

Hon. Albert Nicholas

Building Bill 2025

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An Act to—

- (a) **replace the Building Controls and Standards Act 1991:**
- (b) **enhance health and safety in the building sector for owners, occupiers, the public, members of building trades and related professions, and construction workers:**
- (c) **improve the quality and durability of buildings in the Cook Islands.**

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Building Act 2025.

2 Commencement

- (1) For Rarotonga and Aitutaki, this Act comes into force on the day after the date on which it receives the assent of the King's Representative.
- (2) For the other islands in the Pa Enea,—
 - (a) sections 30, 31, 37, and 38 come into force on the day after the date on which the Act receives the assent of the King's representative; and
 - (b) the other provisions of this Act come into force on a date or dates set by Order in Executive Council; and
 - (c) 1 or more orders may bring this Act into force on different dates for 1 or more islands.

Part 1 Preliminary provisions

3 Interpretation

In this Act, unless the context otherwise requires,—

Act includes regulations made under this Act

approved testing agencies or laboratories means testing agencies or laboratories referred to in section 53

authorised officer means a person described in section 50

building has the meaning given in section 4

Building Board or **Board** means the Building Board established under section 41

Building Controller means the person described in section 39

building inspector means a person described in section 49

building permit means a permit issued under section 23

building work—

- (a) means work for, or in connection with, the construction of a building, temporary building work, or demolition work:
- (b) includes any work that is prescribed to be building work in the regulations

certificate means a suitability certificate, an occupancy certificate, or a completion certificate

CIBC means the Cook Islands Building Code as described in, or replaced or amended under, section 55, and a reference to the CIBC in this Act includes any relevant approved standards, codes of practice, or operating procedures made under section 57

completion certificate means a certificate issued under section 28

construct, in relation to a building, means to design, build, erect, prefabricate, or relocate a building, and includes—

- (a) to rebuild a building:
- (b) design work:
- (c) site work:
- (d) to renovate a building:
- (e) to alter, repair, or add to a building or a structure that becomes a building:
- (f) to use a modular component:
- (g) to remove a building or part of a building from a place to another place or from a position on land to another position on the same land

and **construction** has a corresponding meaning

demolition notice means a notice issued under section 37

demolition permit means a permit issued under section 25

demolition work means work to demolish or pull down a building or more than a small part of a building, unless the small part of the building contains any of the following:

- (a) load-bearing walls, beams, or columns:
- (b) a part of the primary roof structure:
- (c) a fire-rated wall or fire separating elements:
- (d) a part of the building that is critical to building's structural stability or weatherproofing

and **demolish** and **demolished** have corresponding meanings

horizontal infrastructure means—

- (a) pipework infrastructure for water, sewerage, or drainage:
- (b) network infrastructure for electricity, telecommunications, or radio communications:
- (c) bridges, wharves, or jetties:
- (d) roads or runways:
- (e) water reticulation systems, for example, catchments or intakes:
- (f) culverts:
- (g) any structure or system of a type similar to the types in paragraphs (a) to (f)

Island Government—

- (a) has the meaning given in section 4 of the Island Government Act 2012-13:
- (b) for the islands of Manuae, Suwarrow, or Takutea, means the ministry unless regulations are made assigning responsibility for any of those islands to an Island Government

Minister means the Minister 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 that is responsible for the administration of this Act

notice to vacate means a notice to vacate issued under section 37(4)

occupancy certificate means a certificate issued under section 27

owner, in relation to land on which building work is proposed to be or is being carried out, or any building on land, means any of the following:

- (a) the holder of an occupation right in the land:
- (b) the holder of a vesting right in the land:
- (c) the holder of a lease on the land:
- (d) if the land is not subject to an occupation right, a vesting right, or a lease, the native freehold owner of the land:
- (e) in the case of freehold land other than native freehold land, the owner of that land:
- (f) the Crown, if the Crown owns the land

permit means a building permit, temporary building permit, or demolition permit

plans, designs, drawings, and specifications—

- (a) means 1 or more of the plans, designs, drawings, and specifications relating to particular building work; and

- (b) includes the proposed procedures for inspection during the building work

regulations means regulations made under this Act

Secretary means the head of the ministry appointed under the Public Service Act 2009 (or their delegate)

small part of a building, for the purpose of demolition work, means a portion of the building that is 10 per cent or less of the total floor area or 25 square metres or less, whichever is smaller

structural adequacy certificate means a certificate issued under section 29

suitability certificate means a certificate issued under section 26

temporary building permit means a permit issued under section 24

temporary building work means building work for, or in connection with,—

- (a) scaffolding or an entertainment stage constructed on a temporary basis for a performance or event; or
- (b) temporary housing; or
- (c) formwork or shoring

traditional house means a traditional Maori building built using traditional materials and construction methods

utility services means services for electricity, drinking water, wastewater, stormwater, telecommunications, or radio communications.

4 **Meaning of building**

In this Act, unless the context otherwise requires, a **building**—

- (a) means—
 - (i) a temporary or permanent, movable or immovable structure (including a structure intended for occupation by people, animals, machinery, or chattels); or
 - (ii) a structure or type of structure prescribed to be a building in the regulations (and the regulations may specify that a structure is classified as a building for some purposes only):
- (b) includes a mechanical, electrical, plumbing, or other system contained within a structure referred to in paragraph (a) or within a property boundary and required by the CIBC:
- (c) does not include the following types of structures:
 - (i) a structure—
 - (A) with a total floor size of less than 10 square metres; and
 - (B) that is not intended for human habitation:
 - (ii) horizontal infrastructure:
 - (iii) free-standing plant or machinery (and its supporting structure if a structure is supplied with it):
 - (iv) a mast, pole, or radio or television aerial that does not exceed 6 metres in height above its attachment or base support:
 - (v) a traditional house with a plan area not exceeding 25 square metres:
 - (vi) an umu structure:

- (vii) temporary scaffolding and formwork, used in the course of building work (except as provided in paragraph (a) of the definition of temporary building work in section 3):
- (viii) any other structure or type of structure prescribed in the regulations not to be a building (and the regulations may specify that a structure is not classified as a building for some purposes only).

5 Act binds the Crown

This Act binds the Crown.

6 Relationship of this Act with other Acts

This Act applies subject to any restriction or requirement in an Act that relates to—

- (a) public health; or
- (b) national or local disasters or emergencies; or
- (c) the environment.

Part 2

Requirements for building work and building materials

General requirements for owners and persons responsible for building work

7 Carrying out building work

Both the owner and person responsible for building work must ensure that the building work is carried out in accordance with—

- (a) the requirements of this Act and the CIBC; and
- (b) any conditions placed on a permit or certificate by this Act or the Building Controller or Board when issuing it.

Permits and certificates

8 Types of permits and certificates

- (1) The owner or person responsible for building work must hold whichever 1 or more of the following permits and certificates apply to the building work being done by them or on their behalf:
 - (a) a building permit:
 - (b) a temporary building permit:
 - (c) a demolition permit:
 - (d) a suitability certificate:
 - (e) an occupancy certificate:
 - (f) a completion certificate.
- (2) The owner or person responsible for building work must also obtain a structural adequacy certificate if required to do so by the Building Controller or Board under section 9(3).
- (3) *See* section 60, which makes it an offence to carry out building work without a permit.

9 Applying for permit or certificate

- (1) An application for a permit or certificate must be—
 - (a) made to the Building Controller; and
 - (b) in the approved form; and
 - (c) accompanied by the number of copies prescribed in the regulations of each of the plans, designs, drawings, and specifications and any other information required by the regulations; and
 - (d) accompanied by the prescribed fee.
- (2) The Building Controller may require that an application include details showing the names, titles, experience, and qualifications of persons who are to observe, inspect, oversee, or supervise building work on behalf on an applicant.
- (3) The Building Controller or Board may require that an application for a building permit or a suitability certificate for a particular building, or a particular class of building, be accompanied by a structural adequacy certificate.

