

Submission to the Legislative Scrutiny Committee

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

Initial submission - building legislation amendments

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Purpose of submission. I support the objective of improving administrative efficiency and reducing unnecessary delay. However, several of the proposed building-law amendments appear likely to increase administration, cost and project delay, or materially change the risk and responsibility carried by private building certifiers. I request targeted consultation with practising building certifiers before these provisions are finalised.

Consultation. At the public briefing on 31 August 2026 I understood that consultation had occurred on the proposed changes. My concern is that, while some matters have been discussed with industry, a number of the changes identified below do not appear to have been the subject of meaningful consultation with practising building certifiers. This submission is therefore intended to identify issues for the Committee's early consideration and questioning.

Summary of recommendations

- i. If the Director's proactive investigation powers are expanded, prescribe clear statutory safeguards for natural justice, independence, disclosure of allegations, consistent enforcement and access to appropriately qualified technical review.
- ii. Do not restrict the Building Advisory Committee's section 11(1)(a) advisory function to matters requested by the Minister; the Committee should retain the ability to initiate advice on emerging industry and regulatory issues.
- iii. Retain the expression "in all material respects" in sections 63(5), 63(6)(c), 70(1) and 72 unless and until the practical consequences of its removal have been consulted on and a workable replacement materiality threshold is developed.
- iv. Reconsider the requirement for every inspection certificate to be issued within 14 days of the inspection, or amend it so the period runs from the time the certifier is satisfied that the requirements for the inspection stage have been met.
- v. Before expanding certificates of existence to post-1 May 2016 work and Importance Level 3 and 4 buildings, require a clear explanation of how the proposal departs from the 2016 occupancy-certification framework, including the Minister's statements to Parliament, the Director of Building Control's April 2016 statutory guidelines, and the present BAS interpretation of Building Act sections 55 and 59.
- vi. Review the additional NTFRS notification, reporting and decision-reason obligations to ensure they are proportionate, technically necessary and do not create duplicate certification or avoidable delay.
- vii. Ensure each proposed Building Regulations amendment is risk-based and operationally workable, including the NTFRS timeframes, certificate-of-existence criteria, Tier 2 documentation and transfer of documents where the original certifier is no longer engaged.
- viii. Retain or more precisely define the matters on which NTFRS may report under Building Regulations Schedule 2 so the amendment does not unintentionally expand referral and consultation across routine commercial work.

PART A - BUILDING ACT 1993 AMENDMENTS (BILL CLAUSE ORDER)

1. Director of Building Control - expanded functions, investigation and enforcement powers

Relevant provisions: Building Act 1993 s 8 and proposed ss 25D-25J; existing ss 26-34; amendments to ss 29, 33, 34E and 34S; Bill cll 5 and 8-14.

Red-tape impact. These amendments are principally an enforcement and disciplinary reform rather than a red-tape reduction measure. I accept that the Director should be able to act where there is clear evidence of serious or blatant practitioner fault. My concern is that a broader power to initiate investigations should only be introduced with equally clear safeguards governing how that power is exercised.

Need for a prescribed investigation policy. The Director has previously been able to act on concerns arising within Government or from other departmental functions by previous internal complaints lodged. That already demonstrates that serious matters need not depend solely on a complaint from a member of the public. If the new proactive power is retained, the circumstances in which it may be used, and the procedural protections that follow, should be prescribed by legislation or a mandatory policy with legal effect. They should not depend only on the discretion of the Director.

Existing policy framework. I acknowledge that BAS currently publishes the *Building Practitioner Complaints Policy* and the *Building Compliance and Enforcement Policy*, both dated April 2023. Those policies recognise principles including natural justice, impartiality, procedural fairness, appropriate technical expertise and, in some circumstances, independent technical advice. My concern is not that no administrative policy presently exists, but that the substantial new powers proposed by the Bill are not yet supported by a settled framework specifically governing their exercise, and that the existing administrative safeguards are not prescribed or legally enforceable.

Natural justice and independence. Any such policy should require the practitioner to be given the complete allegation and sufficient particulars to understand and answer the case against them, including identification of the complainant or originating source where lawful. It should also prevent an investigation being framed through selective or targeted questions that may limit the practitioner's response or create a later allegation about a matter that was never fairly put. Where a matter originates from a departmental review, the person investigating or deciding referral should be independent of the person who formed the original adverse view. These safeguards should be legally enforceable and not merely administrative preferences.

