonable speed.
- (2) The territorial authority may apply to a District Court for an order authorising the territorial authority to carry out building work.
 - (3) Before the territorial authority applies to a District Court under subsection (2), the territorial authority must give the owner of the building not less than 10 days' notice of its intention to do so.
 - (4) If a territorial authority carries out building work under the authority of an order made under subsection (2),—
 - (a) the owner of the building is liable for the costs of the work; and
 - (b) the territorial authority may recover those costs from the owner; and
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.
 - (5) Any building work required to be carried out under subsection (2) may include the demolition of all or part of a building.

Compare: 1991 No 150 s 74

221 Recovery of costs when territorial authority carries out work on default

- (1) If a territorial authority is entitled under this Act to recover the costs of carrying out any building work from the owner of any building or land,—
 - (a) the money payable becomes a charge on the land; and
 - (b) the provisions of the Local Government (Rating) Act 2002 and the Local Government Act 2002 apply accordingly.

- (2) The territorial authority—
- (a) may destroy, sell, or otherwise dispose of any materials that result from the carrying out of any work by the territorial authority; and
 - (b) in the case of the sale of any materials,—
 - (i) must apply the proceeds of the sale towards payment of the amount payable to the territorial authority under subsection (1); and
 - (ii) must pay the surplus (if any) to the owner.
- (3) If the territorial authority exercises the powers conferred by this section, the exercise of those powers does not relieve a person from any penalty for failure to comply with the requirements of a notice under this Act.
- (4) Any building work that is carried out, or is to be carried out, by a territorial authority under this section is declared to be a public work for the purposes of the Public Works Act 1981.
Compare: 1991 No 150 s 75

Powers of territorial authority to carry out inspections and enter land

222 Inspections by territorial authority

- (1) An authorised officer is entitled, at all times during normal working hours or while building work is being carried out,—
- (a) to inspect—
 - (i) land on which building work is or is proposed to be carried out; and
 - (ii) building work that has been or is being carried out on or off the building site; and
 - (iii) any building; and
 - (b) to enter premises for—
 - (i) the purpose of inspecting the building; or
 - (ii) the purpose of determining whether the building is dangerous, earthquake prone, or insanitary within the meaning of subpart 6 of Part 2.
- (2) An authorised officer must, on entering private land under subsection (1), and when requested at any subsequent time, produce to the occupier of the land written evidence of the authorised officer's identity.

- (3) The powers conferred by this section are in addition to, and do not limit, the powers conferred by section 173 of the Local Government Act 2002.
- (4) In this section and sections 223 to 228,—
- authorised officer** means an officer of a territorial authority to whom either or both of the following applies:
- (a) he or she is authorised to carry out inspections; or
 - (b) he or she is authorised to enter land—
 - (i) by this Act; or
 - (ii) by an order of the District Court made under section 227
- inspection** means the taking of all reasonable steps—
- (a) to determine whether—
 - (i) building work is being carried out without a building consent; or
 - (ii) building work is being carried out in accordance with a building consent; or
 - (iii) a notice to fix has been complied with:
 - (b) to ensure that,—
 - (i) in relation to buildings for which a compliance schedule is issued, the inspection, maintenance, and reporting procedures stated in the compliance schedule are being complied with; or
 - (ii) in relation to buildings that have specified systems, the requirement for a compliance schedule is being complied with:
 - (c) to enable a territorial authority to—
 - (i) identify dangerous, earthquake-prone, or insanitary buildings within its district; and
 - (ii) carry out its functions or duties in relation to those buildings:
 - (d) to satisfy a territorial authority as to whether a certificate of acceptance for building work should be issued under section 96.

Compare: 1991 No 150 s 76(1), (2), (3), (11)

223 Duty to assist inspections

- (1) The persons specified in subsection (2) must give all reasonable assistance to enable an authorised officer to inspect all or part of a building or building work.
- (2) The persons are—
 - (a) the owner of the building; and
 - (b) an occupier of the building; and
 - (c) any person engaged in the building work.

Compare: 1991 No 150 s 76(4)

224 Warrant must be produced

An authorised officer must, on entering private land and when requested at any subsequent time, produce to the occupier of the building a written warrant issued under section 174 of the Local Government Act 2002.

Compare: 1991 No 150 s 76(5)

225 Offence to impersonate authorised officer

- (1) A person commits an offence if the person impersonates or falsely pretends to be an authorised officer named in a warrant referred to in section 224.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 80(h)

226 Restriction on entry to household unit

- (1) Despite section 222, an authorised officer may not enter a household unit that is being used as a household unit without—
 - (a) the consent of the occupier of the household unit; or
 - (b) an order of a District Court made under section 227.
- (2) Subsection (1) does not limit the power conferred by section 173 of the Local Government Act 2002 (which allows a local authority entry into occupied land or buildings without prior notice in cases of emergency).

Compare: 1991 No 150 s 76(7)

227 District Court may authorise entry to household unit

- (1) A District Court, on the application of an authorised officer, may make an order authorising the officer to enter a household unit.
- (2) The court may make the order under subsection (1)—
 - (a) only if it is satisfied that—
 - (i) the proposed entry is necessary for the purposes of section 222; and
 - (ii) the authorised officer has taken all reasonable steps to obtain the consent of the occupier to the proposed entry; and
 - (b) subject to any conditions that it thinks fit.

Compare: 1991 No 150 s 76(8), (9)

228 Authorised officer must give notice to occupier of household unit

An authorised officer must,—

- (a) if he or she intends to apply for an order under section 227, give the occupier of the household unit to which that application relates not less than 10 days' written notice of his or her intention to do so; and
- (b) before he or she enters a household unit under the authority of an order under section 227, serve the order on the occupier of the household unit to which that order relates.

Compare: 1991 No 150 s 76(10)

Enforcement powers of territorial authority

229 Authorisation of enforcement officers

- (1) A territorial authority—
 - (a) may authorise any of its officers to issue infringement notices under section 372; and
 - (b) if it grants an authorisation under paragraph (a), must supply the enforcement officer with a warrant.
- (2) The warrant must clearly state the functions and powers that the enforcement officer has been authorised to carry out under this Act.

Compare: 1991 No 150 s 77(1), (2)

230 Conditions of authorisation

- (1) An enforcement officer who exercises or purports to exercise a power conferred by or under this Act—
- (a) must carry on him or her—
 - (i) the warrant supplied under section 229; and
 - (ii) evidence of his or her identity; and
 - (b) must produce, if required to do so, the warrant and the evidence referred to in paragraph (a).
- (2) An enforcement officer who holds a warrant issued under section 229 must, on the termination of his or her appointment as an enforcement officer, surrender the warrant to the territorial authority.

Compare: 1991 No 150 s 77(3), (4)

231 Offence to impersonate enforcement officer

- (1) A person commits an offence if the person impersonates or falsely pretends to be an enforcement officer named in a warrant supplied under section 229.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 80(h)

*Delegation of power***232 Delegation of powers by territorial authority and its officers**

Clause 32 of Schedule 7 of the Local Government Act 2002 applies, with all necessary modifications, in respect of powers conferred by this Act on a territorial authority and its officers.

Compare: 1991 No 150 s 78

*Transfer of functions, duties, or powers of territorial authority***233 Transfer of functions, duties, or powers of territorial authority**

A territorial authority may transfer 1 or more of its functions, duties, or powers under this Act to another territorial authority, except the power of transfer conferred by this section.

Compare: 1991 No 150 s 25(1), (2)

234 Procedure for transfer

If a territorial authority proposes to transfer any of its functions, duties, or powers under section 233, the territorial authority must—

- (a) use the special consultative procedure in section 83 of the Local Government Act 2002; and
- (b) serve notice on the Minister of its proposal to transfer the function, duty, or power; and
- (c) agree with the other territorial authority to whom the function, duty, or power is to be transferred that the transfer is desirable on either or both of the following grounds:
 - (i) efficiency;
 - (ii) technical or special capability, or expertise.

Compare: 1991 No 150 s 25(3)

235 Territorial authorities may agree on terms of transfer

A territorial authority from whom functions, duties, or powers are to be transferred under section 233 and a territorial authority to whom those functions, duties, or powers are to be transferred—

- (a) must enter into an agreement in respect of the transfer; and
- (b) may agree on the terms and conditions of the transfer.

Compare: 1991 No 150 s 25(4)

236 Effect of transfer

(1) A territorial authority to whom a function, duty, or power is transferred under section 233—

- (a) may perform the function or duty, or exercise the power, as if the function or duty were imposed, or the power were conferred, on that territorial authority under this Act; and
- (b) may, unless the agreement in respect of the transfer provides otherwise, cancel, at any time, the transfer in accordance with that agreement.

- (2) A territorial authority from whom a function, duty, or power is transferred may, at any time, change or revoke the transfer by written notice to the other territorial authority concerned.

Compare: 1991 No 150 s 25(5), (6), (7)

Subpart 3—Responsibilities of building consent authority that is not territorial authority or regional authority

Subpart 3 heading: amended, on 15 March 2008, by section 41 of the Building Amendment Act 2008 (2008 No 4).

237 Application of subpart

This subpart applies to a building consent authority that—

- (a) is registered under section 273; and
- (b) provides services as a building consent authority in a district; but
- (c) is not—
 - (i) the territorial authority for the district, or another territorial authority to which a function, duty, or power is transferred under section 233; or
 - (ii) the regional authority for the region, or another regional authority to which a function, duty, or power is transferred under section 244.

Section 237(c): substituted, on 14 April 2005, by section 3(7) of the Building Amendment Act 2005 (2005 No 31).

238 Duties of building consent authority

- (1) A building consent authority must, in performing its functions under Part 2,—
- (a) obtain a project information memorandum before granting a building consent; and
 - (b) provide to the New Zealand Fire Service Commission a copy of every application for a building consent of a kind specified by notice under section 46; and
 - (c) provide to the territorial authority for the relevant district copies of the information referred to in subsection (2).
- (2) The information is—

- (a) plans and specifications submitted to the building consent authority in relation to an application for a building consent; and
 - (b) the following information issued or received by the building consent authority in respect of a building:
 - (i) project information memoranda:
 - (ii) building consents:
 - (iii) code compliance certificates:
 - (iv) compliance schedules:
 - (v) building warrants of fitness:
 - (vi) energy work certificates:
 - (vii) notices to fix:
 - (viii) any other records that relate to the information referred to in subparagraphs (i) to (vii); and
 - (c) records of any information on any land or building received by the building consent authority from a statutory authority; and
 - (d) details about any levy collected under section 53; and
 - (e) the following information about the building consent authority:
 - (i) the name and contact address of the building consent authority:
 - (ii) the scope of accreditation of the building consent authority:
 - (iii) whether the building consent authority has adequate means to cover any civil liabilities that may arise in the performance of its functions, and, if so, what those means are.
- (3) A building consent authority must provide the copies of the information to the territorial authority for the relevant district within 5 working days after the building consent authority issues or receives the information.
- (4) A building consent authority commits an offence if it fails to comply with subsection (3).
- (5) A building consent authority that commits an offence under this section is liable to a fine not exceeding \$5,000 and, in the case of a continuing offence, to a further fine not exceeding \$500 for every day or part of a day during which the offence has continued.

239 Building consent authority must provide information to chief executive

A building consent authority must provide information to the chief executive in accordance with the regulations.

240 Building consent authority may impose fee or charge and must collect levy

- (1) A building consent authority—
 - (a) may impose a fee or charge payable by a member of the public—
 - (i) in relation to a building consent; and
 - (ii) for the performance of any other function or service under this Act; and
 - (b) must collect the levy for which an applicant is liable to pay to the chief executive under section 53.
- (2) If a fee, charge, or levy is payable to a building consent authority for the performance of a function or service under this Act, the building consent authority may refuse to perform the function or service, unless the fee, charge, or levy is paid.
- (3) A failure by a person to pay a fee, charge, or levy does not affect the duty of a building consent authority under section 238 to provide copies of certain information to the territorial authority.

Subpart 4—Responsibilities of regional authorities*Functions, duties, and powers of regional authorities generally***241 Regional authority must gain accreditation and be registered**

- (1) A regional authority must, for the purpose of ensuring that it performs the function of a building consent authority in relation to dams,—
 - (a) apply for, and gain, accreditation under this Part; and
 - (b) apply to be, and be registered as, a building consent authority under this Part; and
 - (c) maintain that accreditation and registration at all times.
- (2) Subsection (1)—

- (a) is subject to the regional authority's power under section 244 to transfer any of its functions under this Act to another regional authority; and
- (b) does not apply to any function it transfers to another regional authority.

Section 241(2): added, on 14 April 2005, by section 18 of the Building Amendment Act 2005 (2005 No 31).

242 Regional authority must provide information to chief executive

A regional authority must provide information to the chief executive in accordance with the regulations.

243 Regional authorities may impose fee or charge and recover costs, and must collect levy

- (1) A regional authority—
 - (a) may impose a fee or charge—
 - (i) for issuing a project information memorandum under section 34; or
 - (ii) for performing any other function or service under this Act; and
 - (b) may recover its costs from the owner if it carries out building work under section 156; and
 - (c) must collect the levy an applicant is liable to pay to the chief executive under section 53.
- (2) If a fee or charge is payable to a regional authority for the performance of a function or service under this Act, the regional authority may decline to perform the function or service, unless the fee or charge is paid.

Section 243 heading: amended, on 14 April 2005, by section 19(1) of the Building Amendment Act 2005 (2005 No 31).

Section 243(1): substituted, on 14 April 2005, by section 19(2) of the Building Amendment Act 2005 (2005 No 31).

*Transfer of functions, duties, and powers of
regional authority*

244 Transfer of functions, duties, and powers of regional authority

A regional authority may transfer 1 or more of its functions, duties, or powers under this Act to another regional authority, except the power of transfer conferred by this section.

245 Procedure for transfer

If a regional authority proposes to transfer any of its functions, duties, or powers under section 244, the regional authority must—

- (a) use the special consultative procedure in section 83 of the Local Government Act 2002; and
- (b) serve notice on the Minister of its proposal to transfer the function, duty, or power; and
- (c) agree with the other regional authority to whom the function, duty, or power is to be transferred that the transfer is desirable on either or both of the following grounds:
 - (i) efficiency;
 - (ii) technical or special capability, or expertise.

246 Regional authorities may agree on terms of transfer

A regional authority from whom functions, duties, or powers are to be transferred under section 244 and a regional authority to whom those functions, duties, or powers are to be transferred—

- (a) must enter into an agreement in respect of the transfer; and
- (b) may agree on the terms and conditions of the transfer.

247 Effect of transfer

(1) A regional authority to whom a function, duty, or power is transferred under section 244—

- (a) may perform the function or duty, or exercise the power, as if the function or duty were imposed, or the power were conferred, on that regional authority under this Act; and

- (b) may, unless the agreement in respect of the transfer provides otherwise, cancel, at any time, the transfer in accordance with that agreement.
- (2) A regional authority from whom a function, duty, or power is transferred may, at any time, change or revoke the transfer by written notice to the other regional authority concerned.

Subpart 5—Responsibilities of building consent accreditation body

Appointment of building consent accreditation body

248 Chief executive may appoint building consent accreditation body

- (1) The chief executive may—
 - (a) appoint a person as a building consent accreditation body; and
 - (b) revoke the appointment at any time.
- (2) A reference in this subpart to a building consent accreditation body is a reference to—
 - (a) the person appointed under subsection (1); or
 - (b) if no person is appointed, the chief executive.

Requirements for building consent accreditation body

249 Requirements for building consent accreditation body

- The chief executive must, by notice in the *Gazette*, specify—
- (a) the minimum frequency of audits that the building consent accreditation body must conduct on accredited building consent authorities (which must be at least once every 3 years); and
 - (b) any other matters the chief executive considers necessary or appropriate.

Section 249(a): amended, on 14 April 2005, by section 16(2)(n) of the Building Amendment Act 2005 (2005 No 31).

Audit fees

Heading: inserted, on 15 March 2008, by section 42 of the Building Amendment Act 2008 (2008 No 4).

249A Fees for audits

A building consent accreditation body may charge an accredited building consent authority the prescribed fee (if any) for an audit conducted under section 249(a) by the building consent accreditation body on the building consent authority.

Section 249A: inserted, on 15 March 2008, by section 42 of the Building Amendment Act 2008 (2008 No 4).

*Accreditation of building consent authorities or
regional authorities*

250 Accreditation

The building consent accreditation body may, on the application of a person made in accordance with section 253, and on payment by the person of the prescribed fee (if any), accredit that person to perform the functions of a building consent authority under this Part and Part 2.

Compare: 1991 No 150 s 51

Section 250: amended, on 15 March 2008, by section 43 of the Building Amendment Act 2008 (2008 No 4).

Section 250: amended, on 14 April 2005, by section 16(2)(o) of the Building Amendment Act 2005 (2005 No 31).

251 Criteria for accreditation

Before granting accreditation, the building consent accreditation body must be satisfied that the applicant meets the prescribed criteria and standards for accreditation.

252 Scope of accreditation of building consent authority that is not territorial authority

- (1) This section applies to a building consent authority that is not a territorial authority or a regional authority.
- (2) The building consent accreditation body must, before granting accreditation to a building consent authority to whom this section applies, determine the scope of accreditation having regard to the prescribed criteria and standards for accreditation.
- (3) The scope of accreditation relates to 1 or more types of building in relation to which the building consent authority concerned is authorised to perform functions under this Part and Part 2.

- (4) An accredited building consent authority may, at any time, request the building consent accreditation body to change the scope of its accreditation.

Section 252(1): amended, on 14 April 2005, by section 3(5) of the Building Amendment Act 2005 (2005 No 31).

253 Application for accreditation

An application for accreditation under section 250 must—

- (a) be made in writing; and
- (b) be given in the prescribed manner (if any); and
- (c) contain the prescribed information (if any).
- (d) *[Repealed]*

Section 253(c): amended, on 15 March 2008, by section 44(1) of the Building Amendment Act 2008 (2008 No 4).

Section 253(d): repealed, on 15 March 2008, by section 44(2) of the Building Amendment Act 2008 (2008 No 4).

254 Revocation of accreditation

- (1) An accreditation under section 250 may be revoked, or the scope of accreditation may be amended, by—
 - (a) the building consent accreditation body; or
 - (b) the chief executive.
- (2) An accreditation may be revoked only if the building consent accreditation body or the chief executive—
 - (a) is satisfied that the building consent authority no longer meets the prescribed criteria and standards for accreditation; and
 - (b) has first given the building consent authority concerned a reasonable opportunity to be heard.
- (3) Despite subsection (2)(a), the building consent accreditation body or the chief executive must not revoke the accreditation of a building consent authority if—
 - (a) the prescribed criteria and standards for accreditation are amended; and
 - (b) the building consent authority no longer meets those criteria and standards solely as a result of the amendments.
- (4) The limit in subsection (3) applies only during the period of 3 months after the date on which the amendments come into force.

Section 254(2)(a): amended, on 14 April 2005, by section 16(2)(p) of the Building Amendment Act 2005 (2005 No 31).

Section 254(2)(b): amended, on 14 April 2005, by section 16(2)(p) of the Building Amendment Act 2005 (2005 No 31).

Section 254(2)(b): amended, on 14 April 2005, by section 16(2)(q) of the Building Amendment Act 2005 (2005 No 31).

Section 254(3): amended, on 14 April 2005, by section 16(2)(o) of the Building Amendment Act 2005 (2005 No 31).

Section 254(3)(b): amended, on 14 April 2005, by section 16(2)(q) of the Building Amendment Act 2005 (2005 No 31).

255 Building consent accreditation body must notify chief executive of grant and revocation of accreditation

- (1) The building consent accreditation body must notify the chief executive when it grants or revokes an accreditation of a building consent authority.
- (2) The notification must be given—
 - (a) in the manner notified by the chief executive to the building consent accreditation body from time to time; and
 - (b) within 7 days after the grant or revocation to which it relates.

Section 255(1): amended, on 14 April 2005, by section 16(2)(o) of the Building Amendment Act 2005 (2005 No 31).

Subpart 6—Responsibilities of dam owner accreditation body

Appointment of dam owner accreditation body

256 Chief executive may appoint dam owner accreditation body

- (1) The chief executive may—
 - (a) appoint a person as a dam owner accreditation body; and
 - (b) revoke the appointment at any time.
- (2) A reference in this subpart to a dam owner accreditation body is a reference to—
 - (a) a person appointed under subsection (1); or
 - (b) if no person is appointed, the chief executive.

Requirements for dam owner accreditation body

257 Requirements for dam owner accreditation body

The chief executive must, by notice in the *Gazette*, specify—

- (a) the minimum frequency of audits that the dam owner accreditation body must conduct on accredited dam owners; and
- (b) any other matters that the chief executive considers necessary or appropriate.

Audit fees

Heading: inserted, on 15 March 2008, by section 45 of the Building Amendment Act 2008 (2008 No 4).

257A Fees for audits

A dam owner accreditation body may charge an accredited dam owner the prescribed fee (if any) for an audit conducted under section 257(a) by the dam owner accreditation body on the accredited dam owner.

Section 257A: inserted, on 15 March 2008, by section 45 of the Building Amendment Act 2008 (2008 No 4).

Accreditation of dam owners

258 Accreditation

- (1) The dam owner accreditation body may, on the application of an owner of a dam made in accordance with subsection (3), and on payment by the person of the prescribed fee (if any), accredit that person under this subpart.
- (2) Before granting accreditation, the dam owner accreditation body must be satisfied that the applicant meets the prescribed criteria and standards.
- (3) An application for accreditation under subsection (1) must—
 - (a) be made in writing; and
 - (b) be given in the prescribed manner (if any); and
 - (c) contain the prescribed information (if any).
 - (d) *[Repealed]*

Section 258(1): amended, on 15 March 2008, by section 46(1) of the Building Amendment Act 2008 (2008 No 4).

Section 258(3)(c): amended, on 15 March 2008, by section 46(2) of the Building Amendment Act 2008 (2008 No 4).

