

NORTHERN TERRITORY BUILDING PRACTITIONERS BOARD

Telephone : 1800 193 111 (prompt 2)
Email : bpb@nt.gov.au
Web Site : www.nt.gov.au/bpb

7 September 2026

The Chair
Legislative Scrutiny Committee
Parliament House
DARWIN NT 0835

Via email:

Dear Chair

Lands and Planning Legislation (Red Tape Reduction) Amendment Bill 2026 (Serial 77)

The Building Practitioners Board (the Board) makes the following comments on the *Lands and Planning Legislation (Red Tape Reduction) Amendment Bill 2026* (the Bill).

Clause 14(b) (amendment of section 34S)

The Board considers that clause 14(b) may not achieve its apparent purpose.

Clause 14 of the Bill seeks to amend section 34S of the *Building Act 1993* by deeming various persons to be guilty of professional misconduct if a corporate registered building practitioner is found by the Building Practitioners Board to be guilty of professional misconduct. The persons affected include the directors of the corporate bodies and persons involvement in the management of the corporate body.

Each such person has a defence if they can show that they:

- (1) Had no knowledge of the misconduct; and
- (2) Could not have, by due diligence, have prevented the misconduct.

The Board notes that this amendment mirrors section 151 which makes directors and persons in management liable for criminal offences committed by the corporate body.

Neither the explanatory statement nor the Minister's introductory speech set out the objective sought to be achieved by the amendment.

The Board assumes that the amendment is designed to deal with an issue that arose from a recent decision of the Inquiry Board (*Kassiou Constructions Pty Ltd*¹). In that matter the Director of Building Control (DBC) took action against a company with the outcome being a large fine. The directors of the company were not parties to the action and, accordingly, the fine imposed did not affect them. The company has subsequently gone into liquidation and the fine is not paid. In theory the directors could have continued in business under their personal registrations.

¹ For further details see decision published on the Board's web site.

Superficially the proposed amendment would appear to make the directors guilty of the professional misconduct breaches of the company.

There are at least two problems with this.

The first is that basic principles of procedural fairness would appear to require that the directors be made parties to the Director's application. Unless the directors are parties to proceedings they would have no opportunity to raise the defence set out in proposed section 34S(2). In the Kassiou matter the directors could have been the subject of the application made by the DBC.

It is likely that neither the Board nor the Northern Territory Civil and Administrative Tribunal would make a decision imposing a penalty unless the directors were to be parties to the proceedings. If so, the amendment does not make it simpler to make directors and managers liable for professional misconduct.

The second problem is that the amendment applies to all directors.

In the Kassiou matter both the directors were building practitioners. It would make sense that they be deemed liable for disciplinary outcomes.

However, there are many corporate building practitioners that have directors who are not registered as individual practitioners. For example, large public companies that construct buildings or provide engineering or certification services.

Most of the penalties for professional misconduct (e.g. cancellations, suspensions) are not relevant to persons who are not registered in their own right as building practitioners. The Board queries whether the amendment is intended to apply to directors who have no personal registration. If it is intended to apply to them it might be useful to include appropriate sanctions (in addition to a fine).

Clause 6 (removal of right of Advisory Board to instigate advice issues)

Clause 6 amends section 11 so that the Advisory Board will no longer have the function of using its own motion to provide to the Minister advice concerning the operation of the Act. Instead, it will only have the role of providing advice if asked to do so by the Minister.

This amendment has the effect of removing an independent source of collective advice from affected industry. The amendment also adds red tape to the processes that must be followed if industry seeks to provide authoritative views to government – that is, they'd would need to go through industry or professional bodies. This seems to a step backwards in quickly identifying problems with the legislation.

Clauses 8 and 11 (removal of aspects of the right to avoid self incrimination)

These clauses provides for new sections 25H(3) & (4) and 34E(3) & (4) which set out matters concerning failures to comply with requirements of the Director of Building Control and auditors.

Those matters are:

- (1) Answers and documents must be provided despite the possibility that the answers or documents might tend to incriminate the person or make the person liable to a penalty.

- (2) The answers and documents are not admissible in evidence in criminal proceedings that are not related to offences under the Act (and regulations).j

The Board notes that this provision seems to be modelled on section 127(6) of the *Home Building Act (NSW)*. However, it is relatively rare to require answers and documents that may lead to adverse criminal and civil outcomes. Compare, for example, section 80(2) of the *Agents Licensing Act 1979* and section 163 of the *Electrical Safety Act 2022*.

Additionally, it is unclear as to whether new sections 25H(4) and 34E(4) prevent or facilitate the use of the answers and documents in disciplinary proceedings before the Board or the Northern Territory Civil and Administrative Tribunal.

Clause 15(2) (new certificate)

Clause 15(2) amends section 40 by adding a new provision (40(ab)) so that one of the certificates that certifiers and the Director can rely on in making decisions under provisions such as sections 58A, 59, 60S, 63, 70, 72D, 74 is a certificate the building work complies with a design certified by another building practitioner that the design complies with the Act and the regulations.

The explanatory statement says that the purpose of the amendment is to permit a certifier to certify a building despite that fact of not having certified the design. The certification can be done on the basis of the certification of the design by another certifier.

The Board assumes that the purpose of this provision is to deal with a problem that may arise when one person certifies a design but another person is certifying the completion of the work.