BAS has since confirmed to me on 11 September 2026 that no new policies, frameworks, procedures or guidance for the proposed amendments have yet been developed for release, and that substantial implementation work will be required before commencement.

My own experience reinforces this concern. MOB was drawn into an investigation that initially concerned another practitioner. The matters put to me were selected by BAS rather than the whole underlying complaint and all particulars being provided from the outset. This made it difficult to know the full case that might ultimately be relied upon. In my view, any 'sideways' extension of an investigation should trigger a fresh notice identifying each allegation, the factual basis for it and the material relied upon, with a proper opportunity to respond before referral is considered.

Consistency of enforcement. The policy should also address selective enforcement. A practitioner should not be singled out for a practice that the regulator knows, or ought to have known, is common across the wider industry unless there is a rational and documented basis for treating that practitioner differently, such as seriousness, repeat conduct, refusal to rectify or a particular safety consequence. If the regulator becomes aware of an industry-wide issue, the first response should ordinarily include clear industry guidance or a consistent compliance program rather than isolated disciplinary action.

Technical investigation. Where the alleged fault concerns matters that can be tested on site, the Director or suitably qualified delegate should ordinarily inspect the site or document why a site inspection is unnecessary.

Technical conclusions should also be reviewed by a suitably qualified individual or independent practitioner, with qualifications and experience within the appropriate field under investigation. Statutory office or internal departmental experience alone should not substitute for relevant professional competence where the issue turns on specialist building practitioner judgment.

Legal representation and equality of arms. BAS now commonly declines to provide interpretive advice and instead recommends that practitioners obtain their own legal advice. If the Director then adopts an interpretation and pursues it through a Practitioners Board inquiry, the Director is able to obtain legal representation to advance that position. Where the Director elects to engage barrister-level representation, consideration should be given to a cost-assistance or cost-shifting mechanism so that the practitioner is not required to fund substantial equivalent representation merely to defend a position advanced by the regulator. At minimum, the legislation should preserve a meaningful ability to recover reasonable costs that includes fair compensation, where the referral is not sustained.

Recommendation. If clauses 5 and 8-14 proceed, I recommend that the legislation require a formal investigation policy, settled on legal advice and subject to appropriate industry consultation, which at minimum provides for:

- a) full and clear particulars of every allegation and the material basis for it before an adverse referral decision is made;
- b) identification of the complainant or originating source where lawful, and a fresh notice whenever an investigation is extended to another practitioner or matter;
- c) independence between the person or unit that formed the original concern and the person conducting the investigation or deciding whether to refer it;
- d) a prohibition on using selective or leading questioning as a substitute for disclosure of the actual allegation;
- e) a documented and consistent approach to industry-wide or commonly occurring practices, so enforcement is not selectively applied without a rational basis;
- f) site inspection where reasonably necessary to determine disputed physical facts, together with suitably qualified technical review by a person or persons of suitable qualification and experience;
- g) reasonable response periods and access to relevant material, including a mechanism for dealing fairly with privileged or confidential information; and
- h) a fair approach to legal costs where the Director chooses barrister-level representation, including meaningful recovery of reasonable practitioner costs and, in appropriate circumstances, compensation for loss or damage where a referral is not upheld.

These safeguards would not prevent action against clear misconduct. They would help ensure that the expanded powers are used consistently, transparently and in accordance with natural justice, and that a practitioner is required to answer a defined case rather than an investigation shaped progressively at the regulator's discretion.

2. Building Advisory Committee - ability to initiate advice

Relevant provision: Building Act 1993 s 11(1)(a); Bill cl 6.

Proposal. Insert "at the request of the Minister" into the Committee's function of advising the Minister on administration of the Act.

Red-tape impact. Not directly a red-tape measure; it narrows an existing advisory function.

Concern. The amendment does not reduce industry representation on the Committee itself, but it would restrict the Committee's present ability under section 11(1)(a) to initiate advice to the Minister. In my view, an advisory committee is most useful when it can identify emerging technical, administrative and industry issues before they become entrenched problems.

I have previously raised concerns about the effectiveness and frequency of Building Advisory Committee engagement. Restricting the advisory function to matters first requested by the Minister risks further reducing the flow of practical industry information to the Minister.

Recommendation. Do not amend section 11(1)(a) in this way. Retain the Committee's capacity to provide advice on its own initiative while also continuing to respond to matters referred by the Minister under section 11(1)(b).

3. Removal of "in all material respects"

Relevant provisions: Building Act 1993 ss 63(5), 63(6)(c), 70(1) and 72; Bill cl 18(1)-(2), 20 and 21.