10 Who is responsible for dealing with applications for permits and certificates

- (1) The Board may deal with applications for all types of permits and certificates.
- (2) The Building Controller may deal with applications for the following types of permits and certificates:
 - (a) building permits for single-storey residential buildings:
 - (b) temporary building permits:
 - (c) demolition permits:
 - (d) occupancy certificates for single-storey residential buildings:
 - (e) completion certificates for single-storey residential buildings.
- (3) The Building Controller must refer applications for the following types of permits and certificates to the Board to be dealt with by the Board:
 - (a) building permits for buildings other than single-storey residential buildings:
 - (b) suitability certificates:
 - (c) occupancy certificates for buildings other than single-storey residential buildings:
 - (d) completion certificates for buildings other than single-storey residential buildings:
 - (e) any permit or certificate for a major development:
 - (f) a permit or certificate listed in subsection (2) that the Building Controller considers would be better dealt with by the Board because of, for example, its complexity or it raises an issue of public interest or requires the balancing of multiple interests.
- (4) In this section, **major development** means any of the following:
 - (a) building work involving 10 or more dwellings:
 - (b) building work involving an industrial or commercial building or buildings that total 1,000 square metres or more:

- (c) building work that involves a site development of 10,000 square metres or more in total:
- (d) a type of building work that is specified in the regulations as being a major development.

11 Delegation of functions by Building Controller to Island Governments

- (1) The Building Controller may, in writing, delegate to an Island Government the power to do the following on the relevant island or on another island for which the Island Government has been assigned responsibility under this Act:
 - (a) approve applications for permits or certificates referred to in section 10(2):
 - (b) carry out inspections of single-storey residential buildings.
- (2) However, the Island Government must refer an application for a permit or certificate listed in section 10(3)(a) to (f) to the Board, and in section 10(3)(f) the reference to Building Controller is to be read as a reference to the Island Government.
- (3) The Island Government is to be treated as if it were the Building Controller for the purposes of dealing with the things referred to in subsection (1)(a) and (b).
- (4) The prescribed fee for any functions undertaken by an Island Government under delegation under this section is payable to that Island Government.
- (5) A delegation may be revoked at any time.

12 Requirement for further information

- (1) The Building Controller or Board may require an applicant, in writing, to provide additional information or material relating to the application, including evidence of consents and approvals required under other Acts or regulations or from other agencies, and payment of any relevant fees. *See* section 14 for notice and timing.
- (2) The information or material may be required only if the Building Controller or Board consider it is necessary to determine compliance with this Act or is otherwise relevant to deciding the application. The applicant must provide that information or material.
- (3) Consideration of the application may be deferred until the information or material is provided.

13 Required testing of material on application for building permit

- (1) The Building Controller or Board may require an applicant for a building permit, in writing, to have any material or thing that will be used in the building work tested and certified by an approved agency or laboratory. *See* section 14 for notice and timing.
- (2) The testing may be required only if the Building Controller or Board consider it is necessary to determine compliance with this Act or is otherwise relevant to deciding the application. The applicant must undertake the testing and have it certified.
- (3) Consideration of the application may be deferred until the certificate is provided.
- (4) Testing and certification under this section are at the applicant's expense.

14 Applicant must be given opportunity to respond to requirements imposed, or deferral, under section 12 or 13

- (1) If requirements are imposed under section 12 or 13, or a deferral of an application is proposed to allow those requirements to be met,—
 - (a) the Building Controller or Board must give notice, in writing, to the applicant of their reasons for—
 - (i) requiring further information or material or testing and certification of material or thing;
 - (ii) deferring the application; and
 - (b) the applicant must be given an opportunity to provide evidence relevant to those reasons within 15 working days from the date they receive the notice.
- (2) The Building Controller or Board must consider any evidence received within that 15-day period and consider whether—
 - (a) the requirements have been met;
 - (b) if the requirements have not been met, the requirements are still justified and further evidence is required from the applicant;
 - (c) a deferral is still justified.
- (3) The Building Controller or Board must give notice to the applicant, in writing, of their decision under subsection (2). If the decision is made under subsection (2)(b) or (c), they must also give their reasons for the decision.
- (4) The notice may specify a time by which further evidence must be provided.
- (5) The application must be treated as refused if the evidence—
 - (a) is not received within the 15-day period under subsection (1)(b); or
 - (b) is not to the satisfaction of the Building Controller or Board when making a decision under subsection (2); or
 - (c) is not received within the time specified in the notice under subsection (3); or
 - (d) is still not to the satisfaction of the Building Controller or Board.

15 Board or Building Controller may seek information from other government agencies

The Building Controller or Board may seek advice and information about a particular application from other government agencies in order to satisfy themselves that any requirements have been met.

16 Refusal to issue permit or certificate

- (1) If the Building Controller or Board is not satisfied that all requirements of this Act are met, they must refuse to issue a permit or certificate.
- (2) The Building Controller must notify an applicant, in writing, if an application for a permit or certificate is refused.
- (3) That notification must include the reasons for the refusal.

17 Conditions

- (1) A permit or certificate is subject to standard conditions provided for in this Act (*see* sections 23(3), 24(3), and 25(4)) and any standard conditions prescribed in the regulations.

- (2) A permit or certificate may also be issued by the Building Controller or Board with special conditions that apply to the particular permit or certificate, and this type of condition may be imposed, varied, or removed after the permit or certificate is issued. Special conditions for different types or classes of buildings may be prescribed by the regulations.
- (3) Special conditions may include conditions to—
 - (a) ensure or enhance the safety and structural integrity of a building:
 - (b) ensure or enhance the safety of building work:
 - (c) avoid or minimise any nuisance arising from the building work, for example, noise.
- (4) Special conditions may also include—
 - (a) the date by which the building work must be completed:
 - (b) requiring a fresh application for a permit or certificate to be made if variations are made to the plans, designs, drawings, or specifications (which were approved when issuing the permit or certificate or are subject to a departure under section 20(2)) to an extent that the Building Controller or Board (whichever issued the permit or certificate) considers means that the plans, designs, drawings, or specifications have changed significantly.
- (5) For the purpose of ensuring that specified systems are maintained throughout the life of a building that is the subject of a building permit, the following additional special conditions may be imposed:
 - (a) a specified compliance schedule:
 - (b) requirements for ongoing inspections or reporting (or both).
- (6) Special conditions may not be imposed on a completion certificate.
- (7) However, conditions imposed on a building permit under subsection (5) continue to have effect after a completion certificate has been issued.

18 Further special conditions following natural disaster

Special conditions may be imposed on permits or certificates that are current at the time of a natural disaster requiring inspections or reporting (or both), or existing special conditions may be varied or removed, if needed to respond to the impact of the natural disaster on the building work that is the subject of the permit or certificate.

19 Bond payable by repeat offenders

- (1) A refundable bond may be required as a condition of the issue of a permit or certificate for building work relating to a person—
 - (a) to whom either of the following has happened on more than 1 occasion:
 - (i) they have been issued with an infringement notice under this Act:
 - (ii) they have been convicted of an offence against this Act; or
 - (b) to whom both of the following have happened:
 - (i) they have been issued with an infringement notice under this Act on 1 or more occasions:
 - (ii) they have been convicted of an offence against this Act on 1 or more occasions.

- (2) In this section, **person** means the applicant for a permit or certificate, a person involved in the ownership or management of the applicant, an agent of the applicant, a person who will be responsible for the building work, or a worker employed by, or a contractor of, the applicant or person who will be responsible for the building work.

20 Effect of permit

- (1) A permit issued under this Act authorises the building work covered by the permit only to be carried out in accordance with—
- (a) the approved plans, designs, drawings, and specifications; and
 - (b) the standard conditions and any special conditions imposed.
- (2) The building work must not depart from the approved plans, designs, drawings, and specifications unless this is permitted in writing by the Building Controller or Board, but the permitted departure must itself be permissible under this Act and the CIBC. If a departure is permitted, the work must not depart from it.
- (3) A permit—
- (a) does not authorise access to, or building work (unless permitted by the permit) on, land; and
 - (b) does not exempt the holder from other legal requirements; and
 - (c) does not confer any right to interfere with, or damage, public lands or property.
- (4) A permit relating to building work within a road reserve does not authorise the building work unless the Secretary also consents in writing to it.
- (5) *See* section 33 for stop work notices that may be issued if a permit is not complied with.