Section 258(3)(d): repealed, on 15 March 2008, by section 46(3) of the Building Amendment Act 2008 (2008 No 4).

259 Revocation of accreditation

- (1) An accreditation under section 258(1) may be revoked by—
 - (a) the dam owner accreditation body; or
 - (b) the chief executive.
- (2) An accreditation may be revoked only if the dam owner accreditation body or the chief executive—
 - (a) is satisfied that the accredited dam owner no longer meets the prescribed criteria and standards; and
 - (b) has first given the accredited dam owner concerned a reasonable opportunity to be heard.
- (3) Despite subsection (2)(a), the dam owner accreditation body or the chief executive must not revoke the accreditation of a dam owner if—
 - (a) the prescribed criteria and standards for accreditation are amended; and
 - (b) the accredited dam owner no longer meets those criteria and standards solely as a result of the amendments.
- (4) The limit in subsection (3) applies only during the period of 3 months after the date on which the amendments come into force.

260 Dam owner accreditation body must notify chief executive of grant and revocation of accreditation

- (1) The dam owner accreditation body must notify the chief executive when it grants or revokes an accreditation of a dam owner.
- (2) The notification must be given—
 - (a) in the manner notified by the chief executive to the dam owner accreditation body from time to time; and
 - (b) within 7 days after the grant or revocation to which it relates.
- (3) The chief executive must, on receiving notification under subsection (1),—
 - (a) in the case of a notice that accreditation has been granted, enter the name of the dam owner on the register kept under section 273(1)(c); or

- (b) in the case of a notice that accreditation has been revoked, remove the name of the dam owner from that register.

Subpart 7—Responsibilities of product certification accreditation body

Appointment of product certification accreditation body

261 Chief executive may appoint product certification accreditation body

- (1) The chief executive may—
 - (a) appoint a person as a product certification accreditation body; and
 - (b) revoke the appointment at any time.
- (2) A reference in this subpart to a product certification accreditation body is a reference to—
 - (a) the person appointed under subsection (1); or
 - (b) if no person is appointed, the chief executive.

Requirements for product certification accreditation body

262 Requirements for product certification accreditation body

- (1) The chief executive must, by notice in the *Gazette*, specify—
 - (a) the minimum frequency of audits that the product certification accreditation body must conduct on accredited product certification bodies; and
 - (b) any other matters that the chief executive considers necessary or appropriate.
- (2) The chief executive may, by notice in the *Gazette*, specify certifications of building methods or products provided by persons outside New Zealand that are to be treated as product certifications for the purposes of this subpart.
- (3) Subsection (2) applies only if the chief executive is satisfied that the building methods and products concerned meet the prescribed criteria and standards for certification.

Audit fees

Heading: inserted, on 15 March 2008, by section 47 of the Building Amendment Act 2008 (2008 No 4).

262A Fees for audits

A product certification accreditation body may charge an accredited product certification body the prescribed fee (if any) for an audit conducted under section 262(1)(a) by the product certification accreditation body on the accredited product certification body.

Section 262A: inserted, on 15 March 2008, by section 47 of the Building Amendment Act 2008 (2008 No 4).

*Accreditation of product certification bodies***263 Accreditation**

The product certification accreditation body may, on the application of a person or body made in accordance with section 265, and on payment by the person or body of the prescribed fee (if any), accredit that person or body to perform the functions of a product certification body under this subpart.

Section 263: amended, on 15 March 2008, by section 48 of the Building Amendment Act 2008 (2008 No 4).

264 Criteria for accreditation

Before granting accreditation, the product certification accreditation body must be satisfied that the applicant—

- (a) has the necessary ability to perform all or any of the functions specified in this subpart competently, impartially, consistently, transparently, and in an accountable manner, having regard to—
 - (i) the technical competence of the applicant to perform the functions for which the applicant wishes to be accredited; and
 - (ii) the applicant's systems, and in particular whether those systems will allow the applicant to perform the functions for which the applicant wishes to be accredited; and
- (b) complies with the prescribed criteria and standards for accreditation.

265 Application for accreditation

An application for accreditation under section 263 must—

- (a) be made in writing; and
- (b) be given in the prescribed manner (if any); and
- (c) contain the prescribed information (if any).
- (d) *[Repealed]*

Section 265(c): amended, on 15 March 2008, by section 49(1) of the Building Amendment Act 2008 (2008 No 4).

Section 265(d): repealed, on 15 March 2008, by section 49(2) of the Building Amendment Act 2008 (2008 No 4).

266 Suspension or revocation of accreditation

- (1) A product certification accreditation body or the chief executive may, at any time, suspend or revoke the accreditation under section 263 of a product certification body, if the product certification accreditation body or chief executive—
 - (a) is satisfied that the product certification body no longer meets the prescribed criteria and standards for accreditation; and
 - (b) has first given the product certification body concerned a reasonable opportunity to be heard.
- (2) A product certification accreditation body that, or chief executive who, suspends the accreditation of a product certification body must—
 - (a) give the product certification body a reasonable period to meet the criteria and standards prescribed for accreditation; and
 - (b) lift the suspension if it or he or she is satisfied that the product certification body meets those standards and criteria within that period.
- (3) A product certification accreditation body or the chief executive may revoke the accreditation of a product certification body at the expiry of the period given in subsection (2), if the product certification body has not met the criteria and standards prescribed for accreditation within that period.
- (4) Despite subsections (1) and (3), the product certification accreditation body or the chief executive must not suspend or revoke the accreditation of a product certification body if—

- (a) the prescribed criteria and standards for accreditation are amended; and
 - (b) the product certification body no longer meets those criteria and standards solely as a result of the amendments.
- (5) The limit in subsection (4) applies only during the period of 3 months after the date on which the amendments come into force.

Section 266: substituted, on 15 March 2008, by section 50 of the Building Amendment Act 2008 (2008 No 4).

267 Product certification accreditation body must notify chief executive of grant, suspension, lifting of suspension, or revocation of accreditation

- (1) A product certification accreditation body must notify the chief executive when it grants, suspends, lifts the suspension of, or revokes an accreditation of a product certification body.
- (2) The notification must be given—
- (a) in the manner notified by the chief executive to the product certification accreditation body from time to time; and
 - (b) within 7 days after the grant, suspension, lifting of suspension, or revocation to which it relates.

Section 267 heading: amended, on 15 March 2008, by section 51(1) of the Building Amendment Act 2008 (2008 No 4).

Section 267(1): amended, on 15 March 2008, by section 51(2) of the Building Amendment Act 2008 (2008 No 4).

Section 267(2)(b): amended, on 15 March 2008, by section 51(3) of the Building Amendment Act 2008 (2008 No 4).

Certification of building methods or products

268 Application for product certificate

- (1) A proprietor of a building method or product may apply to a product certification body for certification of that building method or product.
- (2) The application must contain the information that is specified from time to time by the product certification body.

Compare: 1991 No 150 s 58(1)

269 Issue of product certificate

- (1) A product certification body must issue a product certificate if it is satisfied that a building method or product that is the subject of an application under section 268 meets the prescribed criteria and standards for certification.
- (2) A product certificate must state whether there are any matters that should be taken into account in the use or application of the building method or product, and if so, what those matters are.

270 Annual review of product certificate

- (1) A product certification body must, on an annual basis, review a product certificate by conducting an audit of the building method or product to which the certificate relates.
- (2) The audit must assess whether the building method or product continues to meet the prescribed criteria and standards for certification.
- (3) The proprietor of the building method or product must provide the product certification body with any information or matter that the product certification body requires for the purposes of the audit.
- (4) A person commits an offence if the person fails to provide any information or matter that the product certification body requires under subsection (3).
- (5) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

271 Suspension or revocation of product certificate

- (1) A product certification body that performed the certification of a building method or product, or the chief executive, may, at any time, suspend or revoke that product certificate if the product certification body or chief executive has first given the proprietor of the building method or product a reasonable opportunity to be heard, and the product certification body or chief executive is satisfied that—
 - (a) the certificate has been obtained by fraud, misrepresentation, or concealment of facts; or

- (b) the building method or product no longer meets the prescribed criteria and standards for certification (whether this becomes apparent as a result of an annual review of a product certificate under section 270 or otherwise); or
 - (c) any certification, or similar authorisation issued or granted in respect of that building method or product, has been revoked or cancelled for any reason; or
 - (d) the building code no longer applies to the building method or product because of an amendment to the code.
- (2) A product certification body that, or chief executive who, suspends a product certificate must—
- (a) give the proprietor of the building method or product a reasonable period to rectify the matter that led to the suspension of the product certificate; and
 - (b) lift the suspension if it or he or she is satisfied that the proprietor of the building method or product has rectified the matter within that period.
- (3) A product certification body or the chief executive may revoke the product certificate at the expiry of the period given in subsection (2) if, within that period, the proprietor of the building method or product has not rectified the matter that led to the suspension of the product certificate.
- (4) Despite subsections (1) and (3), the product certification body or the chief executive must not suspend or revoke a product certificate if—
- (a) the prescribed criteria and standards for certification are amended; and
 - (b) the building method or product to which the certificate relates no longer meets those criteria and standards solely as a result of the amendments.
- (5) The limit in subsection (4) applies only during the period of 3 months after the date on which the amendments come into force.

Section 271: substituted, on 15 March 2008, by section 52 of the Building Amendment Act 2008 (2008 No 4).

Section 271(2)(b): amended, on 7 July 2010, by section 9 of the Building Amendment Act 2010 (2010 No 50).

272 Product certification body must notify chief executive of issue, suspension, lifting of suspension, and revocation of certificate

- (1) A product certification body must notify the chief executive when it issues, suspends, lifts the suspension of, or revokes a certificate under this subpart.
- (2) The notification must be given—
 - (a) in the manner notified from time to time by the chief executive to the product certification body; and
 - (b) within 7 days after the issue, suspension, lifting of suspension, or revocation to which it relates.

Section 272 heading: amended, on 15 March 2008, by section 53(1) of the Building Amendment Act 2008 (2008 No 4).

Section 272(1): amended, on 15 March 2008, by section 53(2) of the Building Amendment Act 2008 (2008 No 4).

Section 272(2)(b): amended, on 15 March 2008, by section 53(3) of the Building Amendment Act 2008 (2008 No 4).

Subpart 8—Miscellaneous responsibilities

Chief executive must keep registers

273 Chief executive must keep registers

- (1) The chief executive must establish and maintain the following registers:
 - (aaa) a register of national multiple-use approvals:
 - (a) a register of building consent authorities for the purposes of section 191:
 - (b) *[Repealed]*
 - (c) a register of accredited dam owners notified to the chief executive under section 260:
 - (d) a register of accredited product certification bodies notified to the chief executive under section 267:
 - (e) a register of certified building methods or products notified to the chief executive under section 272.
- (2) The chief executive must—
 - (a) make each register available for public inspection, without fee, at reasonable hours at the head office of the Ministry; and

- (b) supply to any person, on request and on payment of a reasonable charge, a copy of each register or part of each register.
- (3) Each register may be kept—
 - (a) as an electronic register (for example, on the Ministry’s website); or
 - (b) in any other manner that the chief executive thinks fit.
- (4) Each register must be operated at all reasonable times unless—
 - (a) the chief executive suspends the operation of the register, in whole or in part, in accordance with subsection (5); or
 - (b) otherwise provided in regulations made under section 402.
- (5) The chief executive may refuse access to a register or otherwise suspend the operation of the register, in whole or in part, if the chief executive considers that it is not practical to provide access to the register.

Compare: 1991 No 150 s 53(1)

Section 273(1)(aaa): inserted, on 1 February 2010, by section 27 of the Building Amendment Act 2009 (2009 No 25).

Section 273(1)(b): repealed, on 14 April 2005, by section 20(1) of the Building Amendment Act 2005 (2005 No 31).

274 Purpose of registers

The purpose of each register is—

- (a) to enable members of the public to know,—
 - (iaa) in the case of the register of national multiple-use approvals, the names and contact details of the persons who have been issued with national multiple-use approvals, together with a description of each approval and any conditions that have been imposed; and
 - (i) in the case of the register of building consent authorities, the names and contact details of those building consent authorities and, if applicable, the scope of their accreditation; and

- (ii) *[Repealed]*
 - (iii) in the case of the register of accredited dam owners, the names and contact details of those dam owners; and
 - (iv) in the case of the register of accredited product certification bodies, the names and contact details of those product certification bodies; and
 - (v) in the case of the register of certified building methods or products, which building methods or products are certified; and
- (b) to facilitate the compliance, audit, and other supporting and administrative functions of the chief executive under this Act.

Section 274(a)(iaa): inserted, on 1 February 2010, by section 28 of the Building Amendment Act 2009 (2009 No 25).

Section 274(a)(ii): repealed, on 14 April 2005, by section 20(2) of the Building Amendment Act 2005 (2005 No 31).

275 Content of register of building consent authorities

The register of building consent authorities referred to in section 273(1)(a) must, in addition to the names of the building consent authorities, contain the following information:

- (a) details of any limits imposed by the chief executive, under section 203(2)(c), on the functions that those authorities may perform;
- (b) any prescribed information;
- (c) in the case of building consent authorities that are not territorial authorities, the scope of accreditation of each of those authorities.

Compare: 1991 No 150 s 53(2)

Chief executive may review territorial authorities

276 Review of territorial authorities

- (1) The chief executive may, on his or her own initiative or at the request of the Minister, conduct a review of either or both of the following matters:
- (a) whether a territorial authority is properly performing its functions and duties under this Act:

- (b) whether a territorial authority is properly exercising its powers under this Act.
- (2) The chief executive must—
 - (a) give the territorial authority a reasonable opportunity to make written submissions on the review; and
 - (b) consider those submissions (if any).
- (3) The chief executive must, after completing the review,—
 - (a) report to the Minister if he or she believes that either or both of the following applies:
 - (i) the territorial authority is not properly performing its functions or duties under this Act;
 - (ii) the territorial authority is not properly exercising its powers under this Act; and
 - (b) if paragraph (a) applies, state in the report the facts on which that belief is based.

Compare: 1991 No 150 s 15

*Power of Minister to appoint person to perform
functions and duties, or exercise powers, of
territorial authority*

277 Non-performance by territorial authority

- (1) This section applies if the Minister considers, in accordance with section 278, that a territorial authority is not properly performing its functions or duties, or exercising its powers, under this Act.
- (2) The Minister may, in consultation with the Minister of Local Government, appoint 1 or more persons to act in place of the territorial authority by—
 - (a) performing all or any of the territorial authority's functions or duties under this Act;
 - (b) exercising all or any of the territorial authority's powers under this Act.

Compare: 1991 No 150 s 29(1)

278 Criteria for appointment or renewal of appointment

- (1) In determining whether an appointment under section 277 should be made, the Minister must consider whether the territorial authority is capable of performing its functions or

duties, or exercising its powers, under this Act to the extent that the Minister considers necessary to achieve the purposes of this Act.

- (2) If the Minister makes an appointment under that section, he or she must, in determining whether the appointment should be renewed,—
- (a) consider the matter specified in subsection (1); and
 - (b) revoke the appointment and direct the territorial authority to resume the performance of its functions or duties, or the exercise of its powers, under this Act if he or she considers that the territorial authority is capable of doing so.
- (3) If subsection (2)(b) applies, the Minister must give the person appointed under section 277 notice of the revocation of that person's appointment.

Compare: 1991 No 150 s 29(7)

279 Effect of appointment

If a person is appointed under section 277,—

- (a) that person has all the functions, duties, and powers of a territorial authority as if they had been imposed or conferred on that person directly by this Act and not by the appointment; and
- (b) this Act applies accordingly.

Compare: 1991 No 150 s 29(3)

280 Costs may be recovered from territorial authority

- (1) This section applies to all costs, charges, and expenses incurred by—
- (a) the Minister for the purposes of section 277; or
 - (b) a person appointed under that section in performing any functions or duties, or exercising any powers, of a territorial authority.
- (2) The costs, charges, and expenses to which this section applies—
- (a) may be recovered from the territorial authority concerned as a debt due to the Minister; or

- (b) may be deducted from any money payable to that territorial authority by the Minister.

Compare: 1991 No 150 s 29(4)

281 Requirements for appointment

- (1) The Minister—
 - (a) may make an appointment under section 277 only if he or she has given the territorial authority not less than 15 working days' written notice of his or her intention to do so; and
 - (b) must specify the period for which the appointment is made.
- (2) The appointment may—
 - (a) be on any terms and conditions that the Minister thinks fit; and
 - (b) be renewed in accordance with section 278.
- (3) A person appointed under section 277 may resign from his or her appointment by giving not less than 20 working days' written notice of his or her intention to resign to the Minister.

Compare: 1991 No 150 s 29(2), (5), (6)

Part 4

Regulation of building practitioners

Subpart 1—Preliminary

Definitions

282 Definitions for this Part

In this Part, unless the context otherwise requires,—

appeal authority—

- (a) in relation to an appeal against a decision of the Registrar under section 330(1), means the Board; and
- (b) in relation to an appeal against a decision of the Board under section 330(2), means the District Court

applicable minimum standards for licensing means the minimum standards for licensing that—

- (a) apply to the licensing class in question; and
- (b) are contained in the rules

Board means the Building Practitioners Board established by section 341

building inspection work means any of the following:

- (a) the assessment and approval of building design documents:
- (b) the undertaking of inspections of building work:
- (c) the issuing of building consents:
- (d) determining compliance with a building consent:
- (e) inspection, maintenance, or reporting procedures stated in a compliance schedule

decision includes—

- (a) any action taken under section 318; and
- (b) an order

decision-maker, in relation to an appeal, means the person or body that made the decision or took the action appealed against

disciplinary matter means an inquiry into, or complaint about, the conduct of a licensed building practitioner or a decision on that inquiry or complaint

LBP standards has the meaning set out in section 353

register means the register of building practitioners established and maintained under section 298

Registrar means the officer appointed under section 310.

Section 282 **applicable minimum standards for licensing** paragraph (a): amended, on 15 March 2008, by section 54(1) of the Building Amendment Act 2008 (2008 No 4).

Section 282 **building inspection work** paragraph (e): substituted, on 15 March 2008, by section 54(2) of the Building Amendment Act 2008 (2008 No 4).

Purposes of licensing

Heading: inserted, on 15 March 2008, by section 55 of the Building Amendment Act 2008 (2008 No 4).

282A Purposes of licensing building practitioners

The purposes of licensing building practitioners under this Act are—

- (a) to assess and record building practitioners as having certain skills and knowledge relevant to building work; and

- (b) to license building practitioners so that, in regard to restricted building work, licensed building practitioners can carry it out or supervise it.

Section 282A: inserted, on 15 March 2008, by section 55 of the Building Amendment Act 2008 (2008 No 4).

*General procedure of Board and Registrar
under this Part*

283 Specified procedure for making decisions

In the performance and exercise of their decision-making functions and powers under this Part, the Board and the Registrar must—

- (a) give written notice of, and reasons for, their decision to any person to whom the decision relates; and
(b) comply with the principles of natural justice; and
(c) comply with any applicable procedures under the rules; and
(d) comply with the regulations.

Compare: 2002 No 17 s 25

284 Other procedure for making decisions

Except as otherwise provided in this Act, the Board and the Registrar may regulate their own procedure for making decisions under this Part.

Compare: 2002 No 17 s 26

**Subpart 2—Licensing and disciplining of
building practitioners**

Licensing classes

Heading: substituted, on 15 March 2008, by section 56 of the Building Amendment Act 2008 (2008 No 4).

285 Licensing classes may be designated by regulations

The Governor-General may, by Order in Council made on the recommendation of the Minister, designate a licensing class or classes for carrying out or supervising particular types of—

- (a) building work;
(b) building inspection work.

Section 285: substituted, on 15 March 2008, by section 56 of the Building Amendment Act 2008 (2008 No 4).

How to become licensed

286 Entitlement to be licensed

An individual is entitled to be licensed as a building practitioner if the individual satisfies the Registrar—

- (a) that he or she meets the applicable minimum standards for licensing; and
- (b) that he or she is not precluded from being licensed because of any action taken by the Board under section 318; and
- (c) that his or her registration, licence, or other recognition under another enactment in respect of any substantially equivalent occupation has not been suspended or cancelled in respect of a disciplinary matter at any time within the last 5 years; and
- (d) that he or she has paid the prescribed fee.

Section 286 heading: amended, on 15 March 2008, by section 57(1) of the Building Amendment Act 2008 (2008 No 4).

Section 286(b): amended, on 15 March 2008, by section 57(2) of the Building Amendment Act 2008 (2008 No 4).

287 Applications to become licensed

An application to become licensed under this subpart must be made to the Registrar in accordance with the rules.

Section 287 heading: amended, on 15 March 2008, by section 58(1) of the Building Amendment Act 2008 (2008 No 4).

Section 287: amended, on 15 March 2008, by section 58(2) of the Building Amendment Act 2008 (2008 No 4).

288 Registrar to license applicant or decline application

(1) If the Registrar is satisfied that the applicant is entitled, under section 286, to be licensed as a building practitioner, the Registrar must—

- (a) license the applicant; and
- (b) send to the applicant evidence that he or she has been licensed, in a form specified in the rules; and
- (c) enter that person's name in the register; and

- (d) issue a unique identifier (for example, a registration number) to the applicant, and notify the applicant what that identifier is.
- (2) If the Registrar is not satisfied that the applicant is entitled to be licensed as a building practitioner, the Registrar must notify the applicant of—
 - (a) the Registrar's decision; and
 - (b) the applicant's right of appeal against the decision.
- (3) Subsection (2) does not limit section 283.

Section 288(1)(a): substituted, on 15 March 2008, by section 59(1) of the Building Amendment Act 2008 (2008 No 4).

Section 288(1)(b): amended, on 15 March 2008, by section 59(2) of the Building Amendment Act 2008 (2008 No 4).

Provisions relating to licences

289 Duty to produce evidence of being licensed

A licensed building practitioner must, if asked by any person, produce for inspection by the person either—

- (a) the evidence of being licensed sent to the licensed building practitioner under section 288(1)(b); or
- (b) a copy of that evidence.