Proposal. Remove the expression "in all material respects" from the inspection and occupancy provisions.

Industry consultation. I am not aware of the removal of "in all material respects" having been raised for consultation with practising local building certifiers. In discussions with other local certifiers, they were likewise unaware of prior consultation on this change.

Red-tape impact. Likely increase.

Concern. The expression has an established practical role in allowing a certifier to distinguish between a material non-compliance and a minor or inconsequential variation. The Department's 2006 policy, Policy Regarding "In All Material Respects" (BAS2006/001), was specifically directed to the operation of sections 63, 70 and 72 and explained the concept as requiring the important and essential aspects of the work to be in place and compliant.

The Bill removes the statutory materiality threshold. It would not necessarily mean that every departure from an approved drawing automatically becomes unlawful; however, the combined effect of the amended inspection provisions, the existing requirement in section 55 for work to be carried out in accordance with the permit, and proposed section 60B(3) may significantly reduce the practical discretion presently available to deal with harmless variations without a permit amendment.

Examples of variations that may be technically compliant and immaterial to safety or performance include:

- a roof pitch varying from 12.5 degrees to 12 degrees, where the installed roofing system remains compliant;
- a minor change in external cladding colour due to product availability;
- a change in door swing or hinged position where change does not impact compliance;
- a footing constructed deeper than the approved design;
- a structural member, connection or reinforcement size increased above the specified drawings; and
- additional reinforcement, bracing or welding beyond the documented design.

If minor compliant variations increasingly require formal permit amendments, the likely consequences are more certifier and consultant time, additional amendment fees, and avoidable interruption to building work while revised documentation is prepared and assessed.

Recommendation. Retain "in all material respects" pending targeted consultation. If the intent is to remove ambiguity, consider replacing it with a defined materiality test rather than moving to an undifferentiated compliance threshold.

4. Inspection certificates to be issued within 14 days

Relevant provision: Building Act 1993 s 63(5)-(7); Bill cl 18(3).

Proposal. Require an inspection certificate to be issued within 14 days after the date of inspection.

Industry consultation. No formal consultation is known to me. The underlying problem of delayed or missing inspection certification is, however, recognised within industry.

Red-tape impact. Potential increase unless the provision is refined and the approved forms and statutory process are amended to reflect how inspections are actually finalised in practice.

Concern. The objective is understandable, particularly where a certifier becomes unavailable and a project cannot readily progress. The difficulty is that section 63(5) presently requires the certifier to be satisfied of compliance before issuing an Inspection Certificate. The approved Inspection Certificate reflects that binary position: it records the inspection stage and date and then certifies that the certifier is satisfied the work associated with that inspection has been carried out in accordance with the Building Regulations. The form contains no mechanism to identify evidence that remains outstanding, to impose or record conditions, or to distinguish between work physically observed as satisfactory and the later documentary evidence required to formally close the inspection stage.

That distinction is important. In practice, a building certifier may be satisfied from the site inspection that the physical work observed at the stage is suitable to proceed, while still reasonably requiring supporting evidence before the statutory inspection stage can be finally certified. A rigid 14-day issue requirement may therefore place the certifier in the position of either issuing a certificate before the evidentiary basis is complete or withholding the certificate and technically breaching the new timeframe.

Examples include:

- a) slab-stage matters where drainage provisions, termite-management documentation or concrete documentation remains outstanding;
- b) an extension adjoining an existing slab where a termite reticulation system will not be charged and certified until later in the project;
- c) timber framing or roof-truss stages where perimeter termite treatment, truss documentation or installation/manufacture certification is completed or supplied later;
- d) wet-area waterproofing, where the certifier may reasonably rely on installer certification because the certifier cannot observe every preparation step, membrane coat and finishing operation;
- e) final inspections where glazing, truss, termite, electrical, plumbing, planning or other relevant certificates are outstanding; and
- f) a later inspection stage being reached while information necessary to close an earlier stage remains outstanding.

Section 62(3) already recognises a distinction between inspection and formal certification by preventing dependent work from progressing until the relevant work has been inspected and the certifier or Director has advised that work may proceed. That mechanism enables the certifier to control progression without requiring premature certification. The proposed 14-day requirement should preserve that practical distinction rather than collapse inspection, permission to proceed and final certification into a single event.