21 Suspending or revoking permit or certificate

- (1) The Building Controller may suspend or revoke a permit or certificate if a consent or approval required under other Acts or regulations, or by other authorities, is not granted or is suspended or revoked.
- (2) *See also*, the power of a building inspector (and the Building Controller) to suspend or revoke a permit in other circumstances under section 51(1)(c).

22 Duration of permit

- (1) A permit expires—
- (a) on the date that is 1 year after the day on which the permit was issued, if the building work has not commenced by that date;
 - (b) on the date set by the Building Controller or Board for completion of the building work (which may be set at any time).
- (2) However, the Building Controller or Board may extend an expiry date (before or after that date) if—
- (a) the extension would not adversely affect human health and safety; and
 - (b) the prescribed fee is paid.
- (3) *See also*, the transitional provision in section 63 for permits and certificates issued before the commencement of this Act.

Building permit

23 Building permit

- (1) Building work (not including temporary building work, *see* section 24 or demolition work, *see* section 25) must not be carried out unless a building permit is held by the owner or person responsible for the building work.
- (2) The Building Controller or Board may issue a building permit only if satisfied that—
 - (a) the application requirements in section 9 are complied with; and
 - (b) the required plans, designs, drawings, and specifications and other information provided comply with this Act and the CIBC; and
 - (c) in the case of a tourist accommodation development, adequate provision (to the satisfaction of the Building Controller or Board) has been made for staff accommodation that complies with the regulations; and
 - (d) any other relevant requirements in this Act have been complied with; and
 - (e) all circumstances indicate that the building work—
 - (i) will comply with this Act and the CIBC; and
 - (ii) will not constitute a danger to any existing occupants of any building, any workers associated with the building work, or members of the public.
- (3) A building permit has the following standard conditions:
 - (a) all building materials, equipment, and procedures used in the building work must comply with this Act and the CIBC;
 - (b) the building work must be carried out in accordance with the approved plans, designs, drawings, and specifications or any departure approved under section 20(2);
 - (c) the owner or person responsible for the building work must pay all fees, and obtain and comply with all consents and approvals required under other Acts or regulations, or from other authorities, relevant to the building work, for example, in relation to public roads and public areas that may be impacted by the building works;
 - (d) any disturbance to the public and to the residents in the area where the building work is carried out must be kept to a minimum;
 - (e) the Building Controller and building inspectors may, without notice, inspect the building and building work during normal working hours or whenever the building work is being carried out;
 - (f) the owner, the person responsible for the building work, and their workers must provide all necessary access and information when inspections are carried out;
 - (g) any directions given by the Building Controller or a building inspector in relation to standard or special conditions must be complied with within the time specified by them;
 - (h) any standard conditions prescribed in the regulations.

Temporary building permit

24 Temporary building permit

- (1) Temporary building work must not be carried out unless a temporary building permit is held by the owner or person responsible for the building work.
- (2) The Building Controller or Board may issue a temporary building permit only if satisfied that—
 - (a) the application requirements in section 9 are complied with; and
 - (b) the required plans, designs, drawings, and specifications and other information provided comply with this Act and the CIBC; and
 - (c) any other relevant requirements in this Act have been complied with; and
 - (d) all circumstances indicate that the temporary building work—
 - (i) will comply with this Act and the CIBC; and
 - (ii) will not constitute a danger to any existing occupants of any building, any workers associated with the building work, or members of the public.
- (3) A temporary building permit has the same standard conditions as a building permit (*see* section 23(3)).
- (4) Any special conditions imposed may include a condition that the temporary building that is the subject of the work must be removed by a specified date or within a specified time period. However, that date or time period may be extended if the Building Controller is satisfied that there is good reason to do so.
- (5) A completion certificate is not required for temporary building work. However, if the building or structure is intended for use by or in the vicinity of the public, it must be inspected by a building inspector and approved as safe before use.

Demolition permit

25 Demolition permit

- (1) Demolition work must not be carried out unless a demolition permit is held by the owner or person responsible for the demolition work.
- (2) However, the Building Controller may approve demolition work for a small part of a building without a demolition permit if—
 - (a) the work is remedial; and
 - (b) the Building Controller is satisfied, after inspecting the building, that a demolition permit is not necessary.
- (3) The Building Controller or Board may issue a demolition permit only if satisfied that—
 - (a) the application requirements in section 9 are complied with; and
 - (b) the required plans, designs, drawings, and specifications and other information provided comply with this Act and the CIBC; and
 - (c) any other relevant requirements in this Act have been complied with; and
 - (d) all circumstances indicate that the demolition work—

- (i) will comply with this Act and the CIBC; and
 - (ii) will not constitute a danger to any existing occupants of any building, any workers associated with the demolition work, or members of the public.
- (4) A demolition permit has the following standard conditions:
- (a) all materials, equipment, and procedures used in the demolition work must comply with this Act and the CIBC:
 - (b) the demolition work must be carried out in accordance with the approved plans, designs, drawings, and specifications or any departure approved under section 20(2):
 - (c) the owner or person responsible for the demolition work must pay all fees, and obtain and comply with all consents and approvals required under other Acts or regulations, or from other authorities, relevant to the demolition work, for example, in relation to public roads and public areas that may be impacted by the demolition work:
 - (d) any disturbance to the public and to the residents in the area where the demolition work is to be carried out must be kept to a minimum:
 - (e) the Building Controller and building inspectors may, without notice, inspect the demolition work during normal working hours or whenever the demolition work is being carried out:
 - (f) the owner, the person responsible for the demolition work, and their workers must provide all necessary access and information when inspections are carried out:
 - (g) any directions given by the Building Controller or a building inspector in relation to standard or special conditions must be complied with:
 - (h) any standard conditions prescribed by the regulations.

Suitability certificate

26 Suitability certificate

- (1) A person must not change the use of a building unless a suitability certificate has been obtained for the proposed new use.
- (2) The Board must issue a suitability certificate if satisfied that—
 - (a) the application requirements in section 9 have been complied with; and
 - (b) the building complies with the proposed new use; and
 - (c) the proposed new use does not contravene the current planning regulations and appropriate physical planning principles; and
 - (d) all consents and approvals required under other Acts or regulations, or from other authorities, have been obtained and complied with and all associated fees have been paid; and
 - (e) the proposed new use will not unduly endanger the health and safety of the public or users of the building or materially reduce any of its amenity.
- (3) If the proposed new use of a building requires building work to be done that requires a permit, the new use of the building and any revised classification must be shown on the completion certificate that is subsequently issued for the building work.

Occupancy certificate

27 Occupancy certificate

- (1) Before a completion certificate is issued, an owner or a person responsible for building work for which a building permit, or a demolition permit for part of a building, is held may apply to the Building Controller for an occupancy certificate.
- (2) A person must not occupy, and an owner must not allow any person to occupy, a building on which building work is being carried out—
 - (a) without an occupancy certificate; or
 - (b) if the Building Controller sets a date for the occupancy to end under subsection (5), after that date unless another occupancy certificate is issued.
- (3) Before the Building Controller issues an occupancy certificate, a building inspector must inspect the building to check and be satisfied that—
 - (a) in the case of a building permit—
 - (i) the application requirements in section 9 have been complied with; and
 - (ii) the building work has, so far, been done according to the approved plans, designs, drawings, and specifications or a departure approved under section 20(2) and the conditions applying to the building permit have been complied with; and
 - (iii) this Act and the CIBC have both been complied with in all aspects of the building work carried out before the inspection date; and
 - (iv) all consents and approvals required under other Acts or regulations, or from other authorities, have been obtained and complied with and all associated fees have been paid; and
 - (v) the toilets, sanitary fittings, drains, and other devices and installations are in working order; and
 - (vi) in all other respects the building is fit for use and for human habitation and does not constitute a danger to its occupants or the public:
 - (b) in the case of a demolition permit—
 - (i) the application requirements in section 9 have been complied with; and
 - (ii) all consents and approvals required under other Acts or regulations, or from other authorities, have been obtained and complied with and all associated fees have been paid; and
 - (iii) for the part of the building to which the occupancy certificate will apply—
 - (A) the toilets, sanitary fittings, drains, and other devices and installations in that part are in working order and likely to remain so; and
 - (B) in all other respects that part is fit for use and for human habitation and is likely to remain so; and

- (C) the demolition work is not likely to constitute a danger to the occupants or the public; and
 - (iv) the demolition work is not likely to otherwise impact on the matters listed in subparagraph (iii).
- (4) The owner or another person may occupy or live in the building or part of the building once an occupancy certificate has been issued but the owner or person responsible for the building work must apply for and obtain a completion certificate when the work is complete.
 - (5) However, the Building Controller may set a date by which the occupancy must end and this may be before the building work is expected to be completed.
 - (6) Any special conditions imposed on the occupancy certificate may include a requirement that the building work is completed by a specified date or within a specified time period. If this type of requirement is imposed, the certificate lapses on the specified date or at the end of the specified period. However, that date or time period may be extended if the Building Controller is satisfied that there is good reason to do so.