Section 289 heading: amended, on 15 March 2008, by section 60(1) of the Building Amendment Act 2008 (2008 No 4).

Section 289(a): amended, on 15 March 2008, by section 60(2) of the Building Amendment Act 2008 (2008 No 4).

290 Term of being licensed

Licensing continues in force until it is cancelled or suspended under this subpart.

Section 290: substituted, on 15 March 2008, by section 61 of the Building Amendment Act 2008 (2008 No 4).

Automatic licensing of certain professions

291 Automatic licensing of people registered under other enactments

- (1) This section applies to a person who is registered, licensed, or otherwise recognised under any other enactment (for example, a registered architect), but does not apply at any time when

that registration, licence, or other recognition is suspended or cancelled.

- (2) An order made under section 285 may treat the person as if they were licensed in a class or classes specified in the order.
- (3) A person who is treated as being licensed in a particular class or classes under subsection (2) may not apply under this Act to be licensed in another class that is substantially equivalent to the class of licensing in which he or she is treated as being licensed.
- (4) The licensing provisions of this subpart do not apply to a person who is treated under this section and the rules as if he or she were licensed (for example, he or she need not apply to become licensed or pay any fees under this subpart).

Section 291(2): amended, on 15 March 2008, by section 62(1) of the Building Amendment Act 2008 (2008 No 4).

Section 291(3): substituted, on 15 March 2008, by section 62(2) of the Building Amendment Act 2008 (2008 No 4).

Section 291(4): substituted, on 15 March 2008, by section 62(2) of the Building Amendment Act 2008 (2008 No 4).

Continuation of licensing

292 Licensed building practitioner must meet applicable minimum standards for licensing to continue

- (1) The Registrar must assess at the frequency required by the rules, and may assess at any other time, whether a licensed building practitioner continues to meet the applicable minimum standards for licensing.
- (2) That assessment must be made in the manner required by the rules.
- (3) A licensed building practitioner who continues to meet those standards is entitled to the continuation of his or her licensing, subject to section 303.

Section 292 heading: amended, on 15 March 2008, by section 63(1) of the Building Amendment Act 2008 (2008 No 4).

Section 292(3): amended, on 15 March 2008, by section 63(2) of the Building Amendment Act 2008 (2008 No 4).

293 Consequences of failure to meet applicable minimum standards for licensing

- (1) If, after making an assessment under section 292, the Registrar determines that the licensed building practitioner no longer meets the applicable minimum standards for licensing, the Registrar must—
- (a) suspend the person's licensing until the person satisfies the Registrar that he or she meets those standards; and
 - (b) record the suspension in the register.
- (2) If the person does not so satisfy the Registrar within 12 months after the suspension, or any further period that the Registrar may determine, the Registrar must—
- (a) cancel the person's licensing; and
 - (b) remove the person's name from the register.

Section 293(1)(a): amended, on 15 March 2008, by section 64 of the Building Amendment Act 2008 (2008 No 4).

Section 293(2)(a): amended, on 15 March 2008, by section 64 of the Building Amendment Act 2008 (2008 No 4).

Licensing cancellation and suspension

Heading: substituted, on 15 March 2008, by section 65 of the Building Amendment Act 2008 (2008 No 4).

294 Cancellation of licensing

The Registrar must cancel a person's licensing and remove the person's name from the register—

- (a) if the person, by written notice, requests the Registrar to cancel his or her licensing; or
- (b) in accordance with section 293(2) (consequences of failure to meet applicable minimum standards for licensing); or
- (c) in accordance with section 318 (disciplinary penalties); or
- (d) in accordance with section 319 (non-payment of fines or costs).

Section 294 heading: amended, on 15 March 2008, by section 66(1) of the Building Amendment Act 2008 (2008 No 4).

Section 294: amended, on 15 March 2008, by section 66(2) of the Building Amendment Act 2008 (2008 No 4).

Section 294(a): amended, on 15 March 2008, by section 66(2) of the Building Amendment Act 2008 (2008 No 4).

295 Mandatory licensing suspension

- (1) The Registrar must suspend a person's licensing and record the suspension in the register in accordance with section 293(1) (consequences of failure to meet applicable minimum standards for licensing).
- (2) The Registrar must, in the case of a person who is the subject of disciplinary proceedings under this subpart,—
 - (a) suspend the person's licensing until an order is made under section 318 or until those disciplinary proceedings are otherwise finished if, in the opinion of the Registrar, suspension of the person's licensing is necessary for the purpose of protecting the public; and
 - (b) record that suspension in the register.
- (3) The Board must suspend a person's licensing and direct the Registrar to record the suspension in the register in accordance with—
 - (a) section 318 (disciplinary penalties); or
 - (b) section 319 (non-payment of fines or costs).

Section 295 heading: substituted, on 15 March 2008, by section 67(1) of the Building Amendment Act 2008 (2008 No 4).

Section 295(1): amended, on 15 March 2008, by section 67(2) of the Building Amendment Act 2008 (2008 No 4).

Section 295(2)(a): amended, on 15 March 2008, by section 67(2) of the Building Amendment Act 2008 (2008 No 4).

Section 295(3): amended, on 15 March 2008, by section 67(2) of the Building Amendment Act 2008 (2008 No 4).

296 Voluntary licensing suspension

- (1) A licensed building practitioner may, by written notice, request the Registrar to suspend his or her licensing for a period specified in the notice.
- (2) The Registrar must then suspend that person's licensing, and record the suspension in the register, for that specified period (subject to the rules).
- (3) A person whose licensing is suspended under this section may, by written notice to the Registrar, request the Registrar to revive the person's licensing.

- (4) The Registrar must then revive that person's licensing (unless there is some other ground to suspend or cancel that person's licensing under this subpart).

Section 296 heading: substituted, on 15 March 2008, by section 68(1) of the Building Amendment Act 2008 (2008 No 4).

Section 296(1): amended, on 15 March 2008, by section 68(2) of the Building Amendment Act 2008 (2008 No 4).

Section 296(2): amended, on 15 March 2008, by section 68(2) of the Building Amendment Act 2008 (2008 No 4).

Section 296(3): amended, on 15 March 2008, by section 68(2) of the Building Amendment Act 2008 (2008 No 4).

Section 296(4): amended, on 15 March 2008, by section 68(2) of the Building Amendment Act 2008 (2008 No 4).

297 Effect of licensing suspension

- (1) A person is not a licensed building practitioner, for the purposes of this Act, for the period for which his or her licensing is suspended.
- (2) At the end of the period of suspension, the person's licensing is immediately revived (unless there is some other ground to suspend or cancel that person's licensing under this subpart).

Section 297 heading: substituted, on 15 March 2008, by section 69(1) of the Building Amendment Act 2008 (2008 No 4).

Section 297(1): amended, on 15 March 2008, by section 69(2) of the Building Amendment Act 2008 (2008 No 4).

Section 297(2): amended, on 15 March 2008, by section 69(2) of the Building Amendment Act 2008 (2008 No 4).

Register of licensed building practitioners

298 Register of licensed building practitioners

- (1) The Registrar must establish and maintain, in accordance with this Act and the regulations, a register of licensed building practitioners.
- (2) The Registrar must enter in the register—
- (a) the name of every licensed building practitioner; and
 - (b) the information about that person that is specified in section 301 to the extent that the information is relevant to that person.

- (3) The Registrar must make any other entries in the register that may be required, permitted, or directed to be entered by or under this subpart or the regulations.

Section 298(1): amended, on 15 March 2008, by section 70 of the Building Amendment Act 2008 (2008 No 4).

299 Purpose of register

The purpose of the register is—

- (a) to enable members of the public to—
- (i) determine whether a person is a licensed building practitioner and, if so, the status and relevant history of the person's licensing; and
 - (ii) choose a suitable building practitioner from a list of licensed building practitioners; and
 - (iii) know how to contact the building practitioner; and
 - (iv) know which licensed building practitioners have been disciplined within the last 3 years; and
- (b) to facilitate the administrative, disciplinary, and other functions of the Board and the Registrar under this Act.

Section 299(a)(i): amended, on 15 March 2008, by section 71 of the Building Amendment Act 2008 (2008 No 4).

300 Form of register

- (1) The register may be kept—
- (a) as an electronic register; or
 - (b) in any other manner that the Registrar thinks fit.
- (2) The register must be operated at all times unless—
- (a) the Registrar suspends the operation of the register, in whole or in part, in accordance with subsection (3); or
 - (b) otherwise provided in the regulations.
- (3) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not necessary or practical or appropriate to provide access to the register.

Section 300(3): amended, on 15 March 2008, by section 72 of the Building Amendment Act 2008 (2008 No 4).

301 Matters to be contained in register

- (1) The register must contain all of the following information, to the extent that the information is relevant, for each licensed building practitioner whose name is entered in the register:
- (a) full name:
 - (b) any aliases:
 - (c) date of birth:
 - (d) address for communications under this Act:
 - (e) residential address:
 - (f) name of any company or body corporate that is associated with the licensed building practitioner (for example, that person's employer or the company of which that person is a director):
 - (g) email and website address:
 - (h) phone number:
 - (i) fax number:
 - (j) any unique identifier issued by the Registrar (for example, a registration number):
 - (k) any other prescribed information:
 - (l) information about the status and history of the person's licensing, particularly—
 - (i) the class in which the person is licensed; and
 - (ii) the date on which the person's name was entered in the register; and
 - (iii) any action taken under section 318 on a disciplinary matter in respect of the person in the last 3 years:
 - (m) any other information that the Registrar considers necessary or desirable for the purpose of the register.
- (2) The register must also show—
- (a) whether a person's licensing was suspended in the last 3 years; and
 - (b) if paragraph (a) applies,—
 - (i) the ground under this Act for the suspension (for example, whether for non-payment of a levy that was required from the licensed building practitioner, or on another ground); and
 - (ii) the period of suspension; and
 - (iii) any conditions for termination of the suspension.

Section 301(1)(l): amended, on 15 March 2008, by section 73(1) of the Building Amendment Act 2008 (2008 No 4).

Section 301(1)(l)(i): amended, on 15 March 2008, by section 73(2) of the Building Amendment Act 2008 (2008 No 4).

Section 301(2)(a): amended, on 15 March 2008, by section 73(3) of the Building Amendment Act 2008 (2008 No 4).

Updates of register

302 Obligation to notify Registrar of change in circumstances

- (1) Each person applying to become licensed, and each licensed building practitioner, must give written notice to the Registrar of any change in circumstances within 10 working days after the change.
- (2) **Change of circumstances—**
 - (a) means any change in the information that the person has provided to the Registrar under this subpart; and
 - (b) includes any change that may be prescribed (if any).

Section 302(1): amended, on 15 March 2008, by section 74 of the Building Amendment Act 2008 (2008 No 4).

303 Registrar must contact licensed building practitioners on annual basis

- (1) The Registrar must, on an annual basis, contact each licensed building practitioner, in a manner provided for in the rules, and—
 - (a) ask whether the licensed building practitioner wishes to continue to be licensed; and
 - (b) ask whether the information shown on the register in respect of that person is correct; and
 - (c) notify the requirement to pay a prescribed levy.
- (2) The licensed building practitioner must, within 20 working days of being contacted,—
 - (a) reply to both questions, and supply any information necessary to ensure that the information shown on the register is correct; and
 - (b) pay to the Registrar the prescribed levy.
- (3) If a licensed building practitioner does not comply with subsection (2), the Registrar must contact the licensed building practitioner, in a manner provided for in the rules, and advise

- the licensed building practitioner that his or her licensing will be suspended unless the person complies with subsection (2), and pays a late fee, within the period, provided for in the rules.
- (4) If the licensed building practitioner does not do so, the Registrar must—
- (a) suspend the person’s licensing until the person does so; and
 - (b) record the suspension in the register.
- (5) If the licensed building practitioner does not comply with subsection (2), and pay the late fee, within 12 months after the date on which the person is contacted under subsection (3), the Registrar must—
- (a) cancel the person’s licensing; and
 - (b) remove the person’s name from the register.

Section 303(3): amended, on 15 March 2008, by section 75(1) of the Building Amendment Act 2008 (2008 No 4).

Section 303(4)(a): amended, on 15 March 2008, by section 75(2) of the Building Amendment Act 2008 (2008 No 4).

Section 303(5)(a): amended, on 15 March 2008, by section 75(3) of the Building Amendment Act 2008 (2008 No 4).

304 Alterations to register

The Registrar may, at any time, make any amendments to the register that are necessary to—

- (a) reflect any changes in the name of a licensed building practitioner or the information specified in section 301; or
- (b) correct a mistake caused by any error or omission on the part of the Registrar or any person to whom the Registrar has delegated his or her functions, duties, or powers.

Searches of register

305 Search of register

A person may search the register in accordance with this Act or the regulations.

306 Search criteria

The register may be searched only by reference to criteria to be specified in the regulations.

307 Search purposes

A search of the register may be carried out only for a purpose referred to in section 299.

308 When search constitutes interference with privacy of individual

A search of the register for personal information that has not been carried out in accordance with sections 305 to 307 constitutes an action that is an interference with the privacy of an individual under section 66 of the Privacy Act 1993.

309 Search fees

- (1) The Registrar may charge a fee for searches of the register.
- (2) The fee may be prescribed by the regulations, or may be determined by the Registrar, and must be no greater than the cost of providing for the search of the register.

Registrar of Licensed Building Practitioners

310 Appointment of Registrar of Licensed Building Practitioners

The chief executive must appoint, under the State Sector Act 1988, a Registrar of Licensed Building Practitioners.

311 Functions of Registrar

The functions of the Registrar are—

- (a) to establish and maintain the register; and
- (b) to make decisions about whether persons meet the requirements for licensing or continued licensing, to issue, cancel, and suspend persons' licensing as part of the licensing system, and to perform the other functions relating to licensing under this subpart; and
- (c) to help the Board to receive and investigate complaints under sections 315 and 316; and

- (d) to provide other administrative support for the Board sufficient to enable the Board to perform its functions efficiently and effectively; and
- (e) to perform any other function conferred on the Registrar by this Act or any other enactment.

Section 311(b): amended, on 15 March 2008, by section 76 of the Building Amendment Act 2008 (2008 No 4).

Section 311(c): substituted, on 14 April 2005, by section 21 of the Building Amendment Act 2005 (2005 No 31).

Section 311(d): substituted, on 14 April 2005, by section 21 of the Building Amendment Act 2005 (2005 No 31).

Section 311(e): added, on 14 April 2005, by section 21 of the Building Amendment Act 2005 (2005 No 31).

312 Power of Registrar to delegate

- (1) The Registrar may delegate to any person (whether an employee of the State services or not), either generally or particularly, any of the Registrar's functions, duties, and powers except the power of delegation.
- (2) A delegation—
 - (a) must be in writing; and
 - (b) may be made subject to any restrictions and conditions that the Registrar thinks fit; and
 - (c) is revocable at any time, in writing; and
 - (d) does not prevent the performance or exercise of a function, duty, or power by the Registrar.
- (3) A person to whom any functions, duties, or powers are delegated may perform and exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- (4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

313 Certificate of Registrar to be conclusive evidence

- (1) A certificate signed by the Registrar, or any person authorised by the Registrar, in relation to the matters referred to in subsection (2) is for all purposes conclusive evidence, in the absence

of proof to the contrary, of those matters specified in the certificate.

- (2) The matters are—
 - (a) that any person was or was not a licensed building practitioner at any particular time or during any period specified in the certificate; or
 - (b) that any entry in the register is as stated in the certificate; or
 - (c) that the description of building work and building inspection work that a person is licensed to carry out or supervise is as stated in the certificate.
- (3) The certificate must be dated.

Section 313(2)(c): amended, on 15 March 2008, by section 77 of the Building Amendment Act 2008 (2008 No 4).

Offences relating to licensing

314 Offences relating to licensing

- (1) A person commits an offence if the person holds himself or herself out as a person who is licensed to carry out or supervise building work or building inspection work, or building work or building inspection work of a certain type, while not being so licensed.
- (2) A person who commits an offence under subsection (1) is liable to a fine not exceeding \$20,000.
- (3) A person commits an offence if the person—
 - (a) fails to produce evidence of being licensed as required by section 289; or
 - (b) fails to give written notice of a change in circumstances in accordance with section 302.
- (4) A person who commits an offence under subsection (3) is liable to a fine not exceeding \$5,000.

Section 314(3)(a): amended, on 15 March 2008, by section 78 of the Building Amendment Act 2008 (2008 No 4).

*Discipline***315 Complaints about licensed building practitioners**

- (1) Any person may complain to the Board about the conduct of a licensed building practitioner in accordance with the regulations.
- (2) A complaint or inquiry, and any decision on the complaint or inquiry, may relate to a person who is no longer a licensed building practitioner but who was a licensed building practitioner at the time of the relevant conduct.

Compare: 2002 No 17 s 20

316 Board must investigate complaints

- (1) The Board must, as soon as practicable after receiving a complaint, investigate the complaint and determine whether or not to proceed with it.
- (2) However, subsection (3) applies if the Board receives a complaint about a licensed building practitioner—
 - (a) who is a licensed building practitioner only because he or she is treated under section 291 and the rules as if he or she is licensed because he or she is registered, licensed, or otherwise recognised under any other enactment (for example, a registered architect); and
 - (b) who is, in the opinion of the Board, subject to a substantially similar or more stringent disciplinary regime by or under that other enactment.
- (3) The Board may not investigate or proceed with the complaint, but must refer it to the body that is responsible for dealing with complaints under that other enactment.

Section 316(2)(a): amended, on 15 March 2008, by section 79 of the Building Amendment Act 2008 (2008 No 4).

317 Grounds for discipline of licensed building practitioners

- (1) The Board may (in relation to a matter raised by a complaint or by its own inquiries) take any of the actions referred to in section 318 if it is satisfied that—
 - (a) both of the following matters apply:
 - (i) a licensed building practitioner has been convicted, whether before or after he or she is li-

- censed, by any court in New Zealand or elsewhere of any offence punishable by imprisonment for a term of 6 months or more; and
- (ii) the commission of the offence reflects adversely on the person's fitness to carry out or supervise building work or building inspection work; or
- (b) a licensed building practitioner has carried out or supervised building work or building inspection work in a negligent or incompetent manner; or
 - (c) a licensed building practitioner has carried out or supervised restricted building work or building inspection work of a type that he or she is not licensed to carry out or supervise; or
 - (d) a licensed building practitioner has carried out or supervised building work or building inspection work that does not comply with a building consent; or
 - (da) a licensed building practitioner has failed, without good reason, in respect of a building consent that relates to restricted building work that he or she is to carry out or supervise, or has carried out or supervised, (as the case may be),—
 - (i) to provide a memorandum, in accordance with section 45(2)(b), about any plans and specifications required to accompany the building consent application; or
 - (ii) to provide the persons specified in section 88(2) with a memorandum, on completion of the restricted building work, in accordance with section 88(1); or
 - (db) a licensed building practitioner has held himself or herself out as being licensed to carry out or supervise building work or building inspection work of a type that, at that time, he or she was not licensed to carry out or supervise; or
 - (e) a licensed building practitioner has, for the purpose of becoming licensed himself or herself, or for the purpose of any other person becoming licensed,—

- (i) either orally or in writing, made any declaration or representation, knowing it to be false or misleading in a material particular; or
 - (ii) produced to the Registrar or made use of any document, knowing it to contain a declaration or representation referred to in subparagraph (i); or
 - (iii) produced to the Registrar or made use of any document, knowing that it was not genuine.
- (2) The Board may take the action whether or not the person is still a licensed building practitioner.

Compare: 2002 No 17 s 21

Section 317(1)(c): substituted, on 15 March 2008, by section 80(1) of the Building Amendment Act 2008 (2008 No 4).

Section 317(1)(da): inserted, on 15 March 2008, by section 80(2) of the Building Amendment Act 2008 (2008 No 4).

Section 317(1)(db): inserted, on 15 March 2008, by section 80(2) of the Building Amendment Act 2008 (2008 No 4).

Section 317(1)(e): amended, on 15 March 2008, by section 80(3) of the Building Amendment Act 2008 (2008 No 4).

318 Disciplinary penalties

- (1) In any case to which section 317 applies, the Board may—
- (a) do both of the following things:
 - (i) cancel the person's licensing and direct the Registrar to remove the person's name from the register; and
 - (ii) order that the person may not apply to be relicensed before the expiry of a specified period:
 - (b) suspend the person's licensing for a period of no more than 12 months or until the person meets specified conditions relating to the licensing (but, in any case, not for a period of more than 12 months) and direct the Registrar to record the suspension in the register:
 - (c) restrict the type of building work or building inspection work that the person may carry out or supervise under the person's licensing class or classes and direct the Registrar to record the restriction in the register:
 - (d) order that the person be censured:
 - (e) order that the person undertake training specified in the order:

- (f) order that the person pay a fine not exceeding \$10,000.
- (2) The Board may take only 1 type of action in subsection (1)(a) to (d) in relation to a case, except that it may impose a fine under subsection (1)(f) in addition to taking the action under subsection (1)(b) or (d).
- (3) No fine may be imposed under subsection (1)(f) in relation to an act or omission that constitutes an offence for which the person has been convicted by a court.
- (4) In any case to which section 317 applies, the Board may order that the person must pay the costs and expenses of, and incidental to, the inquiry by the Board.
- (5) In addition to requiring the Registrar to notify in the register an action taken by the Board under this section, the Board may publicly notify the action in any other way it thinks fit.

Compare: 2002 No 17 s 23

Section 318(1)(a)(i): amended, on 15 March 2008, by section 81(1) of the Building Amendment Act 2008 (2008 No 4).

Section 318(1)(b): amended, on 15 March 2008, by section 81(2) of the Building Amendment Act 2008 (2008 No 4).

Section 318(1)(c): amended, on 15 March 2008, by section 81(3) of the Building Amendment Act 2008 (2008 No 4).