Alternative if the 14-day requirement proceeds - conditional or staged Inspection Certificate. If the 14-day issue requirement is retained, I recommend that the legislation and the approved Inspection Certificate be amended to expressly permit a conditional or staged Inspection Certificate. The form could include a clearly identified field such as:

'Subject to the following conditions / outstanding evidence:'

The certifier could then issue the certificate within 14 days recording that the work physically observed at the inspection stage was satisfactory, while transparently identifying the documents, certifications, testing or minor matters still required before that inspection stage is closed in full. Examples might include a termite certificate, truss installation certificate, drainage provisions, concrete test results or another document that was not reasonably available at the inspection date.

The statutory effect of such a certificate should be made clear. It should not be treated as an unconditional certification of matters that the certifier has expressly identified as outstanding. Rather, it should evidence the inspection undertaken, the matters observed and accepted, and the conditions that remain to be discharged. Once the outstanding evidence is received and accepted, the certifier should be able to issue a short closure or superseding certificate recording that the conditions attached to the earlier Inspection Certificate have been satisfied.

Final Inspection Certificate. The approved Final Inspection Certificate presently requires the certifier to certify that the work has been inspected at the required stages, has been completed, complies with the Building Regulations, and that all directions have been complied with. That final statutory certification should remain the point at which unresolved compliance conditions are closed. The form could nevertheless be improved by including a field such as "Conditions / qualifications and closure of prior inspection conditions" so that the final certificate can identify how earlier conditional Inspection Certificates were resolved and record any qualification that the legislation permits. Matters essential to the satisfaction required by section 63(6) should not remain outstanding when the Final Inspection Certificate is issued.

This approach would create a transparent audit trail. For example, a slab Inspection Certificate could be issued within 14 days subject to receipt of a specified termite certificate or drainage measures undertaken. The later evidence could then be recorded as satisfying that condition. At final inspection, the Final Inspection Certificate could identify that all earlier conditional inspection items have been discharged. This is preferable to either delaying all certification until every document is available or compelling a certifier to give an unconditional statutory certificate before the evidentiary basis is complete.

Definition of 'issued'. The Bill should also define, either in section 63 or the Regulations, when an Inspection Certificate is taken to have been 'issued' for the purpose of the 14-day requirement. The term should be tied to an objective act of delivery or lodgement, for example when the certificate is:

- provided electronically or in hard copy to the applicant, owner, builder or person who requested or is entitled to receive the inspection certificate; or
- lodged or uploaded through an approved online portal or electronic system operated by Building Advisory Services / the Director of Building Control.

Where both steps are required, the legislation should state which event satisfies the 14-day obligation. A clear definition would avoid disputes about whether a certificate was "issued" when it was signed, generated in a certifier's software, emailed to the builder, uploaded to the Department or formally received by Building Advisory Services.

Importantly, amendment of the approved form alone may not be sufficient. If section 63(5) continues to prohibit issue until the certifier is fully satisfied of the statutory compliance matters, adding a conditions field to the form could create uncertainty about the legal status of a conditional certificate. If the Government wishes the 14-day period to run from the physical inspection date, the Act or Regulations should expressly authorise the conditional/staged mechanism and state its legal effect.

Recommendation. My preferred approach remains that the 14-day period run from the date on which the building certifier is satisfied that the requirements for the relevant inspection stage have been met. If Government nevertheless retains a 14-day period from the date of inspection, I recommend that:

1. section 63 and the Regulations expressly authorise a conditional or staged Inspection Certificate where specified evidence or minor matters remain outstanding;
2. the approved Inspection Certificate be amended to include a prominent "Subject to the following conditions / outstanding evidence" field and a mechanism to record closure of those conditions;
3. the approved Final Inspection Certificate include a field recording the closure of earlier conditional inspection items, while preserving the requirement that matters necessary to satisfy section 63(6) are complete before final certification;
4. the legislation define when an Inspection Certificate is 'issued', including delivery to the relevant applicant/owner/builder or lodgement through an approved Building Advisory Services portal; and
5. the 14-day obligation distinguish between the act of carrying out an inspection, permission for dependent work to proceed under section 62(3), conditional recording of an inspection, and final statutory certification of the inspection stage.

This would address genuine concerns about delayed inspection records while preserving the certifier's obligation to base statutory certification on complete and adequate evidence.

5. Certificates of existence - removal of completion-date restriction

Relevant provisions: Building Act 1993 ss 55, 59, 72D-72F and 167B; Building Regulations 1993 regs 19D and 19E; Bill cll 22-24, 34 and 40.