Completion certificate

28 Completion certificate

Completion certificate for building work for which building permit held

- (1) The owner or person responsible for building work for which a building permit is held must hold a completion certificate for the building before anyone occupies, lives in, or uses the building.
- (2) However, subsection (1) does not apply if the owner or person responsible for the work has an occupancy certificate (unless the work is complete and therefore subsection (3) applies).
- (3) A completion certificate must be applied for as soon as practicable after completing the building work.
- (4) Before a completion certificate is issued, a building inspector must inspect the building to check and be satisfied that—
 - (a) the application requirements in section 9 have been complied with; and
 - (b) the building work has been done in accordance with the approved plans, designs, drawings, and specifications or a departure approved under section 20(2); and
 - (c) the conditions applying to the permit have been complied with; and
 - (d) this Act and the CIBC have both been complied with in all aspects of the building work; and
 - (e) all consents and approvals required under other Acts or regulations, or from other authorities, have been obtained and complied with and all associated fees have been paid; and
 - (f) the toilets, sanitary fittings, drains, and other devices and installations are in working order; and
 - (g) in all other respects the building is fit for human habitation and does not constitute a danger to its occupants or the public.

Completion certificate for major demolition work

- (5) The owner or person responsible for major demolition work for which a demolition permit is held must hold a completion certificate for the work before anyone occupies, lives in, or uses the site on which the demolition took place.
- (6) However, subsection (5) does not apply if the owner or person responsible for the demolition work has an occupancy certificate for part of a building on the site (unless the work is complete and therefore subsection (7) applies).
- (7) A completion certificate must be applied for as soon as practicable after completing the demolition work.
- (8) Before a completion certificate is issued, a building inspector must inspect the site of the demolition work and be satisfied that—
 - (a) the application requirements in section 9 have been complied with; and
 - (b) the demolition work has been done in accordance with the approved plans, designs, drawings, and specifications or a departure approved under section 20(2); and
 - (c) the conditions applying to the permit have been complied with; and
 - (d) this Act and the CIBC have both been complied with in all aspects of the demolition work; and
 - (e) all consents and approvals required under other Acts or regulations, or from other authorities, have been obtained and complied with and all associated fees have been paid; and
 - (f) the site is safe from hazards; and
 - (g) there is no ongoing risk to buildings, land, or people in the vicinity of the site.
- (9) In this section, **major demolition work** means work to demolish a building or part of a building to which 1 or more of the following applies:
 - (a) it is more than 2 storeys in height;
 - (b) it has a total floor area exceeding 150 square metres;
 - (c) it involves the use of heavy machinery, explosives, or other methods that pose a risk to public safety or adjoining properties;
 - (d) it involves the removal of hazardous building materials, for example, asbestos.

Provisions applying to both

- (10) A building permit or a demolition permit is complied with and ceases to have effect when a completion certificate is issued, except as provided in section 17(5) and (7) for a building permit.
- (11) A completion certificate may be refused if section 59(4) applies (difference in fee not paid).

Structural adequacy certificate

29 Structural adequacy certificate

- (1) A structural adequacy certificate required under section 9(3) may be provided only by a registered engineer.

- (2) A structural adequacy certificate must include the information required by the regulations and the engineer must certify that the plans, designs, drawings, and specifications of the proposed building or existing building comply with—
 - (a) the stability requirements of the CIBC; and
 - (b) all other design features and business practices that are necessary for the building to be structurally sound.
- (3) A structural adequacy certificate must be obtained at the applicant's expense.
- (4) In this section, **registered engineer** means a person who is registered as an engineer in the Cook Islands or a jurisdiction recognised for this purpose by the Building Controller or Board.

Building materials

30 Confirmation of compliance required for all building materials

- (1) A person must not import or manufacture a building material or sell or use a building material or make it available for building work, unless a confirmation of compliance is issued for the material.
- (2) A person may apply to the Building Controller for a confirmation of compliance.
- (3) The application must include information about the material, including—
 - (a) detailed specifications of the material (including any known concerns about the material); and
 - (b) relevant test results and analysis relating to the material.
- (4) A building inspector or a person the Building Controller considers has biosecurity expertise, or both, may inspect the material before a decision is made under subsection (5).
- (5) As soon as practicable after receiving an application, the Building Controller must—
 - (a) issue a confirmation of compliance, if satisfied that the material—
 - (i) is not prohibited; and
 - (ii) if it is a restricted material, meets the conditions in a ministerial notice under section 31; and
 - (iii) complies with this Act and the CIBC; and
 - (iv) in the case of building material that is imported, poses no biosecurity risk; or
 - (b) if not satisfied of the matters described in paragraph (a), decline to give a confirmation of compliance and give the applicant written notice of that decision and the reasons for it.
- (6) A confirmation of compliance must state—
 - (a) the name of the person who is importing or manufacturing the material; and
 - (b) that the material complies with this Act and the CIBC; and
 - (c) in the case of material that is imported, it poses no biosecurity risk; and
 - (d) whether the material is restricted or not; and
 - (e) if the material is restricted, the conditions that apply to its importation, manufacture, use, sale, or the making of it available for building work.

31 Ministerial notice for prohibited or restricted building materials

- (1) The Minister may, on the advice of the Board, by notice, prohibit or restrict the importation, manufacture, sale, or use of a building material or the making of it available for building work, if the Minister considers that—
 - (a) it does not comply with this Act or the CIBC; or
 - (b) it has issues relating to safety or structural integrity; or
 - (c) it poses a risk of fire or other dangers.
- (2) For restricted material, the notice must set out conditions that must be met when importing, manufacturing, selling, or using the material or making it available for building work.
- (3) A person must not—
 - (a) import, manufacture, sell, or use a prohibited building material or make it available for building work;
 - (b) import, manufacture, sell, or use a restricted building material, or make it available for building work, except in accordance with the conditions that apply.
- (4) A notice made by the Minister must be made available free of charge—
 - (a) on an internet site maintained by or on behalf of the ministry; and
 - (b) at the head office of the ministry; and
 - (c) according to any further requirements prescribed in the regulations.
- (5) The lists of materials in the notice must be reviewed at regular intervals as determined appropriate by the ministry.

Part 3

Stop work notices and demolition of unsafe buildings

32 Application of Part

This Part applies whether or not a permit or certificate has been issued for building work.

Stop work notices

33 Stop work notices: reasons for issue

A stop work notice may be issued by the Building Controller if they believe on reasonable grounds that—

- (a) a permit or certificate issued under this Act has not been complied with;
- (b) there has been a failure to comply with this Act or the CIBC relating to any of the following:
 - (i) fire resistance;
 - (ii) building work for and location of exits;
 - (iii) accessibility and safety requirements, including for people with disabilities;
 - (iv) electrical safety;
 - (v) any matter relevant to protection from fire or building access;

- (vi) specific requirements applicable to theatres, public halls, and other buildings designed for public access and use:
- (c) a defect in the building needs to be remedied:
- (d) a building or a feature of it is a risk to the safety of building occupants, persons working in or around the building, or members of the public:
- (e) given the nature of the use of the building and the number of people present in it from time to time,—
 - (i) a defect in the building structure may exist that poses a safety risk; or
 - (ii) there is insufficient provision made for toilets and sanitation:
- (f) pollutants are being emitted from the building or land on which the building sits or the building work is creating a nuisance for others in its vicinity.

