

NORTHERN TERRITORY BUILDING ADVISORY COMMITTEE

Telephone : (08) 8999 8945
Email : bas@nt.gov.au

www.bac.nt.gov.au

Our Ref: 2026/3908

7 September 2026

The Chair
Legislative Scrutiny Committee
Parliament House
DARWIN NT 0835

Dear Chair

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

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

Clause 6. Section 11 amended (Function and powers of Advisory Committee)

Currently, the Building Act allows the Building Advisory Committee (BAC) to proactively provide advice, making use of the broad experience of the committee members. The proposed change narrows the scope of the BAC, confining it to a reactive role. Given the complexity of the construction industry, this could mean that issues, or potential issues, of which the BAC is aware may go unnoticed by decision-makers until they rise to a level of significant public concern. Historically, the BAC has been responsible for developing and providing extensive information to Building Advisory Services and the Minister, including through policy and building notes aimed at strengthening the building industry in the Northern Territory – most of it provided proactively rather than reactively. Moving the functions of the BAC to a reactive role could present the Minister with additional risk, including reputational risk.

The BAC opposes this proposed change and urges that it retain the ability to report on relevant matters proactively.

Clause 10. Section 33 amended (Building practitioners and others must cooperate during investigation)

Clause 11. Section 34E amended (Building practitioners must cooperate with auditor)

While the BAC supports the powers to investigate and audit building practitioners, these proposed changes – particularly the inability to refuse to answer questions – appear problematic from a natural justice perspective, given that the information may then be used in criminal proceedings for an offence against the Building Act.

The privilege against self-incrimination is a fundamental principle of the common law, and is protected under Article 14(3)(g) of the International Covenant on Civil and Political Rights, to which Australia is a party. The Bill does provide that compelled information cannot be used in a prosecution, but excepts prosecutions for offences against the Building Act – that is, the very proceedings an investigation or audit under the Act is most likely to produce. The immunity therefore offers no protection where it matters most: a practitioner can be compelled, on pain of penalty, to provide the evidence used to prosecute them. In substance this displaces the accusatorial principle that the burden of proving an offence rests with the prosecution, not with the person under investigation.

The burden of establishing an offence should remain on the investigating body, and should be discharged using independent evidence rather than compelled answers or documents obtained from the person under investigation. The BAC does not suggest that the Director would misuse these powers, but a power drafted this broadly reduces the incentive to gather independent evidence and, as against natural persons, removes a protection the common law treats as fundamental.

The BAC recommends that these provisions be reconsidered so that the immunity against use of compelled information extends to prosecutions under the Building Act, and that the powers be framed to ensure investigations and audits are conducted fairly.

Clause 15. Section 40 amended (Building certifier or Director may rely on certificate)

The BAC recognises the existing issue that certificates currently issued to certify construction do not include a statement that work complies with the Act or Regulations and therefore are not aligned with the Act. Previous attempts were made to update the wording of the construction certificates to include this, however this was broadly viewed as a recertification of the design (which is certified in a separate certificate which does include a statement regarding compliance with the Act or Regulations). The industry pushed back strongly on this, with engineers refusing to sign construction certificates with this wording.

While the insertion of 40(2)(ab) allows certification of construction based on a certified design rather than compliance with the Acts and Regulations, it is only for when the design is certified by **another** building practitioner. This means that, where the building practitioner is the same, the construction certificate would still need to certify compliance with the Act and Regulations, leading to the same issue of recertifying a design at the end of construction, despite a separate design certificate already being issued.

The design certification and construction certification process should remain separate, irrespective of the building practitioners involved.

The BAC recommend an update to the proposed wording as follows:

a certificate of a building practitioner certifying that building work complies with a design certified by ~~another~~ a building practitioner as complying with this Act and the Regulations that was provided with the application for the building permit for the building work

Clause 18. Section 63 amended (Inspections)

Clause 20. Section 70 amended (Granting occupancy permit)

Clause 21. Section 72 amended (Effect of occupancy permits)

Policy BAS 2006/001 currently sets out the interpretation of 'all material respects' which 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.' It recognises that 'the building certifier is not a building site supervisor and cannot oversee all aspects of the building work during construction.' Removal of the 'in all material respects' puts more onus on the building certifier to ensure the notifiable/prescribed inspection stages meet the requirements of the Act and Regulations. This means building certifiers will not be able to sign inspection certificates unless suitable evidence/documents can confirm compliance. This will create time delays and additional costs to the consumer (noting Reg 15A inspection stages for notification during building work only applies to Class 1a, 2 and 10 buildings). It is also our understanding that some trades (e.g. pest management termite protection) cannot issue part certificates as it would breach their insurance requirements, in which they would not be covered. These more onerous requirements would also ripple outwards to other practitioners as certifiers seek to confirm this higher level of compliance.

The BAC views this as a clear increase in red tape which will be felt by all consumers. It will drive up prices and blow out timelines with no substantive gain. **The BAC strongly urges that the term 'all material respects' remains in place.**

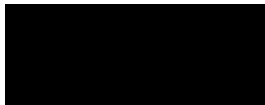
The additional requirement under 63(7) for the inspection certificate to be issued within 14 days is also problematic when combined with the removal of 'all material respects'. Requiring this will have knock-on effects, including the following example relating to engineers:

- Certifiers will need to be certain that works comply, and will therefore require sign-off from other parties prior to issuing the certificate including Section 40 construction certificates at each stage.
- Section 40 construction certificates are typically provided at completion and often rely on other items such as concrete test results which take 28 days.
- If the certifier cannot get a Section 40 construction certificate, or other such documentation within the required time frame, the inspection will be failed.
- The process increases the inputs required by building practitioners, which comes at a cost to consumers and clearly impacts timelines.

In combination with the removal of 'all material respects' the BAC views this 14-day time limit as an increase in red tape and urges reconsideration.

The BAC would welcome further discussion on these proposed amendments.

Yours sincerely



Dr Elisha Harris
Chairperson

Encl: Policy BAS 2006/001

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;

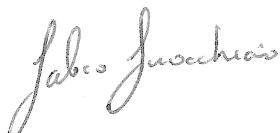
The term "in all material respects" is not, for example, a statement that the concrete is the right strength or slump; or every component of the frame has been checked; or that the plaster board has the right type of glue; or that the every block in a block work wall has been core filled; or that every 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