Proposal. Expand the Certificate of Existence pathway so that it may apply to existing building work regardless of the date of completion, and prescribe all building classes, including Importance Level 3 and 4 buildings.

Industry consultation. The broader issue of post-construction certification has been discussed with industry. However, the proposed change now goes beyond an administrative adjustment: it alters two deliberate boundaries of the 2016 occupancy-certification reforms - the post-1 May 2016 cut-off for Certificates of Existence and the exclusion of higher-consequence Importance Level 3 and 4 buildings. In my view, those changes warrant direct consultation with practising building certifiers and a clear statement of the legal and policy basis for the change.

Red-tape impact. Potentially beneficial in providing a pathway for uncertified existing work, but it also represents a substantial change in regulatory policy and may be addressing an uncertainty created by a later administrative interpretation rather than an identified defect in the original legislation.

2016 legislative design and parliamentary intention. The 2016 occupancy-certification reforms were introduced by the then Minister for Lands and Planning, David Tollner. In his second reading speech on 10 February 2016, the Minister explained that the existing system created certification impasses and gave the specific example that, where there were unapproved variations and the original building permit had expired, 'a new permit is needed'. He also explained that the new Certificate of Existence pathway was created for existing unapproved legacy work and would not be available for hospitals, schools, emergency shelters or other high-risk buildings and essential facilities e.g. Importance Level 3 & 4 buildings. (NT Legislative Assembly, Debates, 10 February 2016, pp 7740-7741.)

The March 2016 debate reinforces that design. Members recorded that draft occupancy-certification guidelines had been provided during consideration of the Bill. Peter Chandler, a former Minister for Lands and Planning, described the problem as the need for a practical system to certify buildings that had existed for some time, while maintaining a proper level of compliance and safety. Gerry McCarthy, a former Labor Lands and Planning Minister, described the reforms as a sensible and pragmatic outcome. The debate also repeatedly distinguished legacy Certificates of Existence from the higher standard expected for critical and high-risk buildings. (NT Legislative Assembly, Debates, 17 March 2016, pp 8016-8017 and 8035-8036.)

Contemporaneous Director's guidance. The Director of Building Control's Occupancy Certification Guidelines, Version 1.0 (April 2016), were issued at the time the reforms commenced. Section 167B of the Building Act permits the Director to make guidelines for administration of the Act, requires those guidelines to be consistent with the Act, and requires a person acting under the Act to have regard to them. The April 2016 guideline expressly addressed 'Assessing unapproved work completed after 1 May 2016' and stated that, to regularise that work, the owner must apply for a Building Permit. It also described the evidence a certifier could require, including as-constructed drawings, reporting-authority material and engineering certification. A separate example dealing with work constructed outside the validity period of an earlier permit likewise stated that post-1 May 2016 work required a new Building Permit and compliance with the standards applicable to that permit.

That contemporaneous position is important. It demonstrates that the post-construction Building Permit pathway was not merely an informal industry practice. It was the published position of the statutory regulator at the commencement of the reforms and was consistent with the Minister's explanation to Parliament that a new permit could be required where unapproved work had already occurred.

August 2024 change in regulatory position. Version 1.1 of the Occupancy Certification Guidelines (August 2024) removed the passages that expressly directed post-1 May 2016 unapproved or completed work to the Building Permit pathway. I understand the current position of the Director of Building Control / Building Advisory Services to be that sections 55 and 59 operate in conflict such that a Building Permit cannot be granted once

the relevant work has already commenced or been completed. In my view, that interpretation requires closer scrutiny.

Section 55 plainly prohibits a person from carrying out building work unless a Building Permit has been granted and is in force. However, that provision addresses the legality of carrying out the work. Section 59 separately states the requirements that must be satisfied before a building certifier grants a Building Permit. The Act does not expressly state that the power under section 59 ceases to exist merely because a section 55 contravention has already occurred. A later permit need not retrospectively legalise the earlier work: the earlier contravention may remain, while the permit operates from the date of grant and establishes the approval and technical standards against which the existing, rectification and remaining work is assessed. On that construction, sections 55 and 59 can operate together without conflict.

The alternative interpretation - that section 55 itself removes the certifier's jurisdiction under section 59 after work has commenced - is difficult to reconcile with the Minister's 2016 explanation, the Director's April 2016 guideline made under section 167B, and the absence of an identified amendment to sections 55 or 59 between 2016 and the change in guidance in August 2024. The 2024 position therefore appears capable of being characterised as a later change in administrative interpretation rather than a necessary consequence of the statutory text.