34 Stop work notices: what may be required

- (1) A stop work notice may require either or both or any part of the following to cease:
 - (a) any building work:
 - (b) any business activity related to the building work.
- (2) If the notice requires only a part of the building work to cease, it must clearly identify which part.
- (3) A stop work notice may require the building work (or part of it) to cease at specified times during a day or week.
- (4) A stop work notice may also require the owner or person responsible for the building work, or both of them, to take 1 or more of the actions listed in section 35, if the Building Controller believes on reasonable grounds that the actions are needed to deal with the matter that is the subject of the notice. The Building Controller may also specify a date by which the actions must be taken.
- (5) A person who is issued with a stop work notice must comply with it by ceasing the work immediately or at the specified times (if relevant), and, if a date is specified in the notice by which they must take any action, do so by that date.

35 Stop work notices: particular actions that may be required

- (1) A stop work notice may require 1 or more of the following to be done:
 - (a) take all necessary action—
 - (i) to comply with this Act, a permit or certificate issued under this Act, or the CIBC:
 - (ii) to remedy a defect:
 - (iii) to make the building safe:
 - (b) vacate the building:
 - (c) provide sufficient toilets and sanitation:
 - (d) prevent or mitigate pollutants or nuisance.

- (2) A stop work notice may also require the person or persons to whom it is issued to provide engineering or other reports to demonstrate compliance or to show that the matter has been remedied or mitigated.

36 Other requirements for stop work notice and duration of notice

- (1) A stop work notice—
- (a) must state the reason or reasons for which it was issued;
 - (b) may specify a time or times by which the stated action or actions must be taken.
- (2) A copy of the notice must be—
- (a) served on any person who is required to take action under the notice; and
 - (b) affixed to the building that is the subject of the notice, or in the vicinity of the building work, in a clearly visible place.
- (3) A notice has effect until the matter that is the subject of the notice is remedied to the satisfaction of the Building Controller.

Demolition notices

37 Demolition notices for unsafe buildings and notice to vacate building

- (1) This section applies if—
- (a) a person who is issued with a stop work notice fails to comply with it or remedy the matter to which it relates and the Board considers that the relevant building is unsafe; or
 - (b) the Board determines that defects of a building (whether or not the building is the subject of building work being carried out under this Act) make it unsafe and cannot be remedied.
- (2) The Board—
- (a) may issue a demolition notice for an unsafe building in Rarotonga;
 - (b) may issue a demolition notice if—
 - (i) an unsafe building is in the Pa Enea; and
 - (ii) the applicable Island Government requests it to do so.
- (3) A demolition notice may require the owner to demolish the building by the date specified in the notice, and—
- (a) the owner must arrange for the demolition and ensure that it is done in accordance with this Act and the CIBC; and
 - (b) if a date is specified in the notice, ensure the demolition is completed by that date; and
 - (c) the owner is responsible for all costs associated with the demolition; and
 - (d) a demolition permit is not required.
- (4) The Building Controller may also issue a notice to vacate to the owner or any occupant of an unsafe building, or both. And may also specify a date by which that must happen. The occupant must vacate, and the owner must ensure that the occupant vacates, the building as required by the notice.

- (5) If a demolition notice has been issued under this section, the Building Controller may authorise and arrange the demolition of the building by a person other than the owner if 1 or more of the following apply:
- (a) the Building Controller is satisfied that the owner is absent from the Cook Islands;
 - (b) the Building Controller is satisfied that the owner genuinely cannot afford to pay for the demolition themselves;
 - (c) any circumstances prescribed in the regulations.
- (6) If a building is demolished under subsection (5),—
- (a) a demolition permit is not required; and
 - (b) unless subsection (5)(b) applies, all costs associated with the demolition may be recovered from the owner as a debt due to the Crown; and
 - (c) the owner is not entitled to claim for any loss or damage associated with the demolition, including loss or damage to materials, fittings, or other contents of the building.

Power to disconnect utilities

38 Power to disconnect utilities

- (1) The Building Controller may arrange for or require the disconnection of utility services to a building for which a stop work notice or a demolition notice has been issued.
- (2) A person must not reconnect those utility services,—
- (a) in the case of a stop work notice, until the notice has been complied with to the satisfaction of the Building Controller;
 - (b) in the case of a demolition notice, unless they are given permission to do so, in writing, by the Building Controller for a specific purpose and may do so only for that purpose and for any period specified by the Building Controller.

Part 4
Regulatory, enforcement, and approved testing agencies and laboratories

Building Controller

39 Building Controller

- (1) The office of the Building Controller, established under the Building Controls and Standards Act 1991, continues.
- (2) The Building Controller is a public servant and is under the authority of the Secretary or the head of another public service agency prescribed by the regulations.
- (3) The Minister may designate an employee of the ministry to hold the office of the Building Controller if there is a vacancy.

40 Role of Building Controller

- (1) The role of the Building Controller is to implement and enforce this Act.

- (2) The Building Controller has the powers necessary to perform the role including all the powers of a building inspector (under section 51).

Building Board

41 Building Board

- (1) The Building Board is established.
- (2) The members of the Board are—
- (a) the Secretary, who is the chairperson; and
 - (b) the head (or their delegate) of each of the ministries responsible for dangerous goods, disability issues, environment, infrastructure, justice, public health, and survey; and
 - (c) the head (or their delegate) of the lead agency responsible for response to fires; and
 - (d) temporary members representing government regulatory agencies with roles associated with building control, appointed by the Minister (as needed to provide particular expertise or experience for dealing with a particular issue); and
 - (e) representatives of the building sector appointed by the Minister in consultation with the Secretary.
- (3) The Board may invite any other agency or body relevant to a matter being considered by the Board to participate in its meetings, but a person participating on behalf of that agency or body must not take part in decision making and is not a member of the Board.

42 Role and functions of Board

- (1) The Board must ensure that—
- (a) the provisions of this Act and the CIBC and approved standards, codes of practice, and operating procedures are implemented and enforced; and
 - (b) the CIBC (including any exemptions or modifications for islands other than Rarotonga referred to in section 55), approved standards, codes of practice, and operating procedures, and guidelines are published and accessible; and
 - (c) buildings are constructed, altered, or demolished in accordance with legal requirements—
 - (i) under this Act; and
 - (ii) relating to public health and safety; and
 - (iii) relating to fire prevention and safety; and
 - (iv) relating to planning and urban management; and
 - (v) relating to natural disasters.
- (2) The Board must also—
- (a) perform functions given by this Act and the CIBC; and
 - (b) consider appeals from decisions made by the Building Controller; and
 - (c) make recommendations to the Minister for—
 - (i) updating and amending the CIBC:

- (ii) the accreditation of testing agencies and laboratories and for listing their names in the CIBC;
 - (iii) making, updating, and amending approved standards, codes of practice, or operating procedures; and
- (d) make, update, and amend guidelines relating to this Act or the CIBC to the extent the Board thinks appropriate; and
- (e) advise government in relation to any matter associated with building regulation or the practices of the building industry in the Cook Islands; and
- (f) consider and recommend changes to the law, including to,—
 - (i) protect the heritage value of culturally and historically significant buildings;
 - (ii) ensure that the impacts of climate change are mitigated in the context of building work;
 - (iii) ensure that the rights and interests of persons with disabilities are protected in relation to the regulation of buildings.
- (3) The Board has the powers necessary to perform its role, including the powers—
 - (a) to identify and arrange for the provision of any technical assistance that it considers necessary for the proper discharge of its responsibilities;
 - (b) to approve and implement any administrative arrangement that facilitates the processing of permits and certificates, including if these powers are delegated to the Building Controller.
- (4) The Board must produce an annual report of its activities for the Minister that must be tabled in Parliament as soon as practicable after the Minister receives it.

43 Delegation of functions by Board

- (1) The Board may delegate any of its functions to—
 - (a) the Building Controller; or
 - (b) an Island Government for matters affecting the relevant island or another island for which the Island Government has been assigned responsibility under this Act.
- (2) However, the Board may not delegate its function to deal with applications for permits or certificates referred to in section 10(3) or the power of delegation under this section.
- (3) A delegation may be revoked at any time, and the delegation of a function of the Board does not prevent the Board from exercising that function itself.