319 Non-payment of fines or costs

If money payable by a person under section 318(1)(f) or (4) remains unpaid for 60 days or more after the date of the order, the Board may—

- (a) cancel the person's licensing and direct the Registrar to remove the person's name from the register; or
- (b) suspend the person's licensing until the person pays the money and, if he or she does not do so within 12 months, cancel his or her licensing and direct the Registrar to remove his or her name from the register.

Section 319(a): amended, on 15 March 2008, by section 82 of the Building Amendment Act 2008 (2008 No 4).

Section 319(b): amended, on 15 March 2008, by section 82 of the Building Amendment Act 2008 (2008 No 4).

320 Payment and application of charges, fines, and other money

- (1) All charges, fines, and other money payable by a person under this subpart—
 - (a) are payable to the Registrar:
 - (b) are recoverable as a debt due to the Registrar from that person, whether or not he or she remains a licensed building practitioner.
- (2) For the purposes of this section, **fine** does not include a fine imposed in respect of the commission of an offence against a provision of this Act.

*Powers and procedure of Board on disciplinary matters***321 Board must act independently**

- (1) The Board must act independently in performing its functions under this subpart.
- (2) The Registrar must ensure that any staff that the Registrar provides by way of administrative support for the Board have not been involved in assisting the Registrar to perform the functions of the Registrar under this subpart.

322 Board may hear evidence for disciplinary matters

- (1) In relation to a disciplinary matter, the Board may—
 - (a) receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the disciplinary matter, whether or not it would be admissible in a court of law:
 - (b) receive evidence on oath (and for that purpose a member of the Board may administer an oath):
 - (c) permit a person appearing as a witness before it to give evidence by tendering a written statement and verifying that statement by oath, statutory declaration, or otherwise:
 - (d) appoint any persons as special advisers to assist the Board (for example, to advise on technical evidence).

- (2) A hearing before the Board on a disciplinary matter is a judicial proceeding for the purposes of sections 108 and 109 of the Crimes Act 1961.

Compare: 2002 No 17 s 27

323 Issuing of summons by Board

- (1) The Board may issue a summons to a person requiring that person to attend a hearing before the Board and to do all or any of the following matters:
- (a) give evidence;
 - (b) give evidence under oath;
 - (c) produce documents, things, or information, or any specified documents, things, or information, in the possession or control of that person that are relevant to the hearing.
- (2) The summons must be in writing, be signed by a member of the Board, and state—
- (a) the date and time when, and the place where, the person must attend; and
 - (b) the documents, things, or information that the person is required to bring and produce to the Board; and
 - (c) if a sum in respect of witnesses' fees, allowances, and expenses is not paid at the time of the summons, the entitlement to be paid or tendered a sum at some reasonable time before the hearing; and
 - (d) the penalty for failing to attend.
- (3) The Board may require that any documents, things, or information produced under this section be verified by oath, statutory declaration, or otherwise.

Compare: 2002 No 17 s 29

324 Service of summons

- (1) A summons may be served—
- (a) by delivering it personally to the person summoned; or
 - (b) by posting it to the person summoned at that person's usual place of residence.
- (2) A summons must,—

- (a) if it is to be served under subsection (1)(a), be served at least 48 hours before the attendance of the witness is required;
 - (b) if it is to be served under subsection (1)(b), be served at least 10 days before the attendance of the witness is required.
- (3) A summons that is posted is treated as having been served when it would have been delivered in the ordinary course of post.

Compare: 2002 No 17 s 30

325 Witnesses' fees, allowances, and expenses

- (1) A witness appearing before the Board under a summons is entitled to be paid witnesses' fees, allowances, and expenses in accordance with the scales prescribed by regulations under the Summary Proceedings Act 1957.
- (2) The person requiring attendance of the witness must pay or tender to the witness the fees, allowances, and expenses at the time the summons is served or at some other reasonable time before the hearing.

Compare: 2002 No 17 s 31

326 Failure to comply with summons

- (1) A person summoned under section 323 commits an offence if he or she, without sufficient cause,—
- (a) fails to attend in accordance with the summons; or
 - (b) does not give evidence when required to do so; or
 - (c) does not give evidence under oath when required to do so; or
 - (d) does not answer any question that is lawfully asked by the Board; or
 - (e) does not provide any documents, things, or information that the summons requires the person to provide.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$2,000.
- (3) A person must not be convicted of an offence under this section if witnesses' fees, allowances, and expenses to which the

person is entitled under section 325 have not been paid or tendered to him or her.

Compare: 2002 No 17 s 32

327 Witness and counsel privileges

- (1) Every person who does the following things has the same privileges as witnesses have in a court:
 - (a) provides documents, things, or information to the Board in relation to a disciplinary matter; or
 - (b) gives evidence or answers questions at a hearing of the Board in relation to a disciplinary matter.
- (2) Every counsel appearing before the Board in relation to a disciplinary matter has the same privileges and immunities as counsel in a court.

Compare: 2002 No 17 s 33

328 Enforcement of actions

If the Board, acting in accordance with this Act and the rules in relation to a disciplinary matter, takes an action or otherwise exercises any power in respect of a person who is or was a licensed building practitioner, that action or other exercise of any power has effect whether or not that person remains a licensed building practitioner.

Compare: 2002 No 17 s 34

329 Certificate of Board to be conclusive evidence

A written certificate signed by any person authorised by the Board is for all purposes conclusive evidence, in the absence of proof to the contrary, of any act or proceeding of the Board.

Appeal from decisions

330 Right of appeal

- (1) A person may appeal to the Board against any decision of the Registrar to—
 - (a) decline to license the person as a building practitioner; or
 - (b) suspend or cancel his or her licensing.

- (2) A person may appeal to a District Court against any decision of the Board—
- (a) made by it on an appeal brought under subsection (1); or
 - (b) to take any action referred to in section 318.

Section 330(1)(b): amended, on 15 March 2008, by section 83(1) of the Building Amendment Act 2008 (2008 No 4).

Section 330(2): substituted, on 15 March 2008, by section 83(2) of the Building Amendment Act 2008 (2008 No 4).

331 Time in which appeal must be brought

An appeal must be lodged—

- (a) within 20 working days after notice of the decision or action is communicated to the appellant; or
- (b) within any further time that the appeal authority allows on application made before or after the period expires.

332 Method of bringing appeal

An appeal—

- (a) must be brought to the Board by notice in writing to the Board; or
- (b) must be brought to the District Court by way of notice of appeal in accordance with the rules of court.

333 Notice of right of appeal

When notifying a person under this Part of any decision or action against which section 330 gives him or her a right of appeal, the decision-maker must also notify the person in writing of the right of appeal and the time within which an appeal must be lodged.

334 Actions to have effect pending determination of appeal

A decision or action against which an appeal is lodged under this subpart continues in force unless the appeal authority to which the appeal is brought orders otherwise.

Compare: 2002 No 17 s 36

335 Procedure on appeal

- (1) An appeal under this subpart must be heard as soon as is reasonably practicable after it is lodged.
- (2) An appeal under this subpart is by way of rehearing.
- (3) On hearing the appeal, the appeal authority—
 - (a) may confirm, reverse, or modify the decision or action appealed against; and
 - (b) may make any other decision or take any other action that the decision-maker could have made.
- (4) The appeal authority must not review—
 - (a) any part of a decision or action not appealed against; or
 - (b) any decision or action not appealed against at all.

Compare: 2002 No 17 s 37

336 Appeal authority's decision final

Except as provided in section 340, the decision of the appeal authority on an appeal under this subpart is final.

337 Appeal authority may refer matter back for reconsideration

- (1) Instead of determining an appeal under this subpart, the appeal authority may direct the decision-maker to reconsider, either generally or in respect of any specified aspect, the whole or any part of the decision or action.
- (2) In giving a direction under subsection (1), the appeal authority—
 - (a) must state its reasons for the direction; and
 - (b) may give any other directions it thinks just as to the matter referred back for reconsideration.
- (3) The decision-maker—
 - (a) must reconsider the matter; and
 - (b) in doing so, must—
 - (i) take the appeal authority's reasons into account; and
 - (ii) give effect to the appeal authority's directions.

338 Orders as to costs

On an appeal under this subpart, the appeal authority may order any party to the appeal to pay to any other party to the appeal any or all of the costs incurred by the other party in respect of the appeal.

339 Orders as to publication of names

- (1) On an appeal under this subpart, the appeal authority may, if in its opinion it is proper to do so, prohibit the publication of the name or particulars of the affairs of a licensed building practitioner or any other person.
- (2) In deciding whether to make an order under subsection (1), the appeal authority must have regard to—
 - (a) the interests of any person (including, without limitation, the privacy of any complainant); and
 - (b) the public interest.
- (3) If the appeal authority prohibits the publication of the name or particulars of the affairs of a licensed building practitioner, the Registrar must remove the name or particulars of the affairs of that licensed building practitioner from the register in relation to the matter under appeal to the extent necessary to reflect the appeal authority's prohibition on publication.

340 Appeal on question of law

- (1) A party to an appeal to the District Court under this subpart may appeal to the High Court against any determination of law arising in the appeal.
- (2) The appeal must be heard and determined in accordance with the appropriate rules of court.
- (3) Part 4 of the Summary Proceedings Act 1957 (together with the other provisions of that Act that are applied in that Part) applies to the appeal—
 - (a) so far as it is applicable and with all necessary modifications; but
 - (b) only so far as it relates to appeals on questions of law.
- (4) Subsection (3) overrides subsection (2).

Subpart 3—Building Practitioners Board

Establishment of Board

341 Establishment of Board

The Building Practitioners Board is established.

342 Capacity and powers

- (1) The Board has only the statutory powers conferred by this Act and any other Act.
- (2) The Board may exercise its powers only for the purpose of performing its functions.

343 Board's functions

The Board's functions are—

- (a) to approve rules relating to licensed building practitioners that are prepared in accordance with this subpart; and
- (b) to receive, investigate, and hear complaints about, and to inquire into the conduct of, and discipline, licensed building practitioners in accordance with subpart 2; and
- (c) to hear appeals against certain decisions of the Registrar in accordance with subpart 2; and
- (d) to review and report to the Minister on the performance of the functions and duties, and the exercise of the powers, of the Board under this Act in accordance with this subpart.

344 Composition of Board

- (1) The Board must have at least 6 members, but not more than 8 members.
- (2) A member must be appointed by the Governor-General on the recommendation of the Minister.

345 Criteria for appointment

- (1) The Minister may recommend a person for appointment as a member of the Board only if, in the Minister's opinion, the person is qualified for appointment—
 - (a) having regard to the functions, duties, and powers of the Board; and

- (b) because of that person's knowledge, experience, or expertise.
- (2) The Minister may accept nominations for membership of the Board, but each member is appointed to undertake the functions and duties of a member rather than to represent the interests of any person.
- (3) One member of the Board must be a barrister or solicitor of at least 5 years' standing.

346 Further provisions relating to Board and its members

Schedule 3 applies to the Board and its members.

Reporting by Board

347 Obligation to prepare annual report

The Board must prepare an annual report on its operations for each period ending with 30 June in each year.

348 Form and content of annual report

- (1) An annual report must contain the following information and reports in respect of the period to which it relates:
 - (a) a report on operations, including the information that is necessary to enable an informed assessment to be made of the Board's performance during the period; and
 - (b) the number of persons in each licensing class against whom the Board took disciplinary action during the period.
- (2) An annual report must be in writing, dated, and signed on behalf of the Board by 2 members.

Section 348(1)(b): amended, on 15 March 2008, by section 84 of the Building Amendment Act 2008 (2008 No 4).

349 Obligation for Board to provide annual report to Minister

The Board must provide the annual report to the Minister as soon as practicable after 30 June in each year.

350 Board to publish reports

As soon as practicable after giving the annual report to the Minister under section 349, the Board must—

- (a) publicly notify that the report has been given to the Minister and where copies of the report may be inspected and purchased; and
- (b) make copies of the report available to the public at the place set out in the public notification, on request, for inspection free of charge and for purchase at a reasonable cost.

351 Annual reports to be presented to House of Representatives

The Minister must present a copy of the annual report given to him or her under section 349 to the House of Representatives no later than 10 parliamentary working days after the date on which the Minister receives that report.

352 Power of Minister to require information relating to affairs of Board

- (1) The Board must supply to the Minister any information relating to the affairs of the Board that the Minister requests.
- (2) However, a request may be refused if—
 - (a) withholding the information is necessary to protect the privacy of any person (including a deceased person); and
 - (b) there would, under the Official Information Act 1982, be good reason for withholding the information if—
 - (i) the request had been made under section 12 of that Act and section 9(2)(a) of that Act applied; and
 - (ii) the need to protect the privacy of any person were not outweighed by the Minister's need to have the information in order to discharge the Minister's ministerial duties; and
 - (c) the information relates to a particular matter in respect of which the Board or any person appointed or employed by the Board is required to act judicially.

*Rules***353 Rules relating to licensed building practitioners**

- (1) There must be made, and there must always be, rules containing the following minimum standards (**LBP standards**):
 - (a) minimum standards of competence (including standards relating to knowledge and skills) that must be met for each licensing class; and
 - (b) minimum standards for demonstrating current competence for each licensing class that must be met for continued licensing, and for the frequency at which assessments of current competence must be carried out.
- (2) There must be made, and there must always be, rules that govern all of the following matters:
 - (a) the information that must be provided by an applicant for licensing, and the way in which this information must be evaluated and decisions on the information must be made and implemented; and
 - (b) the information that must be provided by a licensed building practitioner to demonstrate his or her current competence, and the way in which this information must be evaluated and decisions on the information must be made and implemented; and
 - (c) the way in which a proposed cancellation or suspension of licensing (that does not relate to a disciplinary matter) is to be considered, decided on, and implemented, and any minimum and maximum periods for suspension.
- (3) The rules must be consistent with this Act.

Compare: 2002 No 17 s 40

Section 353(1)(a): amended, on 15 March 2008, by section 85(1) of the Building Amendment Act 2008 (2008 No 4).

Section 353(1)(b): amended, on 15 March 2008, by section 85(1) of the Building Amendment Act 2008 (2008 No 4).

Section 353(2)(a): amended, on 15 March 2008, by section 85(2) of the Building Amendment Act 2008 (2008 No 4).

Section 353(2)(c): amended, on 15 March 2008, by section 85(2) of the Building Amendment Act 2008 (2008 No 4).

354 Chief executive to prepare proposed rules

The chief executive must prepare proposed rules under section 353.

355 Particular requirements for preparation of rules containing LBP standards

In preparing a rule containing LBP standards, the chief executive must—

- (a) ensure that the proposed rule is consistent with the purposes of this Act; and
- (b) consult with licensed building practitioners or any persons whom the chief executive reasonably considers to be representative of licensed building practitioners or of other persons or classes of persons affected by the proposed rule; and
- (c) take into account international best practice and New Zealand's international obligations.

Compare: 2002 No 17 s 41

356 Rules to be approved by Board

- (1) The chief executive must submit proposed rules for the approval of the Board.
- (2) The Board must, as soon as practicable after receiving a proposed rule for approval, by written notice to the chief executive,—
 - (a) approve it; or
 - (b) decline to approve it.

357 Revision of rules

If the Board declines to approve a proposed rule,—

- (a) the Board must indicate the grounds on which it declines to approve it; and
- (b) the Board must direct the chief executive to prepare and submit a revised proposed rule; and
- (c) the chief executive must submit a revised proposed rule to the Board not later than 15 working days after the date on which approval was declined or any later date that the Board in any particular case may allow.

358 Approval of revised rule

- (1) As soon as practicable after receiving a revised proposed rule, the Board must—
 - (a) approve the rule by written notice to the chief executive; or
 - (b) if the Board considers that the revised proposed rule requires further amendment,—
 - (i) make any amendments to the rule that the Board considers necessary; and
 - (ii) approve the rule (as amended) by written notice to the chief executive, which notice must be accompanied by a copy of the rule as approved.
- (2) Before making an amendment to a rule under this section, the Board must—
 - (a) advise the chief executive of the Board's intention to do so; and
 - (b) give the chief executive a reasonable opportunity to make submissions on the matter; and
 - (c) consider those submissions.

359 Requirements of sections 355 to 358 relate to amendments and revocations by Board

The requirements of sections 355 to 358 that apply to making a rule apply also to an amendment or revocation of that rule.

360 Rules to be approved by Minister

- (1) The Board must submit the proposed rules for the approval of the Minister.
- (2) The Minister must, as soon as practicable after receiving a proposed rule for approval, by written notice to the Board,—
 - (a) approve it; or
 - (b) decline to approve it.

361 Rules made when approved by Minister

The rules are made once they are approved by the Minister.

362 Status of rules

The rules are deemed to be regulations for the purpose of the Regulations (Disallowance) Act 1989 but not for the purpose of the Acts and Regulations Publication Act 1989.

Part 5

Miscellaneous provisions

Subpart 1—Other offences and criminal proceedings

Offence relating to building control

362A Premises in respect of which duty arises under section 363

- (1) This section applies to premises that—
 - (a) are intended to be open to members of the public or are being used by members of the public; and
 - (b) comprise all or part of a building.
- (2) For the purposes of subsection (1), premises may be intended to be open to members of the public—
 - (a) whether or not members of the public are charged for their use (or, as the case may be, whether or not it is intended that members of the public are to be charged for their use); and
 - (b) whether or not members of the public will, regularly or from time to time, be excluded from them.

Section 362A: inserted, on 14 April 2005, by section 22(1) of the Building Amendment Act 2005 (2005 No 31).

363 Protecting safety of members of public using premises open to public or intended for public use

- (1) A person who owns, occupies, or controls premises to which section 362A applies must not use, or permit the use of, any part of the premises that is affected by building work—
 - (a) if—
 - (i) a building consent is required for the work; but
 - (ii) no building consent has been granted for it; or
 - (b) if a building consent has been granted for the work, but—
 - (i) no code compliance certificate has been issued for the work; and

- (ii) no certificate for public use has been issued under section 363A for the part; or
- (c) if a building consent has been granted for the work, and a certificate for public use has been issued under section 363A for the part, but—
 - (i) no code compliance certificate has been issued for the work; and
 - (ii) the certificate for public use has been issued for the part subject to conditions that have not been complied with.
- (2) For the purposes of subsection (1), a part of premises may be affected by building work—
 - (a) whether or not the work has been completed; and
 - (b) whether the work is being or has been done to or in, or involves or involved the building of,—
 - (i) the part itself; or
 - (ii) some other part of the building that the premises comprise or form part of.
- (3) A person who fails to comply with subsection (1) commits an offence.
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

Section 363: substituted, on 14 April 2005, by section 22(1) of the Building Amendment Act 2005 (2005 No 31).

363A Public use of premises may be allowed before issue of code compliance certificate in some circumstances

- (1) A person who owns, occupies, or controls premises to which section 362A applies may apply in the prescribed form to the territorial authority for a certificate for public use for the premises or a part of the premises if—
 - (a) a building consent has been granted for building work affecting the premises or part; and
 - (b) no code compliance certificate has been issued for the work.
- (2) The territorial authority may issue a certificate for public use for the premises or part if, and only if, satisfied on reasonable

grounds that members of the public can use the premises or part (as the case may be) safely.

- (3) A certificate for public use—
 - (a) must be in the prescribed form; and
 - (b) may be issued subject to conditions.
- (4) The territorial authority must decide whether to issue the certificate—
 - (a) within 20 working days after the authority receives an application for it; or
 - (b) within any further period agreed between the applicant and the authority.
- (5) Within the period stated in subsection (4), the territorial authority may require the applicant to give it further reasonable information in respect of the application; and if it does so, the period is suspended until it receives the information.
- (6) Nothing in this section relieves the owner of a building from the obligation imposed by section 92(1) to apply to a building consent authority for a code compliance certificate after all building work to be carried out under a building consent granted to the owner is completed.

Section 363A: inserted, on 14 April 2005, by section 22(1) of the Building Amendment Act 2005 (2005 No 31).

363B Application of section 363 to building work where consent granted, or work begun, before 31 March 2005

- (1) This section applies to building work if it affects premises to which section 362A applies, and—
 - (a) a building consent was granted for it before 31 March 2005; or
 - (b) it began before 31 March 2005.
- (2) Before 31 March 2010, section 363(1) does not apply to building work to which this section applies.
- (3) On and after 31 March 2010, section 363(1) does not apply to building work to which this section applies if a certificate of acceptance has been issued for it under section 96(1) before 31 March 2010.

Section 363B: inserted, on 14 April 2005, by section 22(1) of the Building Amendment Act 2005 (2005 No 31).

363C Section 363 does not apply to building work commenced before commencement of Building Act 1991

- (1) Section 363(1) does not apply to building work commenced before 1 July 1992.
- (2) Subsection (1) applies whether the work was completed before, on, or after 1 July 1992.

Section 363C: inserted, on 14 April 2005, by section 22(1) of the Building Amendment Act 2005 (2005 No 31).

364 Offence for residential property developer to transfer household unit without code compliance certificate

- (1) A residential property developer commits an offence if the residential property developer does either or both of the following things before a code compliance certificate is issued in relation to a household unit:
 - (a) completes a sale of the household unit:
 - (b) allows a purchaser of the household unit to enter into possession of the household unit.
- (2) Subsection (1) does not apply if the residential property developer and the purchaser of the household unit enter into a written agreement, in the prescribed form, that the residential property developer may do either or both of the things referred to in that subsection before a code compliance certificate is issued in relation to the household unit concerned.
- (3) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.
- (4) Subsection (1) does not apply if the contract for the sale and purchase of the household unit was entered into before 30 November 2004.

Section 364(4): added, on 14 April 2005, by section 23 of the Building Amendment Act 2005 (2005 No 31).

*Offences relating to administration of Act***365 Offence to fail to comply with direction of authorised person**

- (1) A person commits an offence if the person intentionally fails to comply with a direction given by a person who is authorised to give the direction by this Act or by the regulations.

- (2) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 80(g)

366 Offence to impersonate building consent authority or regional authority, etc

- (1) A person commits an offence if the person impersonates—
(a) a building consent authority or regional authority; or
(b) an officer or employee of a building consent authority or regional authority.