The current Bill creates a further inconsistency that should be explained. The Explanatory Statement for clause 34 says regulation 6(b) will be expanded so that a Building Permit application may include drawings containing sufficient detail and at a scale appropriate to 'the work carried out or to be carried out' to show the building work. That drafting is difficult to reconcile with a categorical position that a Building Permit application cannot lawfully concern work already carried out. At minimum, the Bill should clarify the intended interaction between sections 55 and 59 rather than leave that question to changing administrative guidance.

Importance Level 3 and 4 buildings. The present legislation and both the April 2016 and August 2024 guidelines exclude Importance Level 3 and 4 buildings from the Certificate of Existence pathway. That exclusion was not incidental. Minister Tollner expressly told Parliament that Certificates of Existence could not be issued for hospitals, schools, emergency shelters and other high-risk or essential facilities. The 2016 scheme therefore deliberately reserved the lowest tier of occupancy certification for lower-consequence legacy work.

The proposed amendments reverse that policy choice by removing the date restriction and prescribing all building classes for Certificates of Existence, including Importance Level 3 and 4 buildings. Proposed regulation 19E would impose additional current fire-safety, load and action requirements, which is an important safeguard, but it does not alter the fact that the Bill overturns a boundary that Parliament was specifically told formed part of the 2016 safety framework. In my view, this is not simply an expansion of an existing pathway; it is a direct reversal of a deliberate legislative policy introduced with the occupancy-certification reforms and should be expressly justified on that basis.

Concern. The Bill appears to respond to the practical consequences of the post-August 2024 regulatory position by broadening Certificates of Existence, rather than first resolving whether the premise for that change - the asserted incompatibility between sections 55 and 59 - is correct. At the same time, it removes the original protection that kept critical buildings outside the Certificate of Existence pathway. If the present interpretation of sections 55 and 59 is incorrect, the proposed expansion may be solving the wrong problem while weakening a safety distinction that the 2016 Parliament deliberately adopted.

Recommendation. Before clauses 22-24 and 40 are finalised, the Committee should seek a clear response from the Director of Building Control and Building Advisory Services addressing the following matters:

1. What is the precise legal basis for the current position that sections 55 and 59 prevent a Building Permit being granted for work that has already commenced or been completed, and how is that position reconciled with the Director's April 2016 guideline made under section 167B?
2. What amendment to the Building Act or Regulations between April 2016 and August 2024 is said to have changed the earlier Building Permit pathway, if the change was legislative rather than administrative?

3. How is the present interpretation reconciled with Minister Tollner's statement to Parliament that a new permit was needed for unapproved variations after expiry of a permit, and with the parliamentary record that draft occupancy-certification guidelines were before members?
4. Why does clause 34 now expressly refer to Building Permit application drawings appropriate to 'work carried out or to be carried out' if a Building Permit is said to be unavailable once work has already been carried out?
5. Why is the 2016 legislative policy excluding Importance Level 3 and 4 buildings from Certificates of Existence being reversed, given the Minister's express assurance to Parliament that hospitals, schools, emergency shelters and other high-risk or essential facilities would not be eligible for that pathway?
6. Whether the preferable legislative response is to expressly clarify the interaction between sections 55 and 59, while preserving the higher occupancy-certification standard originally required for critical buildings, rather than broadening Certificates of Existence to resolve an administrative interpretation issue.

Further targeted consultation with practising building certifiers should occur before these provisions are finalised.

6. NTFRS notification and reasons after permit or occupancy decision

Relevant provision: Building Act 1993 Schedule 3 cl 11; Bill cl 29(8).

Proposal. Create specific post-decision notification requirements where NTFRS is the reporting authority. A building certifier would be required to provide the permit or occupancy certification and a written statement about compliance with relevant fire-safety matters identified in the NTFRS report. If a recommendation is not implemented, the certifier must also provide reasons.

Concern. The existing Act already requires the certifier to consider a reporting authority's report but does not require every recommendation to be implemented. The additional written statement to NTFRS risks creating a duplicate or expanded certification obligation without a clearly stated regulatory benefit. The legal effect and intended evidentiary status of that statement should be clarified, and the certifier's independent statutory decision-making role should be preserved.

Recommendation. Clarify the legal purpose and evidentiary status of the new Schedule 3 clause 11 statement and reasons requirement. The related NTFRS referral scope and timeframes under the proposed Regulations are addressed below in Bill clause order.