44 Meetings of Board

- (1) The Board may determine its own procedures, subject to this section and any requirements prescribed in the regulations.
- (2) The Board must meet at the frequency prescribed in the regulations.
- (3) Meetings may proceed only if there is a quorum of 60 per cent of the members.

- (4) Members who are absent from a meeting must be invited to indicate their approval or disapproval of any resolution from the meeting (that must be circulated to them following the meeting). Any indication given must be added to the votes taken at the meeting to produce a final result.
- (5) A member who does not respond to a circulated resolution by the end of 7 days after the day it is sent is to be treated as having approved the proposed action.

45 Disclosure of interests by Board members

- (1) On appointment, a member of the Board must make a formal disclosure of any potential and actual conflicts of interest they have relating to the business of the Board.
- (2) Board members must also make a formal disclosure of potential and actual conflicts of interest at any time that their circumstances change and a potential or actual conflict arises from that change.
- (3) A Board member who has a personal or professional interest in a matter being considered by the Board must disclose the interest to the chairperson as soon as practicable after becoming aware of it and must not take part in deliberation of the matter or vote on the matter.
- (4) The member who has disclosed the interest must leave a meeting of the Board where the matter is being deliberated on if requested to do so by the chairperson.
- (5) Any disclosure of interest is confidential to the Board.

46 Resignation, removal, and fees and allowances of Board members

- (1) Any of the members appointed to the Board under section 41(2)(d) and (e) may resign at any time by written notice to the Minister (with a copy to the Board).
- (2) The Minister, on the advice of the Secretary, may remove any member appointed under section 41(2)(d) and (e) for any of the following reasons:
 - (a) breach of the member's duties:
 - (b) failure or inability to perform, or inadequate performance of, the member's duties or responsibilities as a member:
 - (c) misconduct by the member:
 - (d) any other just cause.
- (3) A member of the Board appointed under section 41(2)(e) is entitled to receive the following:
 - (a) remuneration by way of fees or allowances for their services as a member of the Board:
 - (b) payment of travelling allowances and expenses for travelling in connection with the performance of their functions as a member of the Board.
- (4) The fees, allowances, and expenses are payable as prescribed in the regulations.

Appeals of decisions or actions by Building Controller and reconsideration of Board decisions

47 Appeals to Board

- (1) A person may appeal to the Board against any of the following decisions or actions:
 - (a) a refusal by the Building Controller to issue a permit or certificate or to issue a permit or certificate subject to conditions under section 16 or 17:
 - (b) a decision by the Building Controller to suspend or revoke a permit or certificate under section 21:
 - (c) a decision by the Building Controller to decline to issue a confirmation of compliance under section 30:
 - (d) the issue of a stop work notice by the Building Controller under section 33:
 - (e) the issue of a notice to vacate by the Building Controller under section 37(4):
 - (f) a decision by a building inspector (including the Building Controller) to suspend or revoke a permit or an occupancy certificate under section 51(1)(c):
 - (g) a decision by the Building Controller not to approve and certify a testing agency or laboratory on an interim basis or to suspend or revoke an approval under section 53:
 - (h) a requirement by the Building Controller to an owner to carry out building work under section 64.
- (2) Appeals must be lodged with the ministry within 30 days after the date the person is notified of the decision or action.
- (3) The Board may—
 - (a) require that further information is provided relating to the grounds for the appeal:
 - (b) direct that a building inspector carry out an inspection and provide a report to the Board:
 - (c) reject the appeal and confirm the decision:
 - (d) uphold the appeal and reverse or modify the decision or remove, amend, or attach new conditions.
- (4) The Board may determine its own procedure for dealing with appeals and, for example, may hear an appeal on the papers.

48 Reconsideration of Board decisions

- (1) A person may request the Board to reconsider a decision it has made under this Act relating to them if—
 - (a) they have additional relevant information for the Board to consider; or
 - (b) they propose to make modifications to the proposal that was the subject of the decision.
- (2) Requests for reconsideration must—
 - (a) be lodged with the ministry within 30 days after the date of the Board's decision; and

- (b) be accompanied by any proposed additional or alternative plans, designs, drawings, and specifications, and any other relevant information to satisfy the Board that the CIBC and any other relevant legal requirements will be complied with; and
 - (c) be accompanied by the prescribed fee.
- (3) The Board may—
- (a) confirm its decision; or
 - (b) reverse or modify the decision or remove, amend, or attach new conditions.

Building inspectors and authorised officers

49 Building inspectors

- (1) The Secretary may designate officers of the ministry to be building inspectors to perform the functions and exercise the powers described in section 51 or that are delegated to them by the Building Controller.
- (2) However, the Building Controller cannot delegate to a building inspector either of the following:
 - (a) a function that has been delegated to the Building Controller by the Board:
 - (b) the power of delegation in this section.
- (3) In this Act, a reference to the Building Controller is to be treated as including a building inspector who has delegated authority for the particular matter.
- (4) A delegation may be revoked at any time, and the delegation of a function by the Building Controller does not prevent them from exercising that function themselves.

50 Authorised officers

- (1) The Building Controller may appoint other appropriately qualified persons, including persons on islands other than Rarotonga, to be authorised officers.
- (2) Authorised officers have the functions and powers of building inspectors that are delegated to them by the Building Controller.
- (3) However, the Building Controller cannot delegate to an authorised person—
 - (a) a function that has been delegated to the Building Controller by the Board:
 - (b) the power of delegation in this section.
- (4) In this Act, a reference to a building inspector is to be treated as including an authorised officer who has delegated authority for the particular matter.
- (5) A delegation may be revoked at any time, and the delegation of a function by the Building Controller does not prevent them exercising that function themselves.

51 Functions and powers of building inspectors

- (1) A building inspector may do any of the following:
 - (a) perform any function or exercise any power given to them in this Act or delegated to them by the Building Controller:
 - (b) inspect and examine building work:

- (c) suspend or revoke—
 - (i) a permit, if they believe on reasonable grounds that the building work to which it relates is not being carried out in accordance with this Act, the CIBC, or the approved plans, designs, drawings, and specifications or a permitted departure under section 20(2), or a condition on the permit has been breached:
 - (ii) an occupancy certificate, if they believe on reasonable grounds that a condition on the certificate has been breached:
- (d) enter land on which building work is being carried out, if the inspector believes on reasonable grounds that changes relating to the work have been made that—
 - (i) may result in the suspension or revocation of the permit under paragraph (c); or
 - (ii) may otherwise pose a danger to the health or safety of the public or the building’s occupants.
- (2) A building inspector may also do any of the following:
 - (a) question a person on a building or demolition site in relation to—
 - (i) the building work; or
 - (ii) any matter relevant to this Act or the CIBC relating to the building work:
 - (b) do any act, or require the owner, person responsible for the building work, or any other person responsible for undertaking or supervising the building work to do any act, necessary to ensure that the building work is carried out in compliance with this Act and the CIBC:
 - (c) take samples for testing and analysis of any matter that may have adverse implications for the safety of buildings, or to determine whether a requirement under this Act or the CIBC has been complied with:
 - (d) take photographs and measurements, and collect other necessary evidence, relating to an aspect of building safety or compliance with this Act or the CIBC:
 - (e) require a person to provide records and information held by the person relating to—
 - (i) any permit, certificate, or notice given in relation to building work or a building’s use:
 - (ii) any licence, permit, or authorisation relating to any activity in the building:
 - (iii) any licence, permit, or registration held by a person who is responsible for the building work:
 - (iv) any other matter involving the performance or exercise of a function or power under this Act:
 - (f) require the owner or person responsible for the building work, or both, to contain, remove, or otherwise deal with any substance or other thing that could adversely impact upon or endanger the safety of a building or building site or persons in the vicinity so as to prevent or minimise its harmful or adverse effects.

- (3) A person must answer questions, provide records and information, and comply with any other requirement by a building inspector under this section.

Immunity from civil liability

52 Immunity from civil liability

The ministry, Island Governments, and officers and staff of the ministry or an Island Government, the Board and its members, the Building Controller, building inspectors, authorised officers, and other persons who have functions, duties, and powers under this Act are immune from liability in civil proceedings for good-faith actions or omissions when—

- (a) carrying out or intending to carry out their responsibilities; or
- (b) performing or exercising, or intending to perform or exercise, their functions, duties, or powers.