- (2) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 80(h)

367 Offence to obstruct execution of powers under this Act

- (1) A person commits an offence if the person wilfully obstructs, hinders, or resists a person in the execution of powers conferred on that person by this Act or by the regulations.

- (2) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 80(j)

Miscellaneous offences

368 Offence to remove or deface notices

- (1) A person commits an offence if the person—
(a) wilfully removes or defaces any notice published under this Act; or
(b) incites another person to do so.

- (2) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Compare: 1991 No 150 s 80(k)

369 Offence to make false or misleading statement

- (1) A person commits an offence if the person, in any communication, application, or document that is required to be made or given under this Act or by the regulations,—
(a) knowingly makes a written or oral statement that is false or misleading in a material particular; or

- (b) knowingly makes a material omission.
- (2) A person who commits an offence under this section is liable to a fine not exceeding \$5,000.

Proceedings for infringement offences

370 Interpretation

In this section and sections 371 to 374,—

infringement fee, in relation to an infringement offence, means the amount prescribed by regulations made under section 402 as the infringement fee for the offence

infringement offence means an offence that is declared, by regulations made under section 402, to be an infringement offence for the purposes of this Act.

371 Proceedings for infringement offences

- (1) A person who is alleged to have committed an infringement offence may either—
 - (a) be proceeded against under the Summary Proceedings Act 1957; or
 - (b) be served with an infringement notice under section 372.
- (2) If an infringement notice has been issued under section 372, proceedings for the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section apply with all necessary modifications.

372 Issue of infringement notices

- (1) An infringement notice may be served on a person if an enforcement officer—
 - (a) observes the person committing an infringement offence; or
 - (b) has reasonable cause to believe that an infringement offence is being or has been committed by that person.
- (2) An infringement notice may be served—
 - (a) by an enforcement officer (not necessarily the person who issued the notice) personally delivering it (or a

- copy of it) to the person alleged to have committed the infringement offence; or
- (b) by post addressed to the person's last known place of residence or business.
- (3) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent to a person under subsection (2)(b) must be treated as having been served on that person when it was posted.

373 Form of infringement notices

An infringement notice must be in the prescribed form and must contain the following particulars:

- (a) sufficient particulars to inform the person served with the notice of the time, place, and nature of the alleged offence; and
- (b) the amount of the infringement fee prescribed for the offence; and
- (c) the time within which the infringement fee must be paid; and
- (d) the address of the place at which the infringement fee must be paid; and
- (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
- (f) a statement of the person's right to request a hearing; and
- (g) a statement of what will happen if the person neither pays the infringement fee nor requests a hearing; and
- (h) any other particulars that may be prescribed.

374 Payment of infringement fees

All infringement fees paid in respect of infringement offences must be paid to the relevant territorial authority.

Proceedings for offences generally

375 Prosecution of offences

- (1) Except as otherwise provided in this Act, 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 a court of competent jurisdiction.

- (2) In this section, **court of competent jurisdiction** means a court having jurisdiction for punishment of offences of the same nature or for the recovery of fines or sums of money of the relevant amount.

Compare: 1991 No 150 s 85

376 Offences punishable on summary conviction

Every offence against this Act is punishable on summary conviction.

377 Laying information

Any of the following persons may lay an information for an offence against this Act:

- (a) the chief executive; or
- (b) a territorial authority; or
- (c) a regional authority; or
- (d) any person referred to in section 176(g).

378 Time limit for laying information

Despite section 14 of the Summary Proceedings Act 1957, an information for an offence against this Act may be laid at any time within 6 months after the time when the matter giving rise to the information first became known, or should have become known, to any of the following persons:

- (a) the chief executive; or
- (b) a territorial authority; or
- (c) a regional authority; or
- (d) any person referred to in section 176(g).

Compare: 1991 No 150 s 80

379 Offence under more than 1 enactment

- (1) A person who does any act or makes any default that constitutes an offence against this Act and any other Act may be proceeded against and punished either under this Act or under that other Act.

- (2) No one is liable to be punished under both this Act and under another Act in respect of the same act or default.

380 What constitutes continuing offence

The continued existence of anything, or the intermittent repetition of any action, contrary to any provision of this Act is taken to be a continuing offence.

381 District Court may grant injunctions for certain continuing breaches

- (1) On the application of any person referred to in subsection (2), a District Court may grant an injunction or make some other appropriate order if it appears to the District Court that—
- (a) a person is committing or is about to commit a breach of section 40 or section 168; or
 - (b) a building is dangerous, earthquake prone, or insanitary in terms of subpart 6 of Part 2 and the territorial authority has failed to take appropriate action; or
 - (c) a dam is dangerous in terms of subpart 7 of Part 2 and the regional authority has failed to take appropriate action.
- (2) The persons are—
- (a) the chief executive; or
 - (b) a territorial authority; or
 - (c) a regional authority; or
 - (d) any person referred to in section 176(g).
- (3) An injunction may be granted, or an order may be made, under subsection (1)—
- (a) even if proceedings for the offence constituted by the breach have not been taken; or
 - (b) if the person is convicted of that 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.

Compare: 1991 No 150 s 81(1), (5)

Section 381(1)(a): amended, on 15 March 2008, by section 86 of the Building Amendment Act 2008 (2008 No 4).

382 Terms of injunction or order

- (1) An injunction may be granted, or an order may be made, under section 381—
 - (a) restraining the person concerned from engaging in the conduct described in section 381(1)(a) or (b) or (c); or
 - (b) for the purpose of ensuring that the person does not engage in that conduct.
- (2) The injunction may be granted and the order made on any other terms that the District Court considers appropriate.
- (3) In the case of a building that does not comply with the provisions of the building code, the injunction or order may be issued in respect of the owner of the building, whether or not the owner has committed an offence against section 40 or section 168, and without prejudice to the liability of any other person.
- (4) The District Court may, at any time, rescind or vary an injunction granted or order made under section 381.

Compare: 1991 No 150 s 81(3)

383 District Court may direct chief executive to make determination

On an application under section 381(1), the District Court may direct the chief executive to make a determination under subpart 1 of Part 3 in respect of any matters that the court specifies.

Compare: 1991 No 150 s 81(2)

384 District Court may grant interim injunctions

- (1) If an application is made to the District Court under section 381(1) for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the 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 District Court's opinion it is desirable to do so, grant an interim injunction restraining the person from engaging in conduct of that kind.

- (2) Subsection (1) applies whether or not it appears to the District Court that the person intends to engage again, or to continue to engage, in conduct of the kind referred to in that subsection.
Compare: 1991 No 150 s 81(4)

385 Application of section 381 to Crown organisation

- (1) Despite section 17(1)(a) of the Crown Proceedings Act 1950,—
- (a) the District Court may, under section 381, grant an injunction against a Crown organisation, but only in its own name; and
 - (b) for the purposes of imposing or enforcing an injunction referred to in paragraph (a), the Crown organisation, if not a body corporate, is to be treated as if it were a separate legal personality.
- (2) If the District Court grants an injunction against a Crown organisation, the provisions of sections 381 to 384 apply with all necessary modifications.
Compare: 1991 No 150 s 81

386 Liability of principal for acts of agents

- (1) The consequence specified in subsection (2) applies if a person (**person A**) commits an offence against this Act while acting as an agent (including a contractor) or employee of another person (**person B**).
- (2) Person B is liable under this Act in the same manner and to the same extent as if person B had personally committed the offence.
- (3) The liability of person B under subsection (2) is without prejudice to the liability of person A.
- (4) Despite subsection (2), if proceedings are brought under that subsection, it is a 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; or
 - (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.
- (5) If a body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate is guilty of the same offence if it is proved—
- (a) that the act that constituted the offence took place with that person's 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.

Compare: 1991 No 150 s 82A

387 Liability for acts of employees or agents of Crown organisations

- (1) Section 386 does not apply if a person acting as agent or employee of a Crown organisation commits an offence under this Act.
- (2) If an offence referred to in section 6(1)(a) of the Crown Organisations (Criminal Liability) Act 2002 is committed by a person acting as the agent or employee of a Crown organisation, the Crown organisation must (without affecting the personal liability of the agent or employee) be treated for all legal purposes as having committed that offence.
- (3) Despite subsection (2), if proceedings for an offence referred to in section 6(1)(a) of the Crown Organisations (Criminal Liability) Act 2002 are brought against a Crown organisation in

reliance on subsection (2), it is a good defence if the Crown organisation proves that—

- (a) the organisation took all reasonable steps to remedy any effects of the act or omission constituting the offence; and
 - (b) either—
 - (i) no person involved in the management of the organisation knew or could reasonably be expected to have known that the offence was to be or was being committed; or
 - (ii) the organisation took all reasonable steps to prevent the commission of the offence.
- (4) If a Crown organisation is convicted of an offence against this Act, the chief executive or principal officer (however described) of the organisation and every person concerned in the management of the organisation is guilty of the same offence if it is proved—
- (a) that the act that constituted the offence took place with that person's 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.

Compare: 1991 No 150 s 82

388 Strict liability and defences

- (1) Except as otherwise provided in this Act, in a prosecution for an offence of contravening or permitting a contravention of this Act, it is not necessary to prove that the defendant intended to commit the offence.
- (2) It is a defence in any prosecution that is referred to in subsection (1) if the defendant proves—
 - (a) that all of the following circumstances apply:
 - (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—
 - (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.

Compare: 1991 No 150 s 83

389 Fines to be paid to territorial authority or regional authority instituting prosecution

- (1) A court must order that a fine imposed on any person in relation to the person's conviction for an offence under this Act be paid to the territorial authority or, as the case may be, the regional authority that laid the information for that offence.
- (2) However, an amount equal to 10% of every amount payable to the territorial authority or the regional authority under subsection (1) must be credited to a Crown Bank Account nominated by the Minister of Finance for the purposes of this subsection.
- (3) If any money awarded by a court in respect of loss or damage is recovered as a fine, and that fine is ordered to be paid to a territorial authority or a regional authority under subsection (1), no deduction is to be made under subsection (2) in respect of that money.
- (4) An order of the court made under subsection (1) is sufficient authority for the Registrar receiving payment of the fine to—
 - (a) pay 10% of the fine to the Crown in accordance with subsection (2); and
 - (b) pay the balance of the fine to the territorial authority or the regional authority entitled to it under the order.
- (5) Nothing in section 73 of the Public Finance Act 1989 applies to a fine ordered to be paid to a territorial authority or a regional authority under subsection (1).

- (6) To avoid doubt, this section does not apply if the information for the offence has been laid by a person other than a territorial authority or a regional authority.

Compare: 1991 No 150 s 84

Subpart 2—Civil proceedings and defences

390 Civil proceedings may not be brought against chief executive, employees, etc

- (1) This section applies to—
- (a) the chief executive; and
 - (b) any employee or agent of the chief executive; and
 - (c) any person engaged by the chief executive under section 187 to assist the chief executive in relation to an application for a determination; and
 - (d) any member, employee, or agent of a territorial authority or regional authority; and
 - (e) any member of a committee appointed by the chief executive, a territorial authority, or a regional authority.
- (2) No civil proceedings may be brought against a person to whom this section applies for any act done or omitted to be done by that person in good faith under this Act.

Compare: 1991 No 150 s 89

391 Civil proceedings against building consent authorities

Any civil proceedings against a building consent authority in respect of the performance of its statutory function in issuing a building consent or a code compliance certificate must be brought in tort and not in contract.

Compare: 1991 No 150 s 90

Section 391 heading: amended, on 14 April 2005, by section 16(2)(r) of the Building Amendment Act 2005 (2005 No 31).

Section 391: amended, on 14 April 2005, by section 16(2)(o) of the Building Amendment Act 2005 (2005 No 31).

392 Building consent authority not liable

- (1) No civil proceedings may be brought against a building consent authority for anything done or omitted to be done in good faith in reliance on any of the following documents:
- (a) a compliance document:

- (b) a determination made by the chief executive under subpart 1 of Part 3:
 - (c) a current product certificate issued under subpart 7 of Part 3:
 - (ca) a current national multiple-use approval issued under section 30F (including, in any particular case, any minor customisations permitted by regulations made under section 402(1)(kc)):
 - (d) a code compliance certificate issued under section 95:
 - (e) a certificate issued under any regulations made under the Electricity Act 1992 or the Gas Act 1992.
- (2) Subsection (3) applies if—
- (a) a building consent has been issued under section 72; and
 - (b) the building consent authority has given a notification under section 73; and
 - (c) the building consent authority has not given a notification under section 74(4) that it has determined that the entry made on the certificate of title of the land is no longer required; and
 - (d) the building to which the building consent relates suffers damage arising directly or indirectly from a natural hazard.
- (3) The persons specified in subsection (4) are not liable in any civil proceedings brought by any person who has an interest in the building referred to in subsection (2) on the grounds that the building consent authority issued a building consent for the building in the knowledge that the building for which the consent was issued, or the land on which the building was situated, was, or was likely to be, subject to damage arising, directly or indirectly, from a natural hazard.
- (4) The persons are—
- (a) the building consent authority concerned; and
 - (b) every member, employee, or agent of that building consent authority.

Compare: 1991 No 150 s 36(4)

Section 392 heading: amended, on 14 April 2005, by section 16(2)(s) of the Building Amendment Act 2005 (2005 No 31).

Section 392(1): amended, on 14 April 2005, by section 16(2)(o) of the Building Amendment Act 2005 (2005 No 31).

Section 392(1)(ca): inserted, on 1 February 2010, by section 29 of the Building Amendment Act 2009 (2009 No 25).

Section 392(2)(b): amended, on 14 April 2005, by section 16(2)(q) of the Building Amendment Act 2005 (2005 No 31).

Section 392(2)(c): amended, on 14 April 2005, by section 16(2)(q) of the Building Amendment Act 2005 (2005 No 31).

Section 392(3): amended, on 14 April 2005, by section 16(2)(p) of the Building Amendment Act 2005 (2005 No 31).

Section 392(4)(a): amended, on 14 April 2005, by section 16(2)(p) of the Building Amendment Act 2005 (2005 No 31).

Section 392(4)(b): amended, on 14 April 2005, by section 16(2)(p) of the Building Amendment Act 2005 (2005 No 31).

393 Limitation defences

- (1) The provisions of the Limitation Act 1950 apply to civil proceedings against any person if those proceedings arise from—
 - (a) building work associated with the design, construction, alteration, demolition, or removal of any building; or
 - (b) the performance of a function under this Act or a previous enactment relating to the construction, alteration, demolition, or removal of the building.
- (2) However, civil proceedings relating to building work may not be brought against a person after 10 years or more from the date of the act or omission on which the proceedings are based.
- (3) For the purposes of subsection (2), the date of the act or omission is,—
 - (a) in the case of civil proceedings that are brought against a territorial authority, a building consent authority, a regional authority, or the chief executive in relation to the issue of a building consent or a code compliance certificate under Part 2 or a determination under Part 3, the date of issue of the consent, certificate, or determination, as the case may be; and
 - (b) in the case of civil proceedings that are brought against a person in relation to the issue of an energy work certificate, the date of the issue of the certificate.

Compare: 1991 No 150 s 91

Subpart 3—Miscellaneous

Service of notices

394 Service of notices

- (1) Any notice or other document required to be served on, or given to, any person under this Act is sufficiently served if it is—
 - (a) delivered personally to the person; or
 - (b) delivered to the person at the person's usual or last known place of residence or business; or
 - (c) sent by fax or email to the person's fax number or email address; or
 - (d) posted in a letter addressed to the person at the person's usual or last known place of residence or business.
- (2) If a notice or other document is to be served on a body (whether incorporated or not), service on an officer of the body in accordance with subsection (1) is taken to be service on the body.
- (3) If a notice or other document is to be served on a partnership, service on any one of the partners in accordance with subsection (1) or subsection (2) is taken to be service on the partnership.
- (4) Despite subsection (1), if a notice or other document is to be served on a Crown organisation for the purposes of this Act, it may be served—
 - (a) by delivering it personally to an employee of the organisation at its head office or principal place of business; or
 - (b) by delivering it at the organisation's head office or principal place of business, including by fax; or
 - (c) in accordance with a method agreed between the informant and the organisation.
- (5) A notice or other document sent by post to a person in accordance with subsection (1)(d) must be treated as having been received by that person at the time at which the letter would have been delivered in the ordinary course of post.

Compare: 1991 No 150 s 87

395 Notices in relation to Māori land

Part 10 of Te Ture Whenua Maori Act 1993 applies to the service of notices under this Act on owners of Māori land, except that the period fixed for anything to be done by the owners must not be extended by more than 14 working days under section 181(4) of that Act, unless otherwise provided by the territorial authority or the regional authority concerned.

Compare: 1991 No 150 s 88

Implied terms of contracts

396 Application of sections 397 to 399

- (1) Sections 397 to 399 apply—
- (a) to a contract entered into, on or after the commencement of this Act, that provides for—
 - (i) building work to be carried out under the contract in relation to 1 or more household units; or
 - (ii) the sale of 1 or more household units by, or on behalf of, a residential property developer; and
 - (b) despite any provision to the contrary in any agreement or contract.
- (2) For the purposes of this section, sections 397 to 399 must be read as if a contract referred to in subsection (1)(a)(ii) were a contract that provides for building work to be carried out (either before or after the contract is entered into) in relation to the household unit or, as the case may be, the household units being sold under the contract.

397 Implied warranties for building work in relation to household units

Despite any enactment or rule of law, in every contract to which this section applies, the following warranties about building work to be carried out under the contract are implied and are taken to form part of the contract:

- (a) that the building work will be carried out—
 - (i) in a proper and competent manner; and
 - (ii) in accordance with the plans and specifications set out in the contract; and
 - (iii) in accordance with the relevant building consent:

- (b) that all materials to be supplied for use in the building work—
 - (i) will be suitable for the purpose for which they will be used; and
 - (ii) unless otherwise stated in the contract, will be new:
- (c) that the building work will be carried out in accordance with, and will comply with, all laws and legal requirements, including, without limitation, this Act and the regulations:
- (d) that the building work will—
 - (i) be carried out with reasonable care and skill; and
 - (ii) be completed by the date (or within the period) specified in the contract or, if no date or period is so specified, within a reasonable time:
- (e) that the household unit, if it is to be occupied on completion of building work, will be suitable for occupation on completion of that building work:
- (f) if the contract states the particular purpose for which the building work is required, or the result that the owner wishes the building work to achieve, so as to show that the owner relies on the skill and judgement of the other party to the contract, that the building work and any materials used in carrying out the building work will—
 - (i) be reasonably fit for that purpose; or
 - (ii) be of such a nature and quality that they might reasonably be expected to achieve that result.

398 Proceedings for breach of warranties may be taken by person who was not party to contract for building work

- (1) An owner of the building or land in respect of which building work was carried out under a contract to which this section applies may take proceedings for a breach of any of the warranties set out in section 397 as if the owner were a party to the contract.
- (2) In this section, **proceedings** includes—
 - (a) adjudication under the Construction Contracts Act 2002; and

- (b) a claim under the Weathertight Homes Resolution Services Act 2006.

Section 398(2)(b): amended, on 1 April 2007, by section 127(1)(a) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

399 Person may not give away benefit of warranties

A provision of an agreement or instrument that purports to restrict or remove the right of a person to take proceedings for a breach of any of the warranties set out in section 397 is of no effect in so far as the provision relates to a breach other than a breach that was known, or ought reasonably to have been known, by the person to exist at the time the agreement or instrument was executed.

Regulations

400 Regulations: building code

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations, to be called the building code, that prescribe—
- (a) functional requirements for buildings; and
 - (b) the performance criteria that buildings must comply with in their intended use.
- (2) Any regulations made under subsection (1) may prescribe that the functional requirements for buildings and the performance criteria with which buildings must comply in their intended use apply—
- (a) generally throughout New Zealand or in particular regions of New Zealand only; and
 - (b) generally over a range of circumstances or in particular circumstances only.

Compare: 1991 No 150 s 48(1)

401 Regulations: acceptable solutions, verifications, etc, that must be complied with in order to comply with building code

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations that prescribe—

- (a) acceptable solutions or verification methods, or both, that must be used to comply with the building code; and
 - (b) the particular circumstances in which those acceptable solutions or verification methods, or both, must be used; and
 - (c) the circumstances in which building methods or products that have a current product certificate issued under section 269 must be used.
- (2) Any regulations made under subsection (1) must state whether those regulations apply to building work for which a building consent has been issued, but for which a code compliance certificate has not been issued.