PART B - BUILDING REGULATIONS 1993 AMENDMENTS (BILL CLAUSE ORDER)

7. NTFRS reporting timeframes and occupancy-certification referral

Relevant provisions: Building Regulations 1993 regs 9 and 10; proposed regs 16A and 17; reg 18AB; Bill cll 36-39.

Proposal. Allow NTFRS to extend its reporting period by five days, correspondingly extend the building certifier's determination period, and establish NTFRS as a reporting authority for occupancy-certification requests in relation to work specified in Schedule 2.

Red-tape impact. Potential additional delay.

Concern. The proposed regulations allow NTFRS to extend the reporting period from 10 to 15 days and correspondingly extend the certifier's building-permit determination period from 20 to 25 days. Equivalent extensions are proposed for occupancy certification. This is not necessarily unreasonable in isolation, but it increases the maximum approval period and therefore sits uneasily with a Bill presented as reducing approval timeframes.

Recommendation. If the extension is retained, the Explanatory Statement and implementation guidance should clearly identify why it is necessary and how it is expected to reduce, rather than increase, overall approval delay. The scope of work reportable to NTFRS under Schedule 2 should also be carefully constrained, as addressed at section 12 below.

8. Meaning of 'Prevention'

Relevant provisions: Building Regulations 1993 reg 19E; proposed reg 19E; Bill cl 40

Proposed regulation 19E(c)(ii) and (iii) uses the expressions "prevention and suppression of fire" and "prevention of the spread of fire". These are broad concepts. For certainty, the drafting should identify whether the intended benchmark is the relevant National Construction Code Performance Requirements, DTS Provisions or another defined technical threshold, and how those requirements are to be applied to existing work.

9. Prescribed certification - prefabricated door frames

Relevant provision: Proposed Building Regulations 1993 reg 20AA(c); Bill cl 41.

Concern. Proposed regulation 20AA(c) prescribes a "prefabricated window certificate or prefabricated door frame certificate". The expression "prefabricated door frame" is very broad and could be read to capture ordinary hinged door frames for which a separate certification requirement may have little regulatory value.

Recommendation. Narrow the provision to the types of proprietary glazed door assemblies for which certification is genuinely required, for example prefabricated bifold, sliding or stacker glazed door-frame systems, or otherwise define the intended scope.

10. Tier 2 declarations - additional prescribed documents

Relevant provisions: Building Regulations 1993 reg 20C; proposed reg 20CA; Bill cll 42-43.

Proposal. Require a declaration under regulation 20C to be accompanied by additional certificates and documents, including those reasonably required for components installed by others, any applicable electrical certificate of compliance, and relevant planning or other prescribed consents, reports or approvals.

Concern. In Tier 2 building control areas, where the relevant work does not require occupancy certification, this represents a material increase in the documentation presently required to complete the declaration process. The proposed change appears to move the Tier 2 process closer to an occupancy-certification style documentary framework, despite the work being specifically within a category for which occupancy certification is not required.

Recommendation. Consider whether this additional documentary framework is proportionate for Tier 2 work and consistent with the Bill's stated objective of reducing red tape.

11. Regulation 20E - documents to the certifier who granted the permit

Relevant provision: Building Regulations 1993 reg 20E(4); proposed reg 20E(4)(d); Bill cl 44.

Proposal. Require the documents specified by proposed regulation 20CA to be given to "the building certifier who granted the building permit for the work".

Concern. The certifier who originally granted the permit may no longer be the certifier currently engaged for the development. The Act expressly provides mechanisms for an engagement to be referred to the Director or another building certifier, and for another certifier to be engaged where the original certifier resigns, dies or becomes incapable of performing the functions. The original certifier may also simply no longer be practicing. In those circumstances, directing the documents only to the certifier who granted the permit may create an avoidable administrative dead end and may prevent the current certifier from receiving documents needed to complete the statutory certification process.

Recommendation. Amend proposed regulation 20E(4)(d) so the documents are given to the building certifier currently engaged to perform the relevant certification functions for the building work, rather than necessarily the certifier who originally granted the permit. If no private certifier is currently engaged, the provision should identify the appropriate recipient or referral pathway.

12. Schedule 2 - scope of NTFRS reporting

Relevant provision: Building Regulations 1993 Schedule 2, NTFRS entry; Bill cl 49.

Proposal. Replace the existing detailed matters on which NTFRS may report with the broader expression "Fire safety matters relating to compliance with the National Construction Code and Australian Standards relevant to the building work", and extend Schedule 2 to operate for both regulations 8 and 16A.