The Board is concerned that section 40(a), when read with new section 40(ab), may be administered so that there is a requirement for re-certification of the design as of the certification of the work.

The Board notes that regulation 21 of the *Building Regulations 1993* may need amendment so as to contain a reference to new section 40(ab).

Clauses 18, 20 and 21 (extent of certification of compliance)

Clause 18 amends sections 63(5) and 63(6)(c) by removing from each of them the words “,in all material respects”.

Similarly with the amendment of sections 70 and 72 by clauses 20 and 21.

The result of these amendments is that is that various certificates and permits are to contain evidence that the relevant building work “complies with the Regulations” than “complies in all material respects with the Regulations”.

These amendments appear to seek consistency with other provisions of the Act and regulations (e.g. section 40, proposed section 17(3)) which require compliance with the legislation rather than compliance “in all material respects” with the legislation.

In 2005 the former Director of Building Control issued an interpretation of the term “all material respects” (see attached). This interpretation made the point that the use of the qualifying term (“all material respects”) rather than the term “in all respects” meant that what a certifier had to be satisfied about was that of all of the important and essential parts of the building work

accorded with the legislative requirements. The interoperation set out aspects that must be certified and a list of other matters that were outside the scope of certification.

The Board is concerned that this change might have the effect of requiring that certifiers need to deal with minor matters of the kind identified by the former Director (noting his reliance on the qualifying words as the basis for certificates only having to deal with the important and essential aspect of a building). If so, this might be quite impractical and would have the effect of adding red tape. That is, the creation of uncertainty is red tape.

The explanatory statement and the introductory speech contain no meaning statement of the purpose of these amendments.

The Board assumes that these amendments are of a drafting nature (designed to achieve consistency of language throughout the Act – but the Board seeks an assurance that the amendments do not affect the generality of the advice provided in 2005 by the former Director concerning the extent of the obligations of certifiers.

If the Committee requires further information please contact me.

Yours faithfully,



Chris Lovewell
Deputy Chairperson

POLICY REGARDING 'IN ALL MATERIAL RESPECTS'

INTRODUCTION

This policy provides an interpretation for Registered Building Practitioners – Building Certifiers (Restricted and Unrestricted) with regard to the following provisions of the Building Act and their operational effect:

- S.63 (5) & (6)(c)
- S.70
- S.72

In this policy the term 'in all material respects' is a reference to the aforementioned provisions of the *Building Act*.

BACKGROUND

Recent amendments to the *Building Act* (the 'Act') have clarified the way building certifiers are required to discharge their functions in accordance with the Act and *Building Regulations* ('Regulations').

The amendments include prescribed inspection stages, the issue of inspection certificates at certain stages of the building work, the issue of a final inspection certificate and the use of approved forms.

POLICY

The Act is quite specific in what the building certifier is responsible for. These are:

1. to issue a building permit for building work;
2. to carry out inspections during the course of the building work being constructed (some are prescribed inspection stages for certain classes of building work);
3. to issue inspection certificates for the inspections specified in the building permit; and
4. to issue an occupancy permit for the building work to which the building permit relates.

The builder has responsibility under the Act to ensure that the building work has been carried out in accordance with the building permit granted in respect of the building work. However, the process has been strengthened by having an independent third party check of the building work through the inspection process, referred to in the Act as inspection stages.

To further strengthen the process, the Act also requires that after each inspection stage the building certifier issues an inspection certificate and at the completion of the building work a final inspection certificate along with an occupancy permit. Before the certifier issues the certificates he/she must be satisfied that the building work described, completed or listed above complies '*in all material respects with the regulations*'.

The term "in all material respects" is taken to mean that the building certifier must be satisfied that all the important and essential aspects of the building work at the time of the inspection were in place and in accordance with the building permit and approved plans. For example:

- For a pre-pour inspection – all the reinforcement size and spacing, the depth of the footings or slab edge beams, the

bearing capacity of the soil, siting of the building etc is as indicated on the approved drawings;

- For a frame inspection – all the bracing, tie-downs, fixings, frame member sizes etc that can be readily seen are as indicated on the approved drawings or engineer's specifications;
- For a final inspection – all relevant structural requirements have been satisfied, all required inspections have been undertaken and what has been constructed matches the approved plans;
- For the occupancy permit – that the building as constructed reflects the approved plans and meets the requirements of the Building Code of Australia and that the compliance requirements under the Act have been satisfied;

The term "in all material respects" is not, for example, a statement that the concrete is the right strength or slump; or every component of the frame has been checked; or that the plaster board has the right type of glue; or that the every block in a block work wall has been core filled; or that every window or door is positioned exactly as shown on the plans. If that was intended then the Act would have required certification 'in all respects'.

Guide for Inspections

It is understood that the building certifier is not a building site supervisor and cannot oversee all aspects of the building work during construction.

To underpin this, the branch has produced a document to assist building certifiers when inspecting building work to fulfil their statutory obligations and ensure compliance with the structural sufficiency, safety, health and amenity for each stage of building work.

The document is called 'Guideline for Inspections of Class 1 to 10 Buildings or Structures'. This document lists many but not all aspects of an inspection stage that a certifier should be looking for when undertaking an inspection.



DIRECTOR OF BUILDING CONTROL

12 JULY 2006