402 Regulations: general

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the following purposes:

Building levy:

- (a) prescribing the rate of the levy to be paid under section 53;
- (b) providing for the method by which the levy will be calculated;
- (c) providing for the payment and collection of the levy:

Licensing:

- (d) prescribing the fees or charges payable in respect of the performance of the Registrar's functions under Part 4, including the fees and charges for—
 - (i) an application to be licensed as a building practitioner; and
 - (ii) the issue of that evidence of being licensed; and
 - (iii) the renewal of that evidence of being licensed:
- (e) providing for the following matters relating to the levy payable by licensed building practitioners under section 303 for, or in connection with, the costs of the operation and administration of the Board:
 - (i) different levies for different classes of licensed building practitioners; and
 - (ii) the amount of the levy; and

- (iii) the method by which the levy will be calculated; and
 - (iv) the criteria and other requirements by and against which the levy will be set or reset; and
 - (v) the payment and collection of the levy; and
 - (vi) exempting any licensed building practitioners or any class of licensed building practitioners from paying the levy; and
 - (vii) waivers and refunds of the whole or any part of the levy; and
 - (viii) any other matters necessary or desirable to set, calculate, administer, collect, and enforce the levy:
- (f) specifying—
- (i) the information that must be provided by persons who make complaints against a licensed building practitioner or a former licensed building practitioner; and
 - (ii) the way in which that information must be evaluated; and
 - (iii) the way in which decisions on whether or not to proceed with the complaint must be made and implemented:
- (g) prescribing procedures, requirements, and other matters, not inconsistent with this Act, for the register of licensed building practitioners established and maintained under section 298, including matters that relate to—
- (i) the operation of the register:
 - (ii) access to the register:
 - (iii) the location of, and hours of access to, the register:
 - (iv) search criteria for the register:
- (h) prescribing the way in which a disciplinary matter must be considered and decided on by the Board, and the way in which decisions on that matter must be implemented:
- (i) prescribing the manner in which rules are to be made, amended, or revoked, including the requirements for

consultation with persons affected by the proposed rules:

General matters:

- (j) prescribing procedures for regulating and controlling the construction, maintenance, and demolition of buildings:
- (k) prescribing the form or content of applications, or any other documentation or information required under this Act:
- (ka) prescribing eligibility criteria for national multiple-use approvals:
- (kb) prescribing the period of time within which the chief executive must decide, under section 30E(1), whether to issue a national multiple-use approval:
- (kc) defining the minor customisations that may be made to plans and specifications in relation to which a national multiple-use approval has been issued when incorporating those plans and specifications into a building consent:
- (kd) defining the minor variations that may be made to a building consent for the purposes of section 45A:
- (l) prescribing information to be provided to the chief executive by—
 - (i) territorial authorities and building consent authorities in relation to buildings and building work; and
 - (ii) regional authorities and owners of dams in relation to dams:
- (m) prescribing time limits for the purposes of this Act:
- (n) prescribing building work that amounts to restricted building work:
- (na) designating a licensing class or classes for carrying out or supervising particular types of—
 - (i) building work; or
 - (ii) building inspection work:
- (o) prescribing systems that amount to specified systems for the purposes of this Act:
- (p) defining moderate earthquake for the purposes of sections 122 and 153:

- (q) defining moderate flood for the purposes of section 153:
- (qa) defining earthquake threshold event for the purposes of section 153A:
- (qb) defining flood threshold event for the purposes of section 153A:
- (r) prescribing the minimum terms and conditions of an insurance policy for the purposes of section 192(2)(a):
- (s) providing for the approval of schemes of insurance for the purposes of section 192(2)(b):
- (t) prescribing the criteria and standards that an applicant must meet to be accredited as—
 - (i) a building consent authority; or
 - (ii) *[Repealed]*
 - (iii) a dam owner; or
 - (iv) a product certification body:
- (ta) prescribing the fees payable for an audit under section 249(a), 257(a), or 262(1)(a), or the rate at which, or method by which, those fees are to be calculated:
- (u) prescribing the criteria and standards that a product certification body must apply in determining applications for a product certificate under section 269 (which must include, without limitation, criteria and standards about the effects on human health of particular building methods or products):
- (v) determining or fixing scales of charges or other criteria for the purpose of fixing charges by the chief executive under Part 3:
- (w) prescribing—
 - (i) the matters in respect of which fees are payable under this Act, and the amount of those fees; or
 - (ii) the rate at which, or method by which, fees are to be calculated for the purposes of this Act:
- (x) specifying criteria and standards that a dam owner must apply in—
 - (i) classifying dams; or
 - (ii) preparing a dam safety assurance programme:
- (y) specifying infringement offences for the purposes of this Act:

- (z) setting the infringement fee for each infringement of-fence (which may not exceed \$20,000):
 - (za) prescribing the forms that must be used for issuing an infringement notice:
 - (zb) prescribing, for the purposes of section 364(2), the form and content of the written agreement referred to in that subsection:
 - (zc) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) The fees and charges prescribed under subsection (1)(d) must be reasonable, having regard to the need to recover the costs incurred by the Registrar in performing his or her functions under this Act.

Compare: 1991 No 150 s 48(2)

Section 402(1)(d)(ii): amended, on 15 March 2008, by section 87(1) of the Building Amendment Act 2008 (2008 No 4).

Section 402(1)(d)(iii): amended, on 15 March 2008, by section 87(1) of the Building Amendment Act 2008 (2008 No 4).

Section 402(1)(ka): inserted, on 1 August 2009, by section 30 of the Building Amendment Act 2009 (2009 No 25).

Section 402(1)(kb): inserted, on 1 August 2009, by section 30 of the Building Amendment Act 2009 (2009 No 25).

Section 402(1)(kc): inserted, on 1 August 2009, by section 30 of the Building Amendment Act 2009 (2009 No 25).

Section 402(1)(kd): inserted, on 1 August 2009, by section 30 of the Building Amendment Act 2009 (2009 No 25).

Section 402(1)(na): inserted, on 15 March 2008, by section 87(2) of the Building Amendment Act 2008 (2008 No 4).

Section 402(1)(qa): inserted, on 15 March 2008, by section 87(3) of the Building Amendment Act 2008 (2008 No 4).

Section 402(1)(qb): inserted, on 15 March 2008, by section 87(3) of the Building Amendment Act 2008 (2008 No 4).

Section 402(1)(t)(ii): repealed, on 14 April 2005, by section 20(2) of the Building Amendment Act 2005 (2005 No 31).

Section 402(1)(ta): inserted, on 15 March 2008, by section 87(4) of the Building Amendment Act 2008 (2008 No 4).

Section 402(1)(w): substituted, on 15 March 2008, by section 87(5) of the Building Amendment Act 2008 (2008 No 4).

402A Chief executive must review regulations made under section 402(1)(kb)

The chief executive must, within 2 years after the commencement of regulations made under section 402(1)(kb),—

- (a) review the prescribed period of time within which the chief executive must decide whether to issue a national multiple-use approval; and
- (b) prepare for the Minister a report on the findings of that review.

Section 402A: inserted, on 1 August 2009, by section 31 of the Building Amendment Act 2009 (2009 No 25).

403 Consultation requirements for making regulations

- (1) This section applies to—
 - (a) an Order in Council proposed to be made under section 285; or
 - (b) regulations proposed to be made under section 400 or section 401.
- (2) Before making a recommendation for the making of an Order in Council or regulations under those sections, the Minister must be satisfied that the chief executive has consulted in accordance with subsections (3) and (4).
- (3) The chief executive must—
 - (a) do everything reasonably practicable on his or her part to consult with the persons or organisations that appear to the chief executive to be representative of the interests of persons likely to be substantially affected by the making of the relevant Order in Council or regulations; and
 - (b) advise the Minister of the results of that consultation.
- (4) The process for consultation should, to the extent practicable in the circumstances, include—
 - (a) giving adequate and appropriate notice of the intention to make the Order in Council or regulations; and
 - (b) giving a reasonable opportunity for interested persons to make submissions; and
 - (c) adequate and appropriate consideration of submissions.

- (5) A failure to comply with this section does not affect the validity of any Order in Council or regulations made.

Compare: 1991 No 150 s 48(4)

404 Certain regulations must not come into force earlier than specified date

Any regulations made under section 402(1)(n) must not come into force earlier than the date on which sections 45(1)(e) and 45(2) to 45(4) and 84 to 89 come into force.

Incorporation of material by reference

405 Incorporation of material by reference into regulations, certain Orders in Council, and compliance document

- (1) The following material may be incorporated by reference into any instrument:
- (a) standards, requirements, or recommended practices of national or international organisations;
 - (b) any other written material that, in the opinion of the Minister or, as appropriate, the chief executive, is too large or is impractical to include in, or print as part of, the instrument concerned.
- (2) Material may be incorporated by reference in an instrument—
- (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the instrument.
- (3) The incorporated material—
- (a) is the material as it exists at the time that the instrument is made or issued; and
 - (b) forms part of the instrument for all purposes and has legal effect accordingly.
- (4) In this section and in sections 406 to 413, **instrument** means—
- (a) any regulations; and
 - (b) any compliance document; and
 - (c) any Order in Council made under section 41 or 285.

Section 405 heading: amended, on 15 March 2008, by section 88(1) of the Building Amendment Act 2008 (2008 No 4).

Section 405(1): amended, on 15 March 2008, by section 88(2) of the Building Amendment Act 2008 (2008 No 4).

Section 405(4): added, on 15 March 2008, by section 88(3) of the Building Amendment Act 2008 (2008 No 4).

406 Effect of amendments to, or replacement of, material incorporated by reference

An amendment to, or replacement of, material incorporated by reference in an instrument has legal effect as part of the instrument only if—

- (a) the amendment or replacement material is made by the person or organisation originating the incorporated material; and
- (b) the amendment or replacement material is of the same general character as the material amended or replaced; and
- (c) either,—
 - (i) in the case of material incorporated in regulations, regulations are made that state that the particular amendment or replacement has that effect; or
 - (ii) in the case of material incorporated in a compliance document, the chief executive, by notice in the *Gazette*, adopts the amendment or replacement.

407 Proof of material incorporated by reference

- (1) A copy of material incorporated by reference in an instrument, including any amendment to, or replacement of, the material (**material**), must be—
 - (a) certified as a correct copy of the material by the Minister or, as appropriate, the chief executive; and
 - (b) retained by the Minister or, as appropriate, the chief executive.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the instrument of the material.

408 Effect of expiry of material incorporated by reference

Material incorporated by reference in an instrument that expires or that is revoked or that ceases to have effect ceases to

have legal effect as part of the instrument only if the Minister or, as appropriate, the chief executive, by notice in the *Gazette*, states that the material ceases to have legal effect.

409 Requirement to consult

- (1) This section applies if—
 - (a) the Minister proposes to make a recommendation for—
 - (i) regulations to be made under this Act that incorporate material by reference; or
 - (ii) regulations under section 406(c)(i) that state that an amendment to, or replacement of, material incorporated by reference in regulations has legal effect as part of the regulations; or
 - (b) the chief executive proposes to—
 - (i) issue a compliance document that incorporates material by reference; or
 - (ii) publish, under section 406(c)(ii), a notice in the *Gazette* that adopts an amendment to, or replacement of, material incorporated by reference in a compliance document.
- (2) Before doing any of the things referred to in subsection (1), the Minister or, as the case may be, the chief executive must—
 - (a) make copies of the material proposed to be incorporated by reference or the proposed amendment to, or replacement of, material incorporated by reference (**proposed material**) available for inspection during working hours for a reasonable period, free of charge, at the Ministry's office in Wellington; and
 - (b) make copies of the proposed material available for purchase at a reasonable price at the Ministry's office in Wellington; and
 - (c) *[Repealed]*
 - (d) give notice in the *Gazette* stating that—
 - (i) the proposed material is available for inspection during working hours, free of charge, the place at which it can be inspected, and the period during which it can be inspected; and
 - (ii) copies of the proposed material can be purchased and the place at which they can be purchased; and

- (iii) *[Repealed]*
 - (e) allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference; and
 - (f) consider any comments they make.
- (2A) Before doing any of the things referred to in subsection (1), the Minister or, as the case may be, the chief executive—
- (a) may make copies of the proposed material available in any other way that he or she considers appropriate in the circumstances (for example, on an Internet website); and
 - (b) must, if paragraph (a) applies, give notice in the *Gazette* stating that the proposed material is available in other ways and details of where or how it can be accessed or obtained.
- (3) The reference in subsections (2) and (2A) to the proposed material includes, if the material is not in an official New Zealand language, an accurate translation in an official New Zealand language of the material.
- (4) A failure to comply with this section does not invalidate an instrument that incorporates material by reference.

Section 409(2)(c): repealed, on 14 April 2005, by section 24(1)(a) of the Building Amendment Act 2005 (2005 No 31).

Section 409(2)(d)(iii): repealed, on 14 April 2005, by section 24(1)(b) of the Building Amendment Act 2005 (2005 No 31).

Section 409(2A): inserted, on 14 April 2005, by section 24(2) of the Building Amendment Act 2005 (2005 No 31).

Section 409(3): amended, on 14 April 2005, by section 24(3) of the Building Amendment Act 2005 (2005 No 31).

410 Access to material incorporated by reference

- (1) The chief executive—
- (a) must make the material referred to in subsection (2) (**material**) available for inspection during working hours free of charge at the Ministry's office in Wellington; and
 - (b) must make copies of the material available for purchase at a reasonable price at all of the Ministry's offices; and

- (c) must make so much of the material as relates to the following matters available for inspection during working hours, free of charge, at all of the Ministry's offices:
 - (i) the use of timber, concrete, concrete masonry, glass, and plaster coating in the construction of buildings; and
 - (ii) the design of buildings using timber, concrete, concrete masonry, and steel; and
 - (iii) plumbing installation; and
 - (iv) access for persons with disabilities; and
 - (v) energy efficiency in buildings; and
 - (d) may make copies of the material available in any other way that the chief executive considers appropriate in the circumstances (for example, on an Internet website); and
 - (e) must give notice in the *Gazette* stating that—
 - (i) the material is incorporated in an instrument and the date on which the instrument was made; and
 - (ii) the material is available for inspection during working hours, free of charge, at the Ministry's office in Wellington and the location of that office; and
 - (iii) copies of the material can be purchased at all of the Ministry's offices and the location of those offices; and
 - (iv) the material referred to in paragraph (c) is available for inspection during working hours, free of charge, at all of the Ministry's offices and the location of those offices; and
 - (v) if copies of the material are made available under paragraph (d), the material is available in other ways and details of where or how it can be accessed or obtained.
- (1A) Subsection (1)(c) does not apply to any material that relates only to product standards or product testing standards.
- (2) The material is—
- (a) material incorporated by reference in an instrument;
 - (b) any amendment to, or replacement of, that material that is incorporated in the instrument or the material referred

to in paragraph (a) with the amendments or replacement material incorporated:

- (c) if the material referred to in paragraph (a) or paragraph (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.

- (3) A failure to comply with this section does not invalidate an instrument that incorporates material by reference.

Section 410(1): substituted, on 14 April 2005, by section 25 of the Building Amendment Act 2005 (2005 No 31).

Section 410(1A): inserted, on 14 April 2005, by section 25 of the Building Amendment Act 2005 (2005 No 31).

411 Acts and Regulations Publication Act 1989 not applicable to material incorporated by reference

The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in an instrument or to an amendment to, or replacement of, that material.

412 Application of Regulations (Disallowance) Act 1989 to material incorporated by reference

- (1) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in an instrument made or issued under this Act to be laid before the House of Representatives.
- (2) The Regulations (Disallowance) Act 1989, apart from the modification to the application of section 4 of that Act made by subsection (1), applies to an instrument made or issued under this Act (other than a compliance document) that incorporates material by reference.

Section 412(2): amended, on 7 July 2010, by section 10 of the Building Amendment Act 2010 (2010 No 50).

413 Application of Standards Act 1988 not affected

Sections 405 to 412 do not affect the application of sections 22 to 25 of the Standards Act 1988.

*Amendments and repeal***414 Amendments to other enactments**

The enactments specified in Schedule 4 are amended in the manner indicated in that schedule.

415 Repeal

- (1) The Building Act 1991 is repealed.
- (2) Despite the repeal of the Building Act 1991 by subsection (1),—
 - (a) the Building Regulations 1992 (SR 1992/150) continue in force as if they had been made under this Act and may be amended or revoked accordingly; and
 - (b) the Building Industry Authority Levy Order 1995 (SR 1995/241) continues in force—
 - (i) as if it had been made under this Act and may be amended or revoked accordingly; and
 - (ii) until the commencement of the first Order in Council that prescribes the rate of the building levy under section 53.

Subpart 4—Transitional provisions*Outline of transitional provisions***416 Outline of transitional provisions**

- (1) The general scheme and effect of the transitional provisions is as follows:
 - (a) on 30 November 2004,—
 - (i) the Authority is dissolved; and
 - (ii) the regulation-making powers in the Act, and its transitional provisions relating to the dissolution of the Authority, come into force; and
 - (iii) the provisions setting out the functions of the chief executive under the Act come into force; and
 - (iv) the obligation of territorial authorities to adopt a policy on dangerous, earthquake-prone, and insanitary buildings comes into force; and
 - (v) the licensing regime for building practitioners comes into force; and

- (vi) the obligation of the chief executive to review the building code comes into force; and
 - (b) between 30 November 2004 and 31 March 2005, the chief executive must perform the functions and duties, and exercise the powers, of the Authority under the Building Act 1991; and
 - (c) on 31 March 2005,—
 - (i) the rest of this Act (except some provisions) comes into force; and
 - (ii) the Building Act 1991 is repealed; and
 - (iii) the building control provisions of the Act (for example, the provisions relating to building consents, code compliance certificates, and compliance schedules) come into force; and
 - (d) between 30 November 2004 and 31 May 2006, persons who held an approval as a building certifier under the former Act may apply to be registered as a building consent authority under section 191; and
 - (e) between 30 November 2004 and 31 May 2006, territorial authorities and regional authorities must apply to be registered under section 191; and
 - (f) on and after the date specified in section 450(3)(b)(ii), only building consent authorities that are registered under section 191 may perform functions relating to building control; and
 - (g) on 30 November 2010,—
 - (i) the requirement that restricted building work must be carried out or supervised by a licensed building practitioner comes into force; and
 - (ii) the transitional period ends.
- (2) This section is a guide only to the general scheme and effect of these provisions.

Section 416(1)(f): amended, on 29 August 2007, by section 5(3) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Section 416(1)(f): amended, on 14 April 2005, by section 3(8) of the Building Amendment Act 2005 (2005 No 31).

Section 416(1)(g): amended, on 15 March 2008, by section 89 of the Building Amendment Act 2008 (2008 No 4).

*No compensation for loss of office***417 No compensation for loss of office**

The Crown is not liable to make a payment to, or otherwise compensate, any person in respect of the person ceasing to hold any office established by or under the former Act.

*Dissolution of Authority***418 Authority dissolved**

The Authority is dissolved.

419 Assets and liabilities vest in Crown

All rights, assets, liabilities, and debts that the Authority had immediately before the commencement of this section must be treated as the rights, assets, liabilities, and debts of the Crown on that commencement.

420 Protection from civil liability for members, building referees, and employees of Authority continued

- (1) Despite the repeal of the former Act and the dissolution of the Authority, no civil proceedings may be brought against any of its members, building referees, or employees for any act done or omitted to be done by that person in good faith under the former Act.
- (2) Subsection (1)—
 - (a) is for the avoidance of doubt; and
 - (b) does not limit the provisions of the Interpretation Act 1999.

421 Restriction of compensation for technical redundancy

- (1) An employee of the Authority is not entitled to receive any payment or other benefit on the ground that his or her position in the Authority has ceased to exist if—
 - (a) the position ceases to exist as a result of the dissolution of the Authority; and
 - (b) in connection with that dissolution,—
 - (i) the employee is offered equivalent employment in the Ministry (whether or not the employee accepts the offer); or

- (ii) the employee is offered, and accepts, other employment in the Ministry.
- (2) In this section, **equivalent employment** is employment in the Ministry—
 - (a) in substantially the same position; and
 - (b) in the same general locality; and
 - (c) on terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the offer of equivalent employment (including any service-related, redundancy, and superannuation conditions); and
 - (d) on terms that treat the period of service with the Authority (and any other period of service recognised by the Authority as continuous service) as if it were continuous service with the Ministry.

Compare: 1988 No 20 s 30E

422 Reappointment of employee of Authority to Ministry

Sections 60 to 61B and 65 of the State Sector Act 1988 do not apply to the appointment of an employee of the Authority to a position in the Ministry if the employee's position in the Authority ceases to exist as a result of the dissolution of the Authority.

Compare: 1988 No 20 s 30F

423 Final reports and accounts

- (1) As soon as is practicable after the commencement of this Part, the Authority must arrange for the final report of the Authority to be delivered to the Minister.
- (2) The report must—
 - (a) describe the Authority's operations for the financial year commencing immediately before the commencement of this section; and
 - (b) include—
 - (i) financial statements of the Authority prepared, in accordance with Part 5 of the Public Finance Act 1989, for that financial year; and

- (ii) an audit report prepared by the Auditor-General and a management statement relating to those financial statements.
- (3) The Minister must present a copy of the report delivered to the Minister under this section to the House of Representatives under section 44A of the Public Finance Act 1989.

424 References to Authority

- (1) Unless the context otherwise requires, every reference to the Authority in any enactment, agreement, deed, instrument, application, notice, or other document in force immediately before the commencement of this section must, on and after that commencement, be read with all necessary modifications as a reference to the chief executive.
- (2) To avoid doubt, on and after the commencement of this section,—
 - (a) a reference to the Authority in the Building Act 1991 must be read as a reference to the chief executive; and
 - (b) the Building Act 1991 must be read with all necessary modifications to enable the chief executive to perform the functions and duties, and exercise the powers, of the Authority until the repeal of that Act under section 415.

425 Proceedings of Authority

Any proceedings to which the Authority is, or becomes, a party (whether before or after the commencement of this section) may be commenced, continued, completed, and enforced by or against the Crown.

Validations

426 Validation of levy

All money received by the Authority from levies imposed under Part 3A of the former Act must be taken to be and always to have been lawfully imposed and collected.

427 Validation of past expenditure of levy

Despite section 23K(3) of the former Act, all applications made before the commencement of this section of levies

imposed under Part 3A of the former Act and of any proceeds from those levies received by the Authority for any purpose are validated and must be taken to be and to always have been lawfully applied.

428 Validation of accumulation of levy

- (1) Despite the provisions of Part 3A of the former Act, the matters referred to in subsection (2) are validated and must be taken to be and always to have been lawful.
- (2) The matters are—
 - (a) the accumulation of levies imposed under that Part and of any proceeds from those levies received by the Authority; and
 - (b) the application of those levies and proceeds by the chief executive for the purposes of this Act.

Other transitional provisions

429 Transitional provision for matters of doubt or dispute relating to building control under former Act

- (1) This section applies to an application for a determination under section 17 of the former Act that has been made, but not determined or withdrawn, before the commencement of this section.
- (2) Despite the repeal of the former Act, an application to which this section applies must be determined by the chief executive in all respects under the former Act as if this Act had not been passed.

430 Transitional provision for building levy under former Act

If, before the commencement of this section, a person is liable to pay a levy under Part 3A of the former Act and the levy remains unpaid after payment is due, then, on and after the commencement of this section,—

- (a) the person must pay the levy to the chief executive as if the levy were payable under this Act; and
- (b) this Act applies to the levy in all respects.