Concern. This is a significant change to the statutory scope of matters on which NTFRS may report. The proposed wording is substantially broader than the present listed matters and has a real potential to expand consultation between building certifiers and NTFRS across a much wider range of technical issues. The broader the reporting remit becomes, the greater the risk of duplicated technical assessment, disagreement between statutory participants, additional response and justification requirements, and delay to permit or occupancy decisions.

The concern is not that NTFRS should be prevented from commenting on genuine fire-safety matters. Rather, the reporting function should be sufficiently precise that all parties understand the limits of the referral. If the provision is left at the broad level of "fire safety matters" under the NCC and relevant Australian Standards, routine commercial work may generate much wider reporting and consultation than presently occurs, including matters where specialist designers and the building certifier already hold the primary technical responsibility.

Recommendation. Retain the existing defined reporting matters unless a demonstrated regulatory gap requires expansion. If broader wording is considered necessary, define with much greater precision the particular fire-safety matters on which NTFRS may report, so the referral function remains targeted, risk-based and predictable. This should be resolved before commencement rather than left to operational practice, where disputes and delays are more likely to be escalated through industry and ultimately to the Minister.

Conclusion

I recognise that a number of the proposed amendments respond to genuine administrative or compliance issues. My concern is that several provisions have significant practical consequences for certifiers and appear to alter long-standing legislative policy without the level of consultation or explanation such changes warrant. In particular, the proposed Certificate of Existence amendments should not proceed merely on the assumption that sections 55 and 59 prevent post-construction Building Permits when the 2016 parliamentary record, the Director's contemporaneous statutory guidelines and even the drafting of proposed regulation 6 point to a materially different interpretation. The proposed extension of Certificates of Existence to Importance Level 3 and 4 buildings also reverses an express safety boundary placed before Parliament in 2016 and should be justified as a substantive policy reversal, not treated as an incidental red-tape measure.

I respectfully request that the Committee seek further evidence from practising building certifiers and consider whether the identified provisions can be refined before passage. I would be pleased to expand on this initial submission or provide practical examples if that would assist the Committee.



Patrick Berts

Building Certifier
MOB Building Certifiers Pty Ltd (Director)

Legislation, policies and supporting documents referred to

- 1) Department of Planning and Infrastructure, Policy Regarding "In All Material Respects", Policy No. BAS2006/001 (July 2006).
- 2) Department of Planning and Infrastructure, Guidelines for Inspecting Class 1 to Class 10 Buildings or Structures (July 2006).
- 3) *Building Act 1993* (NT).
- 4) *Building Regulations 1993* (NT).
- 5) Lands and Planning Legislation Amendment (Red Tape Reduction) Bill 2026, Serial 77.
- 6) Explanatory Statement, Lands and Planning Legislation Amendment (Red Tape Reduction) Bill 2026, Serial 77.
- 7) Northern Territory Government, *Occupancy Certification Guidelines*, Version 1.0, April 2016.
- 8) Northern Territory Government, *Occupancy Certification Guidelines*, Version 1.1, August 2024.
- 9) Comparison document: *2016 & initial 2024 Guidelines comparison* — particularly pages 10 and 24, showing the change in treatment of building work commenced or completed after 1 May 2016.
- 10) Northern Territory Legislative Assembly, Debates, Wednesday 10 February 2016 - Building Amendment (Occupancy Certification) Bill (Serial 152), second reading speech by the Minister for Lands and Planning, David Tollner.
- 11) Northern Territory Legislative Assembly, Debates, Thursday 17 March 2016 - Building Amendment (Occupancy Certification) Bill (Serial 152), including contributions concerning draft guidelines, legacy certification and high-risk buildings.
- 12) Northern Territory Government, approved Inspection Certificate form - Building Act 1993 s 63(5), approved 31 December 2012.
- 13) Northern Territory Government, approved Final Inspection Certificate form - Building Act 1993 s 63(6), approved 31 December 2012.
- 14) Northern Territory Government, Building Advisory Services, *Building Practitioner Complaints Policy*, Version 1 (April 2023), TRM 2019/2319~0001.
- 15) Northern Territory Government, Building Advisory Services, *Building Compliance and Enforcement Policy*, Version 1 (April 2023), TRM 2019/2319~0002.
- 16) Email from Mathew Hoschke, Manager Audits and Investigations, Building Advisory Services, to MOB Building Certifiers, "RE: Investigation Policies and Procedures", 11 September 2026.