Approved testing agencies and laboratories

53 Approved testing agencies and laboratories

- (1) The following are approved testing agencies and laboratories:
- (a) testing agencies and laboratories approved by the Minister and listed in the CIBC as accredited testing agencies or laboratories;
 - (b) testing agencies and laboratories approved and certified by the Building Controller, on an interim basis, to undertake the testing of any material or thing relevant to building work.
- (2) The Building Controller may revoke or suspend the approval of a testing agency or laboratory given under subsection (1)(b) at any time.
- (3) See section 42 that gives the Board the role of recommending accreditation of testing agencies and laboratories and the listing of their names in the CIBC.
- (4) A certificate issued by an approved testing agency or laboratory must be recognised by the Building Controller or Board as proof of the matters stated in the certificate.
- (5) A person must not claim to be an approved testing agency or laboratory for the purposes of this Act unless the person is approved in accordance with this section. It is an offence under section 60 to do so.

Part 5

Regulations, CIBC, approved standards, codes of practice, and operating procedures, and forms, other documents, and fees

Regulations

54 Regulations

The King's Representative may, by Order in Executive Council, on the recommendation of the Minister, make regulations for all or any of the following purposes:

- (a) providing for anything this Act says may or must be prescribed or required or specified by the regulations:

- (b) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect:
- (c) providing further powers for the Board relating to its functions under this Act:
- (d) prescribing procedures to be followed by the Building Controller or Board when performing functions or exercising powers under this Act:
- (e) prescribing obligations of members of the Board:
- (f) prescribing additional requirements for buildings, including relating to the following:
 - (i) the provision and location of vehicle parking areas:
 - (ii) the height and appearance of buildings:
 - (iii) the provision of landscaping and other beautification measures for the buildings relevant to their location:
 - (iv) access to and provision of essential services to buildings generally or a class of buildings:
 - (v) the provision of staff accommodation in tourist accommodation developments:
 - (vi) requirements related to the following things for a particular building, buildings generally, or a class of buildings:
 - (A) amenity:
 - (B) a building's occupants, including staff in staff accommodation in tourist accommodation developments:
 - (C) members of the public likely to be impacted by the presence of a building or buildings:
 - (D) the environment in which a building is located:
 - (E) implementing water-sensitive design into buildings and surroundings:
- (g) prescribing additional powers for the Building Controller, building inspectors, or authorised officers in relation to the enforcement of this Act and the CIBC, including the issue of stop work notices:
- (h) addressing or mitigating the impacts of climate change and natural disasters on buildings and building safety, including requirements for insulating buildings:
- (i) promoting and protecting access to and use of buildings by persons with disabilities:
- (j) regulating the building trades (for example, builders, plumbers, electricians, joiners, and roofers) and related professions (for example architects) including by—
 - (i) restricting certain building work-related activities to appropriately qualified members of building trades and related professions:
 - (ii) requiring, and providing requirements for, registers for building trades and related professions:
- (k) prohibiting the importation, manufacture, or use of any building equipment:
- (l) regulating testing agencies or laboratories:

- (m) setting administrative requirements and arrangements for permits and certificates:
- (n) prescribing standard conditions or special conditions for permits or certificates:
- (o) regulating the management of building sites including controls over access routes, retaining walls, grading of sites, slope stabilisation, erosion control, tree preservation, and waste management:
- (p) approving building manuals and standard plans, designs, drawings, and specifications:
- (q) prescribing controls for the preservation or maintenance of heritage or cultural values associated with particular buildings or structures, a class of buildings or structures, or sites of particular buildings or structures, which may include standards or other requirements for materials and other matters used for preservation and maintenance:
- (r) regulating the dealing with buildings that are unsafe or derelict, including providing powers to demolish or remove them:
- (s) providing for the ongoing assessment of existing and completed buildings for compliance with building standards and other standards or requirements, including through the use of warrants of fitness and compliance schedules:
- (t) assigning responsibility for 1 or more of the islands of Manuae, Suwarrow, or Takutea to an Island Government described in the Island Government Act 2012-13.

CIBC

55 Cook Islands Building Code becomes CIBC

- (1) For the purposes of this Act, the Cook Islands Building Code contained in Schedule 1 of the Building Controls and Standards (National Building Code) Order 2022 (the **Building Code**) as it was immediately before the commencement of this Act is to be treated as the CIBC under this Act.
- (2) Despite the Building Code being contained in legislation (which is revoked by this Act) before the commencement of this Act, from the commencement of this Act the CIBC is to be treated as a stand-alone code that can be amended or replaced as provided in this section and section 56.
- (3) The Minister may, on the recommendation of the Board, certify and approve—
 - (a) a replacement of the CIBC, by signing a new version of it; or
 - (b) an amendment of the CIBC, by signing a copy of the amended version.
- (4) The Minister may approve the replacement of the CIBC or substantive amendments to it only if the Board has consulted with members of the building industry, the emergency management sector, disability groups, and other persons or groups the Minister considers appropriate.
- (5) The Board must provide a summary of that consultation to the Minister, who must consider it before approving the replacement or amendment of the CIBC.
- (6) However, the Minister may, in writing, do either or both of the following:

- (a) approve minor and technical amendments to the CIBC, on the recommendation of the Building Controller or Board, without the consultation referred to in subsection (4):
 - (b) on the recommendation of the Board, after consultation by it with the relevant Island Government or Governments, exempt or modify the application of the CIBC or part of it to 1 or more islands other than Rarotonga.
- (7) The CIBC, including any amendments, or exemptions or modifications relating to any island other than Rarotonga, must be published on an internet site maintained by or on behalf of the ministry.
- (8) Judicial notice must be taken of a copy of the CIBC certified by the Minister as proof that it has been certified and approved under this section.

56 Contents of CIBC

- (1) The purpose of the CIBC is to ensure that building work is carried out according to appropriate standards of structural sufficiency, quality, durability, fire safety, health, accessibility, and amenity, and planning requirements.
- (2) An amendment to or replacement of the CIBC may include standards or other requirements relating to building work including the following:
- (a) building design:
 - (b) building structure:
 - (c) the use of building materials and required standards for these, including restrictions and prohibitions on specified materials or types of material:
 - (d) fire resistance:
 - (e) access and egress, including for people with disabilities:
 - (f) health and amenity (for example, damp and waterproofing, sanitary facilities, room sizes, light and ventilation, water supply plumbing, sanitary plumbing, drainage, and road drainage):
 - (g) services and equipment:
 - (h) special use buildings:
 - (i) car parking and vehicle access requirements:
 - (j) setbacks from roads and boundaries:
 - (k) fencing of swimming pools:
 - (l) specific dangers arising from buildings, including removing, containing, and disposing of asbestos:
 - (m) energy efficiency:
 - (n) other requirements necessary or appropriate to protect the health and safety of owners, occupiers, members of building trades and related professions, and the public, including in relation to climate change (for example installing insulation) and natural disasters.
- (3) Different requirements and higher standards may be applied to public and government buildings to promote resilience to natural disasters and climate change.
- (4) The CIBC may adopt standards and specifications by reference to—
- (a) standards and specifications applying under other Cook Island laws; and

- (b) overseas building standards.

Approved standards, codes of practice, and operating procedures

57 Approved standards, codes of practice, and operating procedures

- (1) The Minister may approve the making or amending of standards, codes of practice, or operating procedures to promptly address matters within the purpose of this Act by signing a copy or an amended copy.
- (2) Without limiting the generality of subsection (1), an approved standard, code of practice, or operating procedure may be made for either of the following:
 - (a) safety or technical issues arising in respect of a particular building material, type of building, or building practice:
 - (b) issues arising out of climate change or natural disasters.
- (3) An approved standard, code of practice, or operating procedure must specify the persons or groups to which it applies and takes effect when it is signed by the Minister.
- (4) The Building Controller must—
 - (a) notify organisations representing members of the building trades and related professions as soon as practicable after the Minister makes or amends an approved standard, code of practice, or operating procedure; and
 - (b) publish the approved standard, code of practice, or operating procedure on an internet site maintained by or on behalf of the ministry.
- (5) However, the validity of an approved standard, code of practice, or operating procedure is not affected by a failure to notify or publish it.
- (6) If an approved standard, code of practice, or operating procedure is inconsistent with the CIBC, it overrides the CIBC to the extent of the inconsistency unless it relates to the structural integrity of the building.
- (7) A person who fails or refuses to comply with an approved standard, code of practice, or operating procedure commits an offence and is liable on conviction—
 - (a) in the case of an individual, to a fine not exceeding \$5,000 and a further amount not exceeding \$500 for each day that the offence continues:
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000 and a further amount not exceeding \$500 for each day that the offence continues.