431 Transitional provision for rate of building levy under this Act

- (1) Despite section 53(2)(a)(ii), the building levy must, during the period specified in subsection (2), be calculated at the rate set out in clause 2 of the Building Industry Authority Levy Order 1995.
- (2) The period is the period that—
 - (a) begins on the commencement of Part 2; and
 - (b) ends on the commencement of the first Order in Council that sets the prescribed rate of the building levy.

432 Transitional provision for certain applications

- (1) This section applies if, before the commencement of this section,—
 - (a) an application for a project information memorandum is made under section 30(1) of the former Act and the project information memorandum has not been issued; or
 - (b) an application for a building consent is made under section 33 of the former Act and the building consent has not been granted or refused; or
 - (c) an application for the accreditation of any proprietary item (being a material, method of construction, design, or component relating to building work) is made under section 58 of the former Act but is not determined or withdrawn.
- (2) On and from the commencement of this section,—
 - (a) the application referred to in subsection (1)(a) must be treated as if it were an application, as the case may be, under section 31 or section 32; and
 - (b) the application referred to in subsection (1)(b) must be treated as if it were an application under section 45; and
 - (c) the application referred to in subsection (1)(c) must be determined as if this Act had not been passed.
- (3) For the purposes of subsection (2)(c),—
 - (a) section 59 of the former Act remains in force as if this Act had not been passed; and

- (b) a certificate of accreditation issued under that section must be treated as if it were a product certificate issued under section 269.

433 Transitional provision for building consents granted under former Act

- (1) A building consent that was granted under section 34 of the former Act before the commencement of this section must, on that commencement, be treated as if it were a building consent granted under section 49.
- (2) However,—
 - (a) section 93 does not apply; and
 - (b) accordingly, a building consent authority is not required to issue a code compliance certificate for the building work concerned within the period specified in that section.

Section 433(2)(b): amended, on 14 April 2005, by section 16(2)(b) of the Building Amendment Act 2005 (2005 No 31).

434 Transitional provision for certain entries on certificates of title made under former Act

- (1) This section applies to any of the following entries that is made before the commencement of this section:
 - (a) an entry on a certificate of title under section 36(2) of the former Act; and
 - (b) an entry in the records of the Surveyor-General or the Maori Land Court under section 36(7) of the former Act; and
 - (c) an entry under section 641A of the Local Government Act 1974.
- (2) On and from the commencement of this section, an entry to which this section applies must be treated as if it had been made under this Act and the provisions of this Act apply accordingly with all necessary modifications.

435 Transitional provision for notices issued under former Act

- (1) This section applies to any of the following notices issued before the commencement of this section:

- (a) a notice to rectify under section 42 of the former Act (including a notice that is deemed to be a notice to rectify under section 45(4) or section 46(5) of that Act):
 - (b) a notice under section 65(1)(b) of the former Act requiring work to be done on a dangerous building:
 - (c) a notice under section 65(2) of the former Act requiring work to be done on an insanitary building:
 - (d) a notice under section 66(3)(b) of the former Act requiring work to be done on an earthquake-prone building.
- (2) On and from the commencement of this section, a notice to which this section applies must,—
- (a) in the case of the notice referred to in subsection (1)(a), be treated as if it were a notice given under section 164 of this Act; and
 - (b) in the case of the notice referred to in subsection (1)(b) or (c) or (d), be treated as if it were a notice given under section 124(1)(c) of this Act.

436 Transitional provision for code compliance certificates in respect of building work carried out under building consent granted under former Act

- (1) This section applies to building work carried out under a building consent granted under section 34 of the former Act.
- (2) An application for a code compliance certificate in respect of building work to which this section applies must be considered and determined as if this Act had not been passed.
- (3) For the purposes of subsection (2), section 43 of the former Act—
 - (a) remains in force as if this Act had not been passed; but
 - (b) must be read as if—
 - (i) a code compliance certificate may be issued only if the territorial authority is satisfied that the building work concerned complies with the building code that applied at the time the building consent was granted; and
 - (ii) section 43(4) were omitted.

437 Transitional provision for issue of certificate of acceptance

- (1) This section applies if—
 - (a) an owner, or the owner's predecessor in title (whether an immediate predecessor in title or otherwise), carried out building work before the commencement of this section for which—
 - (i) a building consent was required under the former Act; and
 - (ii) the building consent was not obtained; or
 - (b) a building certifier is unable or refuses to issue either of the following in respect of building work for which a building consent was issued before the commencement of this section:
 - (i) a building certificate under section 56 of the former Act; or
 - (ii) a code compliance certificate under section 95.
- (2) A territorial authority may, on application, issue a certificate of acceptance.
- (3) For the purposes of subsection (2), sections 96(2) and (3) and 97 to 99 apply with all necessary modifications.
- (4) A reference to a **building certifier** in this section includes a reference to a building certifier that applied for registration, and is registered, under section 191 as a building consent authority.

438 Transitional provision for code compliance certificates and compliance schedules issued under former Act

- (1) On the commencement of this section,—
 - (a) a code compliance certificate issued under section 43 of the former Act has effect as if it had been issued under section 95 of this Act; and
 - (b) a compliance schedule issued under section 44 of the former Act has effect as if it had been issued under section 102 of this Act.
- (2) Before 30 November 2010,—
 - (a) the reference in sections 103(1)(c) and 108(7) to licensed building practitioners, in relation to a territorial authority, includes a reference to independently qualified people accepted by the authority as being qualified

- to carry out the inspection, maintenance, and reporting procedures required for a specified system stated in a compliance schedule:
- (b) the references in sections 108(3)(c), 108(3)(d), 108(7), 109, and 110(a) to a licensed building practitioner, in relation to a territorial authority, include references to an independently qualified person accepted by the authority as being qualified to carry out the inspection, maintenance, and reporting procedures required for a specified system stated in a compliance schedule.
- (3) A person who immediately before the commencement of this section was accepted by a territorial authority as being qualified to carry out the inspection, maintenance, and reporting procedures required for a specified system stated in a compliance schedule continues to be accepted until the authority withdraws its acceptance.
- (4) Before 30 November 2010, a territorial authority—
- (a) may accept any person as being qualified to carry out the inspection, maintenance, and reporting procedures required for a specified system stated in a compliance schedule:
 - (b) may withdraw its acceptance of any person as being qualified to carry out the inspection, maintenance, and reporting procedures required for a specified system stated in a compliance schedule (whether the acceptance occurred before or after the commencement of this section).
- (5) If not earlier withdrawn, a territorial authority's acceptance of a person as being qualified to carry out the inspection, maintenance, and reporting procedures required for a specified system stated in a compliance schedule expires on 30 November 2010.

Section 438(2): substituted, on 14 April 2005, by section 26 of the Building Amendment Act 2005 (2005 No 31).

Section 438(2): amended, on 15 March 2008, by section 90 of the Building Amendment Act 2008 (2008 No 4).

Section 438(3): substituted, on 14 April 2005, by section 26 of the Building Amendment Act 2005 (2005 No 31).

Section 438(4): added, on 14 April 2005, by section 26 of the Building Amendment Act 2005 (2005 No 31).

Section 438(4): amended, on 15 March 2008, by section 90 of the Building Amendment Act 2008 (2008 No 4).

Section 438(5): added, on 14 April 2005, by section 26 of the Building Amendment Act 2005 (2005 No 31).

Section 438(5): amended, on 15 March 2008, by section 90 of the Building Amendment Act 2008 (2008 No 4).

439 Transitional provision for document used in establishing compliance with building code

- (1) This section applies if, before the commencement of this section,—
 - (a) a document for use in establishing compliance with the building code has been prepared or approved under section 49(1) of the former Act; and
 - (b) in a case where that document has been approved, the approval has not been withdrawn under section 49(6) of that Act.
- (2) On and from the commencement of this section, the document referred to in subsection (1) must be treated as if it were a compliance document.

440 Transitional provision for applications for approval as building certifier under former Act

- (1) An application for approval as a building certifier that has been made under section 51 of the former Act, but not determined or withdrawn, before the commencement of this section must, on that commencement, be considered and determined by the chief executive in all respects as if this Act had not been passed.
- (2) An appeal against a decision to refuse to grant approval as a building certifier that has been commenced under section 52(9) of the former Act, but not completed, before the commencement of this section must be continued and completed in all respects under the former Act as if this Act had not been passed.
- (3) For the purposes of this section and section 441, sections 51 to 53 of the former Act remain in force as if this Act had not been passed.

441 Transitional provision for applications for continuation or renewal of approval as building certifier under former Act

- (1) An application for the continuation or renewal of an approval as a building certifier under section 51(5) of the former Act may be made to the chief executive until the close of 31 May 2006.
- (2) The chief executive may, until the close of 31 May 2006, grant the application.
- (3) An approval as a building certifier that is continued or renewed under subsection (2) expires at the close of 31 May 2006.

442 Meaning of approved building certifier

In sections 443 to 446, **approved building certifier** means a person—

- (a) who, immediately before the commencement of this section, held a current approval as a building certifier under section 51 of the former Act; and
- (b) whose approval is continued or renewed, and has not expired, under the former Act or section 441.

443 Approved building certifiers have until 31 May 2006 to apply to be registered as building consent authority

Every approved building certifier has until 31 May 2006 to apply to be registered as a building consent authority under section 191.

444 What happens if approved building certifier applies to be registered as building consent authority by 31 May 2006

- (1) An approved building certifier who applies to be registered as a building consent authority by 31 May 2006 may, during the transitional period, issue either of the following in respect of building work for which a building consent was issued before the commencement of this section:
 - (a) a building certificate under section 56 of the former Act; or
 - (b) a code compliance certificate under section 95.

- (2) In this section, **transitional period** means the period commencing on the date of commencement of this section and ending on 30 November 2007.

445 What happens if approved building certifier does not apply to be registered as building consent authority by 31 May 2006

- (1) If an approved building certifier does not apply to be registered as a building consent authority by 31 May 2006, the approved building certifier must not, after the close of that date, accept any further applications for—
- (a) a building certificate under section 56 of the former Act; or
 - (b) a code compliance certificate under section 95.
- (2) An approved building certifier may, in respect of an application for a certificate referred to in subsection (1) that was made before the close of 31 May 2006, issue the certificate until the close of 30 November 2007.
- (3) However, an approved building certifier must arrange for any other application for a certificate referred to in subsection (1) to be transferred to a building consent authority or territorial authority if the certificate has not been issued or refused by 30 November 2007.
- (4) A building consent authority or a territorial authority to whom an application is transferred under subsection (3) may issue a code compliance certificate under section 95.

446 Certain provisions of former Act apply for purposes of sections 444 and 445

- (1) For the purposes of sections 444 and 445,—
- (a) sections 54 to 57 of the former Act remain in force as if this Act had not been passed; and
 - (b) a building consent authority must accept, under section 19(1), a building certificate issued under section 56 of the former Act as establishing compliance with the building code; and
 - (c) a party may apply, under section 177, for a determination in relation to a decision by an approved building

certifier to issue, or refuse to issue, a building certificate or a code compliance certificate.

- (2) For the purposes of subsection (1)(c), sections 176 to 190 apply with all necessary modifications.
- (3) In this section, **party**—
 - (a) has the meaning given by section 176; and
 - (b) includes an approved building certifier.

447 Transitional provision for certificate of accreditation issued under former Act

A certificate of accreditation issued under section 59 of the former Act in respect of any proprietary item (being a material, method of construction, design, or component relating to building work) before the commencement of this section must, on and from that commencement, be treated as if it were a product certificate issued under section 269 and the provisions of this Act apply accordingly with all necessary modifications.

448 Transitional provision for proceedings under former Act

- (1) This section applies to the following proceedings:
 - (a) proceedings under section 54 or section 55 of the former Act in relation to a building certifier; and
 - (b) proceedings under Part 9 of the former Act (including court proceedings related to an application for a determination under section 17 of that Act).
- (2) Any proceedings to which this section applies that were commenced, but not completed, before the date of commencement of this section must be continued and completed in all respects under the former Act as if this Act had not been passed.

449 Territorial authorities and regional authorities must apply to be registered by 31 May 2006

A territorial authority or a regional authority must, by 31 May 2006, apply to be registered under section 191.

450 When territorial authority may and must act as building consent authority during transition to this Act

- (1) A territorial authority may, during the period specified in subsection (3), act as a building consent authority (including in relation to a dam) even though the territorial authority has yet to be registered under section 191.
- (2) *[Repealed]*
- (3) The period is the period that—
 - (a) begins on the date of commencement of Part 2; and
 - (b) ends on the earlier of—
 - (i) the date on which an application for registration by the territorial authority under section 191 is granted or refused; or
 - (ii) 31 March 2009.
- (3A) A territorial authority that is registered under section 191 must, until the time specified in subsection (3B), act as a building consent authority in relation to a dam within the territorial authority's district.
- (3B) The time is the earlier of the following:
 - (a) the close of the day before the date specified in subsection (3)(b)(ii); and
 - (b) the time at which the regional authority whose region includes the territorial authority's district—
 - (i) is registered under section 191; or
 - (ii) transfers its functions as a building consent authority in relation to dams in that district to another regional authority, under subpart 4 of Part 3 of this Act or subpart 2 of Part 3 of the Local Government Act 2002.
- (3C) If a territorial authority acts as a building consent authority under subsection (1) or (3A),—
 - (a) the territorial authority must be taken to have all the functions, duties, and powers of a building consent authority under this Act; and
 - (b) this Act applies with all necessary modifications.
- (3D) The Governor-General may, by Order in Council, before the date specified in subsection (3)(b)(ii), specify a later date in substitution for that date.

(3E) An order under subsection (3D) is a regulation for the purposes of the Regulations (Disallowance) Act 1989.

(4) This section overrides sections 14 and 193.

Section 450 heading: amended, on 29 August 2007, by section 5(4) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Section 450(2): repealed, on 29 August 2007, by section 5(5) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Section 450(3)(b)(ii): amended, on 26 June 2008, by clause 3 of the Building (Building Consent Authority Transition) Order 2008 (SR 2008/147).

Section 450(3A): inserted, on 29 August 2007, by section 5(2) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Section 450(3B): inserted, on 29 August 2007, by section 5(2) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Section 450(3C): inserted, on 29 August 2007, by section 5(2) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Section 450(3D): inserted, on 29 August 2007, by section 5(2) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Section 450(3E): inserted, on 29 August 2007, by section 5(2) of the Building (Consent Authorities) Amendment Act 2007 (2007 No 34).

Review of building code

451 Chief executive must review building code

- (1) The chief executive must, within 3 years after the commencement of this section,—
 - (a) review the building code; and
 - (b) prepare for the Minister a report on the review that includes recommendations setting out any amendments to the building code that are necessary or desirable.
- (2) In conducting the review, the chief executive must consider—
 - (a) the extent to which the building code complies with and meets the requirements of this Act; and
 - (b) the extent to which the building code is stated in sufficient detail to provide clear guidance on performance standards that buildings must meet to ensure compliance with the building code.

Schedule 1

s 41(1)(b)

Exempt building work

A building consent is not required for the following building work:

- (a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006, except—
 - (i) complete or substantial replacement of a specified system; or
 - (ii) complete or substantial replacement of any component or assembly contributing to the building's structural behaviour or fire-safety properties; or
 - (iii) repair or replacement (other than maintenance) of any component or assembly that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or
 - (iv) repair or replacement of a water storage heater connected to a solid-fuel heater or other supplementary heat exchanger (other than—
 - (A) repair of an open-vented water storage heater using the same pipework; or
 - (B) replacement of an open-vented water storage heater with a comparable heater using the same pipework):
- (ab) the opening and reinstatement of any purpose-made access point within a drainage system that—
 - (i) is not a NUO system or part of a NUO system; and
 - (ii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006:
- (ac) the alteration to drains for a dwelling, if the alteration—
 - (i) is of a minor nature (for example, shifting a gully trap); and
 - (ii) does not include making any new connection to a service provided by a network utility operator; and

- (iii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006:
- (ad) the alteration to existing sanitary plumbing (as defined in section 3 of the Plumbers, Gasfitters, and Drainlayers Act 1976) in a dwelling (for example, replacing a bath with a shower or moving a toilet) carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006 and that is not repair or replacement to which paragraph (a)(iv) (other than subparagraph (A) or (B)) applies:
- (ae) the installation, replacement, or removal in any existing building of a window (including a roof window) or an exterior doorway if—
 - (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) in the case of replacement, the window or doorway being replaced satisfied the provisions of the building code for durability:
- (af) the alteration to an entrance or an internal doorway of a dwelling to improve access for persons with disabilities, if compliance with the provisions of the building code relating to structural stability is not reduced:
- (ag) the alteration to the interior of any non-residential building (for example, a shop, office, library, factory, warehouse, church, or school), if the alteration does not—
 - (i) reduce compliance with the provisions of the building code that relate to means of escape from fire, protection of other property, sanitary facilities, structural stability, fire-rating performance, and access and facilities for persons with disabilities; or
 - (ii) modify or affect any specified system:
- (b) the construction or alteration of any motorway sign, stopbank, culvert for carrying water under or in association with a road, or other similar structure that is a simple structure and is owned or controlled by a network utility operator or other similar organisation:
- (c) the construction or alteration of 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 (for example, the load of vehicles on a road):

- (ca) the construction, alteration, or removal of an internal wall (including the construction, alteration, or removal of an internal doorway) in any existing building if—
 - (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) the means of escape from fire provided within the building are not detrimentally affected; and
 - (iii) the wall is not made of units of material (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar:
- (d) the construction or alteration of any wall (except a retaining wall or an internal wall), fence (except a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987), or hoarding, in each case of a height not exceeding 2 metres above the supporting ground:
- (da) the construction or alteration of any dam that is not a large dam:
- (e) the construction or alteration of any tank or pool and any structural support of the tank or pool (except 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 35 000 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:
- (f) the construction, alteration, or removal of any tent or marquee that has a floor area not exceeding 50 square metres if that tent or marquee is to be, or has been, used for public assembly for a period of not more than 1 month:
- (fa) the construction, alteration, or removal of any tent or marquee that has a floor area not exceeding 100 square metres if that tent or marquee is, or has been, for private use for a period of not more than 1 month:
- (g) the construction or alteration of 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:

- (h) the construction or alteration of any temporary storage stack of goods or materials:
- (i) building work in connection with any detached building (except a building that is required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996 or a building closer than its own height to any residential accommodation or to any legal boundary) that—
 - (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 which, 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 for which a building consent is required; or
 - (iv) does not exceed 1 storey, does not exceed 10 square metres in floor area, and does not contain sanitary facilities or facilities for the storage of potable water, but may contain sleeping accommodation (without cooking facilities) if the detached building is used in connection with a dwelling:
- (j) building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like with a floor area not exceeding 5 square metres:
- (ja) the construction, alteration, or removal of any fabric, glass, or metal awning on any building that—
 - (i) is on the ground or first storey level; and
 - (ii) does not exceed 15 square metres in size:
- (jb) the construction, alteration, or removal of a pergola:
- (jc) the construction, alteration, or removal of a porch or verandah on any building where that porch or verandah—
 - (i) is on the ground or first storey level; and
 - (ii) is over a deck or a patio; and
 - (iii) does not exceed 15 square metres in size:
- (k) any other building work in respect of which the territorial authority (or, as the case requires, the regional authority) considers that a building consent is not necessary for the purposes of this Act because that building work—

- (i) is unlikely to be carried out otherwise than in accordance with the building code; or
- (ii) if carried out otherwise than in accordance with the building code, is unlikely to endanger people or any building, whether on the same land or on other property.

Compare: 1991 No 150 Schedule 3

Schedule 1 paragraph (a): substituted, on 15 March 2008, by section 91(1) of the Building Amendment Act 2008 (2008 No 4).

Schedule 1 paragraph (a): amended, on 1 April 2010, by section 185 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74).

Schedule 1 paragraph (a)(iv): substituted, on 7 July 2010, by section 11(1) of the Building Amendment Act 2010 (2010 No 50).

Schedule 1 paragraph (ab): inserted, on 15 March 2008, by section 91(1) of the Building Amendment Act 2008 (2008 No 4).

Schedule 1 paragraph (ab)(ii): amended, on 1 April 2010, by section 185 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74).

Schedule 1 paragraph (ac): inserted, on 16 October 2008, by clause 3(1) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (ac)(iii): amended, on 1 April 2010, by section 185 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74).

Schedule 1 paragraph (ad): inserted, on 16 October 2008, by clause 3(1) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (ad): amended, on 7 July 2010, by section 11(2) of the Building Amendment Act 2010 (2010 No 50).

Schedule 1 paragraph (ad): amended, on 1 April 2010, by section 185 of the Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74).

Schedule 1 paragraph (ae): inserted, on 16 October 2008, by clause 3(1) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (af): inserted, on 16 October 2008, by clause 3(1) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (ag): inserted, on 16 October 2008, by clause 3(1) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (b): substituted, on 15 March 2008, by section 91(2) of the Building Amendment Act 2008 (2008 No 4).

Schedule 1 paragraph (b): amended, on 16 October 2008, by clause 3(2) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (c): amended, on 16 October 2008, by clause 3(3) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (ca): inserted, on 16 October 2008, by clause 3(4) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (d): amended, on 16 October 2008, by clause 3(5) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (d): amended, on 15 March 2008, by section 91(3) of the Building Amendment Act 2008 (2008 No 4).

Schedule 1 paragraph (da): inserted, on 15 March 2008, by section 91(4) of the Building Amendment Act 2008 (2008 No 4).

Schedule 1 paragraph (da): amended, on 16 October 2008, by clause 3(6) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (e): amended, on 16 October 2008, by clause 3(7) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (f): substituted, on 16 October 2008, by clause 3(8) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (fa): inserted, on 16 October 2008, by clause 3(8) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (g): amended, on 16 October 2008, by clause 3(9) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (h): amended, on 16 October 2008, by clause 3(10) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (i)(iv): substituted, on 16 October 2008, by clause 3(11) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (ja): inserted, on 16 October 2008, by clause 3(12) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (jb): inserted, on 16 October 2008, by clause 3(12) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (jc): inserted, on 16 October 2008, by clause 3(12) of the Building (Schedule 1) Order 2008 (SR 2008/318).