Forms, other documents, and fees

58 Forms and other documents

- (1) Forms necessary for the operation of this Act may be—
 - (a) prescribed by the regulations; or
 - (b) approved and published by the Building Controller, subject to any requirements for forms or other documents contained in this Act.
- (2) Forms, plans, designs, drawings, and specifications, and other documents must be completed and submitted as required by this Act and prescribed by the regulations.

- (3) Plans, designs, drawings, and specifications, and other documents that are required to accompany applications, become the property of the ministry and must be stored securely and disposed of as prescribed by the regulations.
- (4) Regulations may allow copies of any of the things referred to in subsection (3) to be obtained by members of the public on payment of a prescribed fee.

59 Fees

- (1) Fees must be paid to the ministry for applications, permits, certificates, approvals, inspections, and other procedures and services under this Act as prescribed by the regulations. However, *see* section 11 which provides that some fees are payable to the relevant Island Government.
- (2) Regulations may—
 - (a) prescribe a fee or rates of fees for different purposes; or
 - (b) impose a method or calculation for determining a fee for different purposes, for example, a method based on the cost of the building work to which it applies.
- (3) If a fee for a permit application is determined based on the cost of building work,—
 - (a) the Building Controller may require that details of the final cost of the building work be provided by the applicant; and
 - (b) if the fee calculated as payable on the final cost of the building work is more than the fee already paid, the applicant must pay the difference; and
 - (c) if the fee calculated as payable on the final cost of the building work is less than the fee already paid, the difference must be paid back to the applicant.
- (4) If subsection (3)(b) applies, the Building Controller or Board may refuse to issue a completion certificate until the difference is paid.

Part 6 Offences and infringement notices

Offences

60 Offences

- (1) A person commits an offence if they—
 - (a) carry out building work without a permit or carry out building work with a permit but fail to comply with the permit, including conditions on it (*see* sections 23, 24, and 25):
 - (b) change the use of a building without a suitability certificate (*see* section 26):
 - (c) occupy or use a building that is the subject of building work or major demolition work without an occupancy certificate or a completion certificate (*see* sections 27 and 28):
 - (d) fail to apply for a completion certificate as soon as practicable following completion of building work or major demolition work (*see* section 28):

- (e) provide false or misleading information in an application for a permit or certificate under this Act:
 - (f) fail to comply with the lawful requirements or directions of the Building Controller, a building inspector, or an authorised person.
- (2) A person commits an offence if they, without reasonable excuse, fail to comply with any of the following sections:
- (a) section 20(2) (departing from approved plans, designs, drawings, and specifications or permitted departure):
 - (b) section 20(4) (building on road reserve without consent of Secretary):
 - (c) section 30(1) (importing, manufacturing, selling, or using building material, or making it available for building work, before a confirmation of compliance is issued by the Building Controller):
 - (d) section 30(3) (failing to provide required information about a building material before importing, manufacturing, selling, or using it, or making it available for building work):
 - (e) section 31(3) (importing, manufacturing, selling, or using a prohibited building material or making it available for building work):
 - (f) section 31(3) (importing, manufacturing, selling, or using a restricted building material, or making it available for building work, without complying with conditions imposed by ministerial notice):
 - (g) section 34(5) (failing to comply with a stop work notice):
 - (h) section 37 (failing to comply with a demolition notice):
 - (i) section 37(4) (failing to comply with notice to vacate):
 - (j) section 38 (failing to disconnect utilities when required, or reconnecting utilities without being permitted by, or not in accordance with, the requirements of, the Building Controller):
 - (k) section 53(5) (claiming to be an approved testing agency or laboratory when not approved):
 - (l) section 59(3)(b) (refusing to pay difference in fee):
 - (m) section 64 (refusing to carry out building work to comply with this Act or the CIBC).
- (3) A person who commits an offence described in subsection (1) or (2) is liable, on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$50,000 and a further amount not exceeding \$5,000 for every day that the offence continues:
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000 and a further amount not exceeding \$10,000 for every day that the offence continues.
- (4) A person who otherwise fails to comply with this Act, without reasonable excuse, is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000 and a further amount not exceeding \$500 for every day that the offence continues:
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000 and a further amount not exceeding \$1,000 for every day that the offence continues.

- (5) Regulations may prescribe offences and penalties for breach of the regulations. However, those penalties are limited to the penalties provided in subsection (4).

Infringement notices

61 Infringement notices

- (1) The ministry may issue written infringement notices for offences under this Act.
- (2) An infringement notice may require the payment of a fee. The fee may be enforced as a civil debt to the Crown.
- (3) If an infringement notice is issued and the fee is paid, the person may not be prosecuted for that offence.
- (4) A person who is issued with an infringement notice may dispute the notice.
- (5) Regulations may prescribe,—
- (a) which offences under this Act may be the subject of an infringement notice:
 - (b) the fee payable in each case:
 - (c) the period in which the fee must be paid:
 - (d) requirements for service of the notice and the form and content of the notice:
 - (e) a process for disputing the issue of a notice, which may include a court process:
 - (f) other matters necessary or desirable for implementing an effective infringement notice regime.

Part 7

Repeal and revocation and transitional and savings provisions

62 Repeal and revocation

- (1) The Building Controls and Standards Act 1991 is repealed.
- (2) The Building Controls and Standards (National Building Code) Order 2022 is revoked.

63 Transitional and savings provisions

- (1) From commencement day, the Building Controls and Standards Regulations 1991 are to be treated as regulations made under this Act.
- (2) A permit or certificate issued under the Building Controls and Standards Act 1991 and still current immediately before commencement day—
- (a) is to be treated as having been issued under this Act; and
 - (b) in the case of a permit, expires 12 months from commencement day (the **expiry date**) and,—
 - (i) if still needed, must be reviewed by the Building Controller or Board (whichever issued the permit or certificate); and

- (ii) all building work that is the subject of the permit must cease from the expiry date until the review under subparagraph (i) is completed.
- (3) An application for a permit or certificate made under the Building Controls and Standards Act 1991 that has been received for processing by the relevant person or body before commencement day but a decision on the application has not yet been made,—
 - (a) must be processed and decided under the provisions of that Act (as if this Act had not come into force); but
 - (b) this Act otherwise applies, on and from commencement day, to the application and to any permit or certificate that is issued or refused.
- (4) An approval given under the Building Controls and Standards Act 1991 or the Building Controls and Standards Regulations 1991 and still in effect immediately before commencement day is to be treated as having been given under this Act.
- (5) In this section and section 64, **commencement day** means the day on which this Act commences.

64 Transitional provision related to existing buildings

- (1) This section applies to both of the following:
 - (a) a building built prior to commencement day that does not comply with this Act or the CIBC;
 - (b) a building built after commencement day that does not comply with this Act or the CIBC whether or not it has a completion certificate under this Act.
- (2) The Building Controller or Board may give notice, in writing, to an owner of a building requiring—
 - (a) that building work be carried out on the building to remedy the non-compliance; and
 - (b) the owner to apply for the relevant permits and certificates under this Act for the building work.
- (3) The notice must give the owner a reasonable period of time in the circumstances to complete the building work and the Building Controller or Board (whichever gave the notice) may extend the time if satisfied there is good reason to do so.
- (4) In this section, **CIBC** means a requirement in the CIBC that relates to any of the following:
 - (a) a risk to the health or safety of people;
 - (b) accessibility, including for people with disabilities;
 - (c) a risk to the environment.