Schedule 1 paragraph (k): amended, on 14 April 2005, by section 3(9) of the Building Amendment Act 2005 (2005 No 31).

Schedule 2

s 118(2)

**Buildings in respect of which requirement
for provision of access and facilities for
persons with disabilities applies**

The buildings in respect of which the requirement for the provision of access and facilities for persons with disabilities apply are, without limitation, as follows:

- (a) land, sea, and air passenger transport terminals and facilities and interchanges, whether wholly on land or otherwise:
- (b) public toilets wherever situated:
- (c) banks:
- (d) childcare centres and kindergartens:
- (e) day-care centres and facilities:
- (f) commercial buildings and premises for business and professional purposes, including computer centres:
- (g) central, regional, and local government offices and facilities:
- (h) courthouses:
- (i) Police stations:
- (j) hotels, motels, hostels, halls of residence, holiday cabins, groups of pensioner flats, boarding houses, guest houses, and other premises providing accommodation for the public:
- (k) hospitals, whether public or private, and rest homes:
- (l) medical and dental surgeries, and medical and paramedical and other primary health care centres:
- (m) educational institutions, including public and private primary, intermediate, and secondary schools, universities, polytechnics, and other tertiary institutions:
- (n) libraries, museums, art galleries, and other cultural institutions:
- (o) churches, chapels, and other places of public worship:
- (p) places of assembly, including auditoriums, theatres, cinemas, halls, sports stadiums, conference facilities, clubrooms, recreation centres, and swimming baths:
- (q) shops, shopping centres, and shopping malls:
- (r) restaurants, bars, cafeterias, and catering facilities:
- (s) showrooms and auction rooms:
- (t) public laundries:
- (u) petrol and service stations:

- (v) funeral parlours:
- (w) television and radio stations:
- (x) car parks, parking buildings, and parking facilities:
- (y) factories and industrial buildings where more than 10 persons are employed:
- (z) other buildings, premises, or facilities to which the public are to be admitted, whether for free or on payment of a charge.

Compare: 1991 No 150 s 47A(4)

Schedule 3
Further provisions applying to Board
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s 346

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Members' appointment

1 Method of appointment

- (1) The Governor-General appoints a member by sending written notice to the member (with a copy to the Board).
- (2) The notice of appointment must—
 - (a) state the date on which the appointment takes effect; and
 - (b) be given only after the person to be appointed has—
 - (i) consented in writing to being a member; and
 - (ii) certified in writing that he or she is not disqualified from being a member; and
 - (iii) disclosed to the Minister all interests that the person would, if he or she were a member, have to disclose under clauses 15 to 18 at the time of the certificate.

2 Qualifications of members

- (1) A natural person who is not disqualified by this clause may be a member.
- (2) The following persons are disqualified from being a member:
 - (a) a person who is an undischarged bankrupt;
 - (b) a person who is prohibited from being a director or promoter of, or being concerned or taking part in the management of, an incorporated or unincorporated body under the Companies Act 1993, or the Securities

Act 1978, or the Securities Markets Act 1988, or the Takeovers Act 1993:

- (c) a person who is subject to a property order made under section 10, section 11, section 12, section 30, or section 31 of the Protection of Personal and Property Rights Act 1988, or whose property is managed by a trustee corporation under section 32 of that Act:
- (d) a person who has been convicted of an offence punishable by imprisonment for a term of 2 years or more or who has been sentenced to imprisonment for any other offence, unless that person has obtained a pardon or served the sentence or otherwise suffered the penalty imposed on the person:
- (e) a person who has failed to disclose all interests under clause 1.

Schedule 3 clause 2(2)(b): substituted, on 25 October 2006, by section 25 of the Securities Amendment Act 2006 (2006 No 46).

3 Term of appointment

- (1) A member holds office for 5 years or any shorter period stated in the notice of appointment.
- (2) A member may be reappointed.
- (3) A member continues in office despite the expiry of his or her term of office until—
 - (a) the member is reappointed; or
 - (b) the member's successor is appointed; or
 - (c) the Governor-General informs the member by written notice (with a copy to the Board) that the member is not to be reappointed and no successor is to be appointed at that time.
- (4) This clause is subject to clause 9.

4 Validity of members' acts

The acts of a person as a member are valid even if—

- (a) the person's appointment was defective; or
- (b) the person is not qualified to be a member.

5 Position where concurrent office

A member may hold that office concurrently with any other office.

*Resignation and removal of members***6 Resignation**

- (1) A member may resign from office by written notice to the Minister (with a copy to the Board) that is signed by the member.
- (2) The resignation is effective on receipt of the notice by the Minister or at any later time stated in the notice.

7 Removal from office

- (1) The Governor-General may, on the advice of the Minister given after consultation with the Attorney-General, remove a member from office by written notice to the member (with a copy to the Board) at any time for any of the following reasons proved to the satisfaction of the Governor-General:
 - (a) breach of the member's duties or the Board's collective duties under this schedule; or
 - (b) failure or inability to perform, or inadequate performance of, the member's duties and responsibilities as a member; or
 - (c) misconduct by the member; or
 - (d) any other just cause.
- (2) Before giving advice to the Governor-General, the Minister must give the member a reasonable opportunity to make written submissions or be heard on the proposal to remove him or her.
- (3) The notice of removal must state the reason for the removal.

8 No compensation for ceasing to hold office

A member is not entitled to any compensation or other payment or benefit relating to his or her ceasing for any reason to hold office as a member.

9 Members ceasing to hold office

A member ceases to hold office if he or she—

- (a) resigns in accordance with clause 6; or

- (b) is removed from office in accordance with clause 7 or any other enactment; or
- (c) becomes disqualified from being a member under clause 2; or
- (d) otherwise ceases to hold office in accordance with any enactment.

Vacancies in membership of Board

10 Position where vacancy in membership

- (1) If a member, for any reason, ceases to hold office as a member, the Governor-General may appoint another person to act as a member.
- (2) A member who is appointed under subclause (1) is appointed for the residue of the term for which the vacating member was appointed.

11 Effect of vacancy in membership

The powers and functions of the Board are not affected by any vacancy in its membership.

Duties of members

12 Accountability for duties

- (1) The duties of members of the Board under this schedule are duties owed to the Minister, and do not provide any ground of action for any other person.
- (2) If the Board breaches any of its duties under clause 14,—
 - (a) each member of the Board is accountable to the Minister for the breach; and
 - (b) that breach justifies all or any of the members being removed from office.

13 Duties of members

A member, when acting as a member, must act—

- (a) in good faith; and
- (b) with reasonable care, diligence, and skill; and
- (c) with honesty and integrity; and
- (d) in accordance with any statement of expectations as to standards of good conduct for members of statutory

bodies issued by 1 or more Ministers of the Crown that applies to statutory bodies (or classes of them) generally.

14 **Collective duties of Board**

The Board must—

- (a) not contravene this Act; and
- (b) act in a manner consistent with the objectives and functions of the Board; and
- (c) perform its functions efficiently and effectively and in a manner consistent with the spirit of service to the public.

Disclosure of interests of members in matters of Board

15 **Meaning of interested**

- (1) A member is **interested** in a matter relating to the Board if, and only if, the member—
- (a) is a party to, or will or may derive a material financial benefit from, the matter; or
 - (b) has a material financial interest in a person to whom the matter relates; or
 - (c) is a director, officer, member, or trustee of a person who will or may derive a material financial benefit from the matter; or
 - (d) is the parent, child, spouse, civil union partner, or de facto partner of a person who will or may derive a material financial benefit from the matter; or
 - (e) is otherwise directly or indirectly materially interested in the matter.
- (2) However, a member is not interested in a matter merely because he or she is a member of a professional building industry body.

Schedule 3 clause 15(1)(d): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

16 **Obligation to disclose interest**

A member who is interested in a matter relating to the Board must disclose the nature of the interest in accordance with

clause 17 as soon as practicable after the member becomes aware that he or she is interested.

17 Method of disclosure of interest

- (1) If clause 16 applies, the member must disclose the details listed in subclause (2) in an interests register and to—
- (a) the chairperson or, if there is no chairperson, the deputy chairperson; or
 - (b) if the member concerned is the chairperson or the positions of the chairperson and deputy chairperson are vacant, the Minister.
- (2) The details are—
- (a) the nature of the interest and the monetary value of the interest (if the monetary value can be quantified); or
 - (b) the nature and extent of the interest (if the monetary value cannot be quantified).

18 Consequences of interest

- A member who is interested in a matter relating to the Board—
- (a) must not vote or take part in any deliberation or decision of the Board relating to the matter; and
 - (b) must be disregarded for the purpose of forming a quorum for that part of a meeting of the Board during which a deliberation or decision relating to the matter occurs or is made.

Confidentiality of information

19 Confidentiality of information

- (1) A member who has information in his or her capacity as a member that would not otherwise be available to him or her must not disclose that information to any person, or make use of, or act on, that information, except—
- (a) for the purposes of the Board; or
 - (b) as required or permitted by law; or
 - (c) in accordance with subclause (2); or
 - (d) in complying with clauses 16 and 17.
- (2) A member may disclose, make use of, or act on the information if—

- (a) the member is first authorised to do so by the Board; and
- (b) the disclosure, use, or act in question will not, or will not be likely to, prejudice the Board.

Liability of Board and others

20 Liability of Board and others

No member of the Board is liable for any act or omission done, in good faith, in the performance or intended performance and exercise of the functions and powers of the Board.

Members' remuneration and allowances

21 Members' remuneration and allowances

- (1) The Board is a statutory board for the purposes of the Fees and Travelling Allowances Act 1951.
- (2) There may be paid, out of public money to the members of the Board, 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 apply accordingly.

Chairperson and deputy chairperson

22 Appointment

- (1) The Minister may appoint one of the members as the chairperson, and another member as the deputy chairperson, of the Board by written notice to the member (with a copy to the Board).
- (2) The notice of appointment must state the date on which the appointment takes effect.

23 Term of appointment

The chairperson and the deputy chairperson each holds that office from the date stated in the notice of appointment until he or she—

- (a) resigns from that office; or
- (b) is removed from it by the Minister; or
- (c) ceases to hold office as a member.

24 Resignation

- (1) A chairperson or deputy chairperson may, without resigning as a member, resign from that office by written notice to the Minister (with a copy to the Board).
- (2) The notice of resignation must state the date on which the resignation takes effect.

25 Removal

- (1) The Minister may remove a chairperson or deputy chairperson from that office by written notice to the person (with a copy to the Board).
- (2) The notice of removal must state the date on which the removal takes effect.

26 Performance and exercise of chairperson's functions, duties, and powers during vacancy

If there is no chairperson or, for any reason, the chairperson is unable to perform and exercise his or her functions, duties, and powers as chairperson, the deputy chairperson has all the functions, duties, and powers of the chairperson.

Procedures of Board

27 Procedure generally

Except as otherwise provided in this Act, the members may regulate their own procedure.

28 Notice of meetings

- (1) The Board or the chairperson must appoint the dates, times, and places for meetings of the Board, and give notice of those meetings to each member not present when the appointment is made.
- (2) The chairperson or any 2 members may call a special meeting of the Board by giving at least 7 days' notice of the special meeting, and the business to be transacted at the meeting, to each member for the time being in New Zealand.
- (3) Only the business stated in the notice of the special meeting may be transacted at the special meeting.

- (4) Notice of a meeting—
 - (a) must be written, and state the date, time, and place of the meeting; and
 - (b) may be given by post, delivery, or electronic communication; and
 - (c) must be sent to the member's last known address in New Zealand.
- (5) An irregularity in a notice of a meeting is waived if all members entitled to receive the notice either—
 - (a) attend the meeting without protesting about the irregularity; or
 - (b) do not attend the meeting, but agree before the meeting is held to the waiver of the irregularity.

29 Methods of holding meetings

A meeting of the Board may be held—

- (a) by a quorum of the members being assembled together at the date, time, and place appointed for the meeting; or
- (b) by means of audio, audio and visual, or electronic communication by which a quorum of members can simultaneously communicate with each other throughout the meeting.

30 Quorum

- (1) A quorum for a meeting of the Board is—
 - (a) half the number of members (if the board has an even number of members) or a majority of the members (if the Board has an odd number of members); but
 - (b) in any case, no less than 3 members.
- (2) No business may be transacted at a meeting of the Board if a quorum is not present.

31 Presiding at meetings

- (1) At a meeting of the Board, the following person presides:
 - (a) if there is a chairperson and he or she is present, the chairperson; or
 - (b) if there is no chairperson or he or she is not present, the deputy chairperson; or

- (c) in any other case, a member chosen by the members present to be the chairperson of the meeting.
- (2) The person chosen under subclause (1) may perform and exercise all the powers, duties, and functions of the chairperson for the purposes of the meeting.

32 Voting at meetings

- (1) Each member has 1 vote.
- (2) A resolution of the Board is passed if it is agreed to by all members present without dissent or if a majority of the votes cast on it are in favour of it.
- (3) A member present at a meeting of the Board is presumed to have agreed to, and to have voted in favour of, a resolution of the Board unless he or she expressly dissents from, or votes against, the resolution at the meeting.

33 Unanimous written resolutions

- (1) A resolution signed or assented to in writing (whether sent by post, delivery, or electronic communication) by all members is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted.
 - (2) The resolution may consist of several documents containing the same resolution, each signed or assented to in writing by 1 or more members.
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Schedule 4
Enactments amended

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Part 1

Amendments to other Acts (other than local
Acts)

Boilers, Lifts, and Cranes Act 1950 (1950 No 53)

Amendment(s) incorporated in the Act(s).

Building Research Levy Act 1969 (1969 No 23)

Amendment(s) incorporated in the Act(s).

**Chartered Professional Engineers of New Zealand Act 2002
(2002 No 17)**

Amendment(s) incorporated in the Act(s).

**Children, Young Persons, and Their Families Act 1989 (1989
No 24)**

Amendment(s) incorporated in the Act(s).

Civil Defence Emergency Management Act 2002 (2002 No 33)

Amendment(s) incorporated in the Act(s).

Costs in Criminal Cases Act 1967 (1967 No 129)

Amendment(s) incorporated in the Act(s).

Crown Organisations (Criminal Liability) Act 2002 (2002 No 37)

Amendment(s) incorporated in the Act(s).

Dairy Industry Act 1952 (1952 No 55)

Amendment(s) incorporated in the Act(s).

Disabled Persons Community Welfare Act 1975 (1975 No 122)

Amendment(s) incorporated in the Act(s).

Part 1—*continued*

Earthquake Commission Act 1993 (1993 No 84)

Amendment(s) incorporated in the Act(s).

Education Act 1989 (1989 No 80)

Amendment(s) incorporated in the Act(s).

Electricity Act 1992 (1992 No 122)

Amendment(s) incorporated in the Act(s).

Fencing of Swimming Pools Act 1987 (1987 No 178)

Amendment(s) incorporated in the Act(s).

Fire Service Act 1975 (1975 No 42)

Amendment(s) incorporated in the Act(s).

Gas Act 1992 (1992 No 124)

Amendment(s) incorporated in the Act(s).

Hazardous Substances and New Organisms Act 1996 (1996 No 30)

Amendment(s) incorporated in the Act(s).

Health Act 1956 (1956 No 65)

Amendment(s) incorporated in the Act(s).

Health and Safety in Employment Act 1992 (1992 No 96)

Amendment(s) incorporated in the Act(s).

Historic Places Act 1993 (1993 No 38)

Amendment(s) incorporated in the Act(s).

Hospitals Act 1957 (1957 No 40)

Amendment(s) incorporated in the Act(s).

Part 1—*continued***Human Rights Act 1993 (1993 No 82)***Amendment(s) incorporated in the Act(s).***Local Government Act 1974 (1974 No 66)***Amendment(s) incorporated in the Act(s).***Local Government Act 2002 (2002 No 84)***Amendment(s) incorporated in the Act(s).***Local Government Official Information and Meetings Act 1987
(1987 No 174)***Amendment(s) incorporated in the Act(s).***Meat Act 1981 (1981 No 56)***Amendment(s) incorporated in the Act(s).***Ombudsmen Act 1975 (1975 No 9)***Amendment(s) incorporated in the Act(s).***Privacy Act 1993 (1993 No 28)***Amendment(s) incorporated in the Act(s).***Public Audit Act 2001 (2001 No 10)***Amendment(s) incorporated in the Act(s).***Public Finance Act 1989 (1989 No 44)***Amendment(s) incorporated in the Act(s).***Public Works Act 1981 (1981 No 35)***Amendment(s) incorporated in the Act(s).***Radiation Protection Act 1965 (1965 No 23)***Amendment(s) incorporated in the Act(s).*

Part 1—*continued*

Resource Management Act 1991 (1991 No 69)

Amendment(s) incorporated in the Act(s).

Sale of Liquor Act 1989 (1989 No 63)

Amendment(s) incorporated in the Act(s).

Sentencing Act 2002 (2002 No 9)

Amendment(s) incorporated in the Act(s).

Schedule 4 Part 1 **Weathertight Homes Resolution Services Act 2002**: repealed, on 1 April 2007, by section 127(1)(b) of the Weathertight Homes Resolution Services Act 2006 (2006 No 84).

Part 2

Local Acts amended

Auckland Improvement Trust Act 1971 (1971 No 9)

Amendment(s) incorporated in the Act(s).

Summit Road (Canterbury) Protection Act 2001 (2001 No 3)

Amendment(s) incorporated in the Act(s).

Part 3

Regulations amended

Dangerous Goods (Class 3—Flammable Liquids) Regulations 1985 (SR 1985/188)

Amendment(s) incorporated in the regulations.

District Courts Rules 1992 (SR 1992/109)

Amendment(s) incorporated in the rules.

Domestic Violence Act Commencement Order 1998 (SR 1998/343)

Amendment(s) incorporated in the order.

Part 3—*continued***Domestic Violence (Public Registers) Regulations 1998
(SR 1998/342)***Amendment(s) incorporated in the regulations.***Education (Early Childhood Centres) Regulations 1998
(SR 1998/85)***Amendment(s) incorporated in the regulations.***Electricity Regulations 1997 (SR 1997/60)***Amendment(s) incorporated in the regulations.***Fire Safety and Evacuation of Buildings Regulations 1992 (SR
1992/361)***Amendment(s) incorporated in the regulations.***Gas Regulations 1993 (SR 1993/76)***Amendment(s) incorporated in the regulations.***Hospitals Regulations 1993 (SR 1993/156)***Amendment(s) incorporated in the regulations.***Old People's Homes Regulations 1987 (SR 1987/336)***Amendment(s) incorporated in the regulations.***Rating Valuations (Local Authority Charges) Regulations 1999
(SR 1999/146)***Amendment(s) incorporated in the regulations.*

Building Amendment Act 2008

Public Act 2008 No 4
Date of assent 14 March 2008
Commencement see section 2

1 Title

This Act is the Building Amendment Act 2008.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 2

Validation and transitional provisions

92 Validation in respect of levies on estimated value of building work

- (1) For the purpose of determining the calculation of any relevant levy on building work, the principal Act must be read as if at all material times it contained the definition of **estimated value** in section 7 of the Act, as amended by section 6 of this Act.
- (2) In this section, **relevant levy** means a levy—
 - (a) imposed under section 53 of the principal Act; and
 - (b) calculated in accordance with section 53(2)(a) of the principal Act; and
 - (c) prescribed in the Building Levy Order 2005; and
 - (d) paid to the chief executive by the applicant for a building consent.

93 Transitional provision for content of project information memorandum

A territorial authority that issues a project information memorandum need not comply with section 35(1)(i) of the principal Act in respect of that project information memorandum, as inserted by this Act, unless 6 months have elapsed since the commencement of this Act.

94 Transitional provision for refusal of application for code compliance certificate

- (1) This section applies to a code compliance certificate application—
- (a) made under section 92 of the principal Act or to which section 436 of the principal Act applies; and
 - (b) in respect of which a building consent authority has not made a decision under section 93 of the principal Act before the commencement of this Act.
- (2) A building consent authority that refuses to issue a code compliance certificate in respect of an application to which this section applies need not comply with section 95A of the principal Act, as inserted by this Act, in respect of that refusal unless 3 months have elapsed since the commencement of this Act.

95 Transitional provision for refusal of application for certificate of acceptance

- (1) This section applies to an application for a certificate of acceptance—
- (a) made under section 97 of the principal Act or to which section 437 of the principal Act applies; and
 - (b) in respect of which a territorial authority has not granted or refused a certificate of acceptance before the commencement of this Act.
- (2) A territorial authority that refuses to issue a certificate of acceptance in respect of an application to which this section applies need not comply with section 99A of the principal Act, as inserted by this Act, in respect of that refusal unless 3 months have elapsed since the commencement of this Act.
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Contents

- 1 General
 - 2 Status of reprints
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 - 5 List of amendments incorporated in this reprint (most recent first)
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Notes

1 *General*

This is a reprint of the Building Act 2004. The reprint incorporates all the amendments to the Act as at 6 August 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Affordable Housing: Enabling Territorial Authorities Act Repeal Act 2010 (2010 No 101): section 4

Building Amendment Act 2010 (2010 No 50)

Building Amendment Act 2009 (2009 No 25)

Building (Schedule 1) Order 2008 (SR 2008/318)

Energy (Fuels, Levies, and References) Amendment Act 2008 (2008 No 60): section 17

Building (Building Consent Authority Transition) Order 2008 (SR 2008/147)

Building Amendment Act 2008 (2008 No 4)

Building (Consent Authorities) Amendment Act 2007 (2007 No 34)

Weathertight Homes Resolution Services Act 2006 (2006 No 84): section 127(1)

Plumbers, Gasfitters, and Drainlayers Act 2006 (2006 No 74): section 185

Securities Amendment Act 2006 (2006 No 46): section 25

Building Amendment Act 2005 (2005 No 31)

Relationships (Statutory References) Act 2005 (2005 No 3): section 7

State Sector Amendment Act (No 2) 2004 (2004 No 114): section 19